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Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill.

We strongly oppose the proposed Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill because:

1. It lacks intervention logic i.e., the processes described do not align with either the research evidence around drivers of offending or the desired outcome of reducing youth offending.

2. It positions the locus of the problem and the proposed solution within the individual young person rather than being community and restorative focused.

3. It does not espouse the Crown's obligations to Māori under Te Tiriti o Waitangi.

4. It does not demonstrate how it will enable children's, and young people's rights, particularly Article 12, regardless of age, ability, ethnicity, under the United Nations Conventions on the Rights of the Child.

In the section below we will provide further detail around our key points to demonstrate that this amendment is ill-informed and totally inappropriate. The intention to improve outcomes for young people involved with the justice system is one that we share. However, the proposed legislation lacks an understanding of the presenting complex problem(s) and does not present a viable or successful solution. Instead, it presents a punitive and stigmatizing process which will harm young people and their families.

Furthermore, we believe that if this amendment was operationalised it would result in further discrimination of rangatahi Māori, and vulnerable or marginalized populations such as young people with speech, language, and communication needs and/or neurodiversity/neurodisability, rather than resulting in the intended reduction in youth offending. This Amendment Bill represents a step backwards.

We bring a unique perspective to the commentary on this legislation. We are a group of specialist speech-language therapists who work in the Youth Court (including Rangatahi and Pasifika courts), District Court and High Court. We also work in the care and protection system. We attend Family Group Conferences to assist with the communication between children, young people, and their whānau and social workers, police, judges, lawyers to ensure that everyone understands what is going on, can participate, and can enact their rights. We also do similar work in the adult justice context. More information about our work and experience is provided at the end of our submission.

From our perspective as Communication Assistants and speech-language therapists in the justice system, we envisage it would be very difficult to explain the proposed Demerit System to any young person in a way that they understood what they were expected to do and how they might clear any points they may have accrued. It would be particularly

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confusing for the many young people we meet who are challenged by paying attention, understanding complex words and by reading.

1. **The Amendment Bill lacks intervention logic i.e., the processes described do not align with the research evidence around the drivers of youth offending or the desired outcome of reducing youth offending.**

   There is a plethora of evidence, including multiple recent reports from Professor Ian Lambie, the Government's own Chief Science Advisor on Justice, that help us to understand the factors underpinning or driving youth offending and consider appropriate solutions. This proposed legislation does not demonstrate an understanding of the relevant evidence or an understanding of child/youth development and successful interventions. The complex factors and experiences that intersect for nearly every young person involved with the justice system mean they are highly unlikely to successfully navigate the proposed Demerit System.

   We recommend the proposed legislation is considered in relation to Professor Lambie's following four papers which are listed on this weblink: https://www.pmcsa.ac.nz/topics/criminal-justice/

   - What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand.
   - Every four minutes: A discussion paper on preventing family violence in New Zealand.
   - It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand.
   - Using evidence to build a better justice system: The challenge of rising prison costs.

   And this paper from the Department of Corrections:
   - What has happened to you? Changing how we think about family violence and justice | Department of Corrections

   If this Amendment Bill had intervention logic it would have based its 'solution' on a robust and evidence-based understanding of the relationship between:
      - the drivers of youth offending e.g. intergenerational trauma and loss, poverty, inequity, family violence etc.
      - the lived experiences, and worldviews of young people and whānau involved in youth justice.
      - the cognitive, linguistic, and mental health strengths and needs of young people and whānau involved in youth justice.

   The Amendment Bill ignores these points and instead proposes an approach that requires young people to successfully navigate a complex system that depends on having well-developed skills for thinking through consequences, assessing risk, and comprehending and being motivated by complex systems. This is just not the reality

for many of the young people involved with the justice system. In other words, this legislation proposes processes that make it more likely that young people involved in youth justice will fail rather than succeed.

Furthermore, if this Amendment Bill had intervention logic the authors would have carried out significant consultation with young people and whānau involved in youth justice so that these young people themselves could provide advice about the processes, strategies, resources/assistance that are most likely to work for them.

This Bill does not reflect any of the above and so there is no relationship between the problem and the solution.

In our opinion, the existing Youth Justice Legislation already provides a framework that enables young people to be held to account and have their needs addressed. Strengthening of the existing framework is recommended so the outcomes can be truly restorative for all. Getting better outcomes in youth justice involves starting much earlier – identifying and providing for children's and whānau needs long before they have involvement in youth justice, and providing timely, culturally relevant and therapeutic input. There are excellent initiatives that already exist that do this – we suggest that projects such as the Mana Tamariki programme (https://www.auckland.ac.nz/en/science/our-research/take-10-with/take-10-with-psychology/take-10-with-ian-lambie.html) or the Wānanga Tikanga programme at Hoani Waititi Marae which is linked to the Rangatahi Court are developed further.

