



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Social Services Select Committee
on the Commissioner for Children Bill**

Introduction

The National Council of Women New Zealand (NCWNZ) is an umbrella organization representing 43 nationally organised societies. It has 35 branches throughout the country to which some 150 societies and a growing number of individuals are affiliated.

The views represented in this submission were gathered by means of canvassing membership opinion through our regular monthly circular. Responses were received from 16 branches and affiliated organisations, and from a number of individual members.

Background

The status of the Commissioner for Children is an issue that the National Council of Women New Zealand (NCWNZ) has had a keen interest in over a long period of time. In 1983 we called for the establishment of an advocate for children, and supported the establishment of the Office of Commissioner for Children in 1989.

Our concerns since then have focussed on the independence of the office, and the Commissioner's ability to carry out his/her duties in the best interests of children, uncompromised by their responsibilities to their funders, or the government of the day. These concerns have been reiterated in subsequent submissions (1989, 1992, 1996), emphasising the paramountcy of the child as an over-arching principle.

In 1998, policy was established calling for "the establishment of an independent Commissioner for Children, reporting to Parliament rather than to the Minister of Social Welfare" (FA 1.1). Most recently, at the 2001 National Executive Meeting of NCWNZ, policy was established that all new legislation should ensure the best interests of the child are upheld.

Status of the Commissioner

There is strong support amongst NCWNZ members to establish the Commissioner for Children by independent statute rather than as an Officer of Parliament. This represents a shift in membership opinion since our submission of 1999 (s99.38) supported the establishment of a Parliamentary Commissioner for Children. The primary reason for this shift is the understanding that advocacy is not an appropriate role for Officers of Parliament, as explained in the Social Services Committee's *Parliamentary Commissioner for Children Bill Interim Report* (25 May 2000). NCWNZ accepts the arguments set out in the Report on this matter, that "conferring the status of Officer of Parliament ... would in fact inhibit the ability of the Commissioner to carry out the valuable advocacy, monitoring, and advice functions". It is our strong view that advocacy for children is the Commissioner's primary function. At the time our original policy was established, the option of the Commissioner's Office being established by separate statute was not an option offered, and had it been we may well have supported it then, as we do now.





However, the overriding concern for increased independence and autonomy of the Commissioner has not changed. NCWNZ agrees that the Office should be established as a separate Crown Entity, independent of the Department of Child Youth and Family, and reporting directly to Parliament, through to the Minister responsible for the CYPF Act who has a predominantly administrative role. This has the effect of elevating its status, giving due weight to the importance of the role of advocate for children. We note that Clause 6 establishes the Commissioner “as a corporation sole with perpetual succession”. We support this provision.

Comments from many members reiterate this point. The Office of the Commissioner should be a ‘stand alone’ body that has the freedom and capacity to work across government departments, particularly with regard to the Commissioner’s powers to investigate. This includes the power to investigate for individual as well as class actions, and may involve several departments, including health and education, as is often the case. Protocols for Ministerial responsibility are always an underlying concern for an officer who may appear to trespass on others’ territory. The Commissioner must also have easy access to groups, organizations and members of the public who are outside of the government process. Independence of the Office makes this direct contact more straightforward, in that he or she is not perceived to be linked with any government agency in any way.

Appointments, Functions and Powers of the Commissioner

NCWNZ is pleased to see this Bill is more substantial than its predecessor (the Parliamentary Commissioner for Children Bill 1999) in that details relating to the appointment, functions and powers of the Commissioner are spelt out.

However, NCWNZ has grave concerns regarding the appointment of the Commissioner, Clause 7, by the Governor General on the advice of the Minister responsible for the Children, Young Persons, and Their Families Act 1989 (the CYPF Act). Subsection (1) NCWNZ is concerned that a the Minister would only recommend a Commissioner who would not criticise CYPF robustly.

Clause 7 (2) provides that only the *Minister's opinion* is required when deciding that the Commissioner has the *appropriate skills and experience*. We suggest that this should be an inter-party appointment in consultation with all parties including Non-Government Organisations (NGOs), with appropriate knowledge and experience with children.

Generally, members supported the Higher Salaries Commission setting the salary of the Commissioner.

A number of members expressed concern that the Office should be adequately resourced to carry out its functions.

UNCROC

There was strong support amongst members for the incorporation of the United Nations Convention on the Rights of the Child (UNCROC) into the statute, recognizing that this Convention, to which New Zealand is a signatory, would operate as a set of guiding principles for the Commission. This Convention, among other things, enshrines the child’s right to be heard where they are capable of forming their own views, in all matters affecting the child. In view of our concern about the invisibility of the child in public policy, we hope that the Commissioner for Children will be a vehicle for ‘giving voice’ to the concerns of children.



UNCROC is a United Nations document and as it presently reads not easily understood by the average New Zealander. It is good that the Bill gives better effect to that but it also sets out in Clause 10(d), that the Principles in Sections 5 and 6 of the Children Young Persons and their Families Act (CYPF) are also a guide for the Commissioner. One member suggested that, as the text of UNCROC is set out in Schedule II, the Principles of Sections 5 and 6 of the Children Young Persons and their Families Act ought to be set out fully as well, and not just in the Explanatory Note (p.4).

CLAUSE BY CLAUSE ANALYSIS

Clause 3

NCWNZ supports the Purposes of the Act as set out in this clause.

