# **one page summary of the hrc submission**

The Human Rights Commission welcomes the introduction of the Children, Young Person and their Families (Oranga Tamariki) Bill. The Bill has significant implications for the rights and well-being of children and young people in New Zealand. It is the cornerstone of the Government’s modernisation the care and protection and youth justice sectors, and introduces a range of policy and operational reforms.

The Commission supports and commends the Bill’s progressive human rights aspects. The Bill recognises and affirms of the rights of children and young people under the UN Convention on the Rights of the Child (UNCROC), the UN Convention on the Rights of Persons (UNCRPD) with Disabilities to an extent that is unprecedented in New Zealand social sector legislation.

The Commission also supports the Bill’s approach in removing the current distinctions that exist in with regards to children with disabilities. However, the Commission has recommended that a specific care and protection principle is added to ensure that support and advocacy services for children with disabilities and their families are provided at the earliest opportunity.

The Bill also brings the youth justice system further into line with international human rights standards by expanding it to include 17 year olds, with an exception for those charged with a serious offence. The Commission strongly supports the recommendation of the Children’s Commissioner that this exception is removed. The Commission has also made a number of recommendations aimed at further improving the Bill’s consistency with international human rights standards on youth justice.

Other aspects of the Bill have more challenging human rights implications. The Bill affects the ethical duties of practitioners regarding confidentiality and introduces broad powers that enable agencies to gather and share data about individual children and groups of children. The Commission considers that, while the safety of children is paramount, this aspect of the Bill may have the unintended consequence of deterring vulnerable children and their families from engaging with support services. The Commission has therefore recommended that changes are made to the Bill that ensure that privacy, ethical and human rights considerations are adequately reflected in information sharing processes and decision-making.

The Bill also appears to shift towards a more interventionist care and protection model that places less priority on retaining a child’s connection with family, whānau, hapū or iwi, following removal from parental care. The Commission considers that this approach is at odds with many of the Bill’s general principles and has recommended that the current care and protection principles regarding the role of family, whānau, hapū or iwi are retained.

The Bill also sits against the background of increased public awareness about historic abuse and ill treatment of children while in the care of the state and the Commission’s call for an independent inquiry. The Bill notably does not introduce amendments aimed at residential facilities and, in the Commission’s view, cannot be seen as a response to or recognition of the state’s past failings. In light of this, the Commission has asked the select committee to consider whether it can be assured that the Bill will prevent the future occurrence of systemic failures that could lead to the abuse of children in state care.

Lastly, the Commission considers that the review of the care and protection and youth justice system cannot be considered in isolation of the underlying socio-economic stressors that lead to, or precipitate, family and whānau breakdown. This includes household poverty and material deprivation.

# **SUMMARY OF RECOMMENDATIONS**

**Recommendation 1 -** The Commission recommends that the Committee has regard to the final report and recommendations of the Confidential Listening and Assistance Service when considering whether the Bill is adequate in ensuring the safety of children while they are in the care of the state.

**Recommendation 2 -** The Commission recommends that the Bill is amended to further strengthen the Chief Executive’s partnership and accountability duties to iwi and Māori organisations.

**Recommendation 3 -** The Commission recommends that the Bill is amended to retain the current care and protection principles that affirm the primary role of family, whānau, hapū and iwi.

**Recommendation 4 -** The Commission recommends that the Bill is amended to retain the obligation upon the state to *establish* support services that seek to improve outcomes for children and young persons.

**Recommendation 5 -** The Commission recommends that the Committee review clauses the Bill to ensure that the legislative threshold for intervention is set at a level that provides an adequate, rights-consistent level of protection and is applied consistently across its provisions.

**Recommendation 6 -** The Commission recommends that Bill is amended to ensure that the purposes of its information sharing provisions are clearly defined and specify the agencies to whom it applies; appropriately protect practitioner-client confidentiality; ensure risk modelling practices are publicly notified; and provide for privacy, human rights and ethical considerations in decision-making processes.

**Recommendation 7 -** The Commission recommends that the Bill is amended to introduce a specific care and protection principle that requires that the needs of a child or young person with a disability, and their family, are accommodated through comprehensive support and independent advocacy, at the earliest opportunity.

**Recommendation 8 -** The Commission recommends that the Bill is amended to introduce new youth justice principles that require that any detention of a child or young person is a last resort measure and is for the shortest period of time; and that require measures to be taken to address any disability that impacts upon the child or young person’s learning or behaviour*.* The Commission also recommends that the Social Services Committee investigates the use of secure care under the current Act.

**Recommendation 9 -** The Commission recommends that the Bill’s clause that enables 17 year olds to be remanded into a youth unit in a prison is deleted. The Commission supports the full coverage of the youth justice system for 17 year olds.

**Recommendation 10 -** The Commission recommends that the Bill is amended to repeal remands of children and young people into police custody subject to a sunset clause that provides that repeal comes into effect 2 years after enactment to enable an effective transition.