At the Bill's first reading on 21 July 2020, the Right Honorable Darroch Ball explained that the Bill's intention was to intervene once only in the lives of children who have offended. This is an attractive proposition, but not realistic. Successful interventions in this field are unlikely to be short and simple, and a preventative approach would actually start when children are very young and ensure they have access to the supports they need throughout childhood – this means addressing poverty, unidentified or identified health, learning and mental well-being needs, ensuring healthy housing and whānau supports are in place, making sure that care and protection concerns are effectively addressed, and doing all this in ways that protect mana, share power with whānau and honour culture. The approach suggested in this Bill does not do these things, and does not present a realistic or relevant solution to the presenting issues.

2. **It positions the locus of the problem and the solution within the individual young person rather than being community and restorative focused.**
The idea that young people will not offend because they want to avoid getting demerit points just doesn't stack up with our experience, or our knowledge of the research. Like many ill-informed behaviour management strategies/processes, this approach does not consider the young person's experience of the world to date, the skills they come with, or the challenges they and their whānau might be facing. The responsibility for addressing offending is relegated to the young person in this approach. Instead, we believe there's role for all of us to play - the whole community, the professionals involved, the community around the young person, their whānau and of course, the young people themselves. Addressing accountability and ensuring

the young person doesn't end up involved with the justice system again, is not just the young person's job. Restorative approaches and approaches that address therapeutic needs, health and education in ways that we know will work are missing in this legislation.

3. **It does not espouse the Crown's obligations to Māori under Te Tiriti o Waitangi.** This Amendment Bill is asynchronous with Te Tiriti o Waitangi e.g., the Crown's responsibility:
    - to provide Māori with the protection and resources that will enable them to thrive, be physically well, and safe.
    - to ensure that Māori have agency and authority in decision-making.
    - to enable Māori language, culture, and identity to be reflected in plans, policies, processes, services and organisations e.g. justice, education etc.
    - and to ensure that Māori are not discriminated against etc.

    It is also not consistent with the intent of the rest of the Oranga Tamariki Act legislation e.g., including whānau, hapu and iwi, reciprocity, and acknowledging a collective rather than individual worldview.

4. **It does not explain how it will enable children's, and young people's rights, particularly Article 12, regardless of age, ability, ethnicity, under the United Nations Conventions on the Rights of the Child.**

    This proposed legislation does not appear to prioritise children, and young people's right to understand, participate in, and influence matters that are important to them. The information provided about this Amendment Bill infers that most, if not all, of the decision-making is done by the enforcement officer unless the child or young person is involved in a family group conference and/or court. We are not provided with any information about when and how the enforcement officer will ensure that the child or young person can understand the (complex) process, form a view about the options and consequences being considered, say what they think, and have some influence over the proceedings. Furthermore, there is no information about who advocates for the child or young person in the initial stages of this process. This apparent willingness to disenfranchise children, young people, and their whānau is extremely worrying. Yet again, this proposed legislation is likely to do more harm than good.

About Talking Trouble Aotearoa New Zealand

Our work is about making sure all the people who have to talk to each other can do so effectively, whether that is:

- the Judge giving bail conditions to a young person.
- the police telling the young person their rights.
- the people involved in a Family Group Conference communicating their views, participating in decision-making etc.

- the Youth Advocate (Lawyer) explaining charges, orders and processes to their young client.
- the young person understanding questions they are asked in court.
- the young person telling their side of the story and explaining their perspective about what happened and what they see as the way forward.
- the young person understanding their plan; what they have to do, for how long, and by when.
- the young person being able to understand and engage with the interventions like counselling, drug and alcohol counselling etc.
- the young person understanding what their teachers and mentors are talking with them about.

Our work involves finding out how someone communicates and whether there are any factors that might be barriers to effective communication and enactment of rights. We are highly trained to identify speech, language and communication difficulties and understand how these might relate to what else might be relevant – there is a long list of complexity for nearly every young person we see who has involvement in the youth court. We frequently are working with young people who have had a history of abuse, who have witnessed or been the victims of family violence, who have been living in poverty all their lives, who have had disruptions to contact or opportunities to live with whānau, who have difficulties that no one has ever picked up before – from ear health issues to Fetal Alcohol Spectrum Disorder to head injury.