Clause 6

NCWNZ supports the establishment of the Office as an independent Crown Entity with perpetual succession.

Clause 7

As noted above NCWNZ believes that further thought should be given to the process of appointment to ensure that the Minister takes a wide range of views into account before making a recommendation to the Governor General.

Clause 8

Term of Office. Some members questioned whether reappointment after five years is desirable. In a rapidly changing world, fresh ideas are important.

Clause 10

NCWNZ supports the provisions concerning functions, powers and duties of the Commissioner. However, it was suggested that Clause 10(d) should become Clause 10(a), and that the current Clause 10(a) should become Clause 10(b). This would give due weight to the principles set out in the CYPF Act, which NCWNZ considers to be of primary importance

Clause 11 (1) (f) and (g)

NCWNZ supports these provisions which set out the General Functions of the Commissioner. However, one suggestion was that in respect of Clauses 11(f) and (g) there ought to be provision for the Commissioner to apply to the Court to be given status in any Hearing. This status is often called *amicus curiae*. The Auckland Woman Lawyer Association (AWLA) do that with respect to cases where they feel particularly strongly a point needs to be made that may have a gender issue. For example they applied for, and were granted, status of *amicus curiae* in the Ruka case, but in a recent child support case they were not granted this status. Examples of cases where the Commissioner could be act as *amicus curiae* could include those relating to Section 59 of the Crimes Act, on the parental rights to use reasonable force, as in the recent case before a Hamilton Court concerning a father's beating of his child.

Clause 11 (1) (k)

NCWNZ supports the provision for the Commissioner to report directly to the Prime Minister on matters affecting the rights of children. This clause reinforces our view that the Commissioner, as an independent Crown Entity, is not required to refer matters to the Minister responsible for the CYPF Act. We understand that the relationship with this Minister is only administrative, as set out in Clause 7 and Clause 26. NCWNZ wishes to emphasise the importance of this arms-length relationship to secure the integrity and neutrality of the Office of the Commissioner.

**Clause 11 (2)**

Other functions that could be conferred on the Commissioner could include involvement in sentencing. Once a jury or Judge has reached a decision and they are taking a Victim Impact Statement, a statement could be sought from the Commissioner for Children. Another function could relate to Immigration cases where children's rights are involved. Incorporating these functions during due process would be more effective than having the Commissioner make comment after decisions have been reached. The UN Convention on the Rights of the Child (UNCROC) is particularly relevant to such issues.

Clause 12

This clause concerns the functions of the Commissioner in relation to the Children Young Persons and their Family Act 1989.

Definitions of a Child

Clause 4 defines a child as a person under the age of 18, Clause 12(2) draws on the definition used in the Children, Young Persons, and Their Families Act 1989. This Act defines the upper age limit for a young person as 17, except under its Guardianship provisions where guardianship can be maintained until 20. NCWNZ believes there needs to be clarification of whether the Act continues to apply in the guardianship situation so that Child Youth and Family are obliged to give support.

Functions

NCWNZ notes that the functions of the Commissioner are to (a) investigate (b) monitor and assess, (c) encourage development of policies (d) advise the Minister, and (e) make recommendations on the working of the Act. There is nothing to suggest the recommendations need to be followed up. Does this mean it is toothless?

Clause 16

This clause disallows investigation of the actions of a Court or Tribunal. NCWNZ is concerned that the Commissioner may not be able to comment on cases if asked by the media. Inevitably, high profile cases such as "Lilybing" or "James Whakaruru" are extensively covered in the media before, during and after court action. It is NCWNZ's view that the Commissioner should be able to provide an informed and educative comment should an appropriate opportunity be offered.

Clause 17 (3)

Referrals of Matters to Certain Statutory Offices, if the Commissioner determines that the matter should be dealt with by one of the Statutory Offices set out in subsection (4), there should be a requirement in the Clause that the Statutory Officer must report back to the Commissioner for Children, to ensure that the Commissioner remains informed.

Clause 25

Proceedings Privileged. NCWNZ hopes that the ability to 'whistle blow' if necessary remains.

Clause 27

NCWNZ understands this clause as clarifying that the funding for the Office of the Commissioner will be appropriated by Parliament as a separate budget line and therefore will be independent of any Department or Ministry.

**Schedule 1****Clause 5 (3) Employees**

NCWNZ is concerned that the responsible Minister determines the number of employees that the Commissioner may have. We believe that the Commissioner should determine the number of employees, within the available budget, that he or she requires to fulfil the functions of the Office. We find the intervention of a Minister in this decision quite anomalous in terms of our understanding of Crown Entities.

Clause 8 (1) (b) Ability to delegate

NCWNZ is concerned that the Commissioner's ability to delegate should not be restricted by the requirement that the Minister needs to approve delegation to a person other than an employee.

CONCLUSION

NCWNZ generally supports the Bill. Many members have expressed concern about the status and well-being of children in our society, particularly with regard to the high levels of violence and abuse reported against children, and their invisibility in public policy. It is hoped that by elevating the status of the Commissioner for Children, increasing his or her powers to act as their advocate, and enshrining the principles of UNCROC (and hopefully Principles 5 and 6 of the Child Youth and Families Act) into our legislation, we may go some way toward ameliorating this situation.

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National President

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