New Zealand and international research has found very high rates of language difficulties within populations of young people involved with the justice system. The various studies have conservatively estimated that these difficulties impact on over 60% of the young people involved. These language difficulties often have impacted on learning at school, managing reading, spelling and writing, making and keeping friends and on the young person's ability of communicate with their families and professionals. Mostly they will have gone under the radar and it is very rare for young people to have had these challenges properly assessed and provided for. Language difficulties are often just one challenge that young people will have faced. They are also typically dealing with a cocktail of undiagnosed or diagnosed challenges and negative early experiences that have impacted on their development and wellbeing. It is hard to image that a young person with this profile of development is going to make sense of the proposed Demerit System and participate successfully in it.

Our role is to make sure that everyone involved understands how to communicate with the child or young person and ideally, we would also provide interventions to build strong communication skills. Like many of the other specialist areas of input such as psychology, counselling, reading interventions, mentoring, there is not enough input from speech-language therapists currently occurring for young people who are known to youth justice agencies. We often feel our input is too sparse and too late. In many cases, young people have got to the point where they have stopped going to school. They've either left of their own accord or have been stood down/expelled. For many the work is confusing, reading is too difficult, understanding what the teachers are saying is hard because of the long words and because they 'go on too long', and making and keeping friends is a challenge.

The intended outcome of this legislation would be much more likely if children and young people are:

1) supported to stay in education (ban standdowns or expulsions, and provide and access to specialist qualified teachers who can address literacy and learning challenges), and
2) have access to those who that help build skills and address needs: Child and Adolescent Mental Health, mentoring, family therapists, youth health specialists, Drug and Alcohol services, counselling, speech-language therapy, occupational therapy, psychological interventions.

Sometimes these services ARE provided for young people who are involved with youth justice, but in many cases, these young people needed this help and support earlier in their lives. Starting to get in trouble should not be the trigger for needs to be recognised and addressed.

Some of the young people have had long journeys with government agencies and our service – one young person first met one of our team when he was 12 years old and staying in a care and protection residence. In our opinion this was far too late – he should have been having help and support from a speech and language expert when he was much younger but there were already a huge group of excellent professionals involved with him and his whānau, as there was a web of complex issues of which language and communication difficulties were only a part. We have been involved in the care and protection processes and youth justice processes with this young person and with his sibling. We're still involved now he is in the 'adult system' as part of his court and parole processes. Would a structured demerit system have made a difference to him and prevented re-offending? Absolutely not.

Sometimes we see young people in the youth justice system who we have met before – we had perhaps met them first when we were engaged as communication assistants to help ensure everyone could communicate with them when they gave evidence of being abused, or we had perhaps met them when their social workers referred them to us to find out more about their language and communication skills because they were known to the care and protection systems.

Last year we provided assessments for children who are known to Oranga Tamariki within a small project in a multidisciplinary team – these children participated in 'Gateway' assessments which aim to open up the 'gates' for services they need. Some of these young people were involved in youth justice processes and some weren't but what is important to know is that those children were coming to see us with sometimes long lists of issues that a 'intervene once' approach is never going to solve – we saw multiple families that were living in motels or temporary accommodation, multiple families where a parent was in prison or involved in the justice system, children who were no longer in touch with their siblings or wider whānau, children who needed medical care for sometimes serious conditions that should never arise in a country like NZ – bronchiectasis, tuberculosis, rheumatic fever - whānau who had been through these systems themselves as children and who hadn't known supportive, responsive parenting themselves, whānau who had experienced dislocation from their culture and racism, children whose siblings had been taken from the care of their whānau or who had been taken themselves from whānau.

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The Gateway assessment provided the opportunity to intervene, but for many of the children we saw, those interventions could have happened earlier in their lives and needed a multiagency approach that tackled housing, employment opportunities for whānau, health, education and then the sorts of input that the team we were working in could provide – speech-language therapy, psychology, paediatric health expertise. However, the amount of input we were able to have for each child was minimal. From the short time we had with each child, there was often so much more that we felt we could have offered - and the services that we would then want to provide were either non-existent or very limited. In our own professional field, some of those services we wanted to recommend were services that would develop their language and literacy skills, but those services are in tightly limited supply or are non-existent for some of the needs. Many of the children and whānau would have benefitted from other input from people outside our profession - taking the information we had gathered to their families and schools and supporting them with others with specialist skills – occupational therapists, psychologists, mentors, youth mental health, drug and alcohol counselling. These are the solutions that can help young people have better outcomes: Adults who can work with young people and help them develop their potential.

We would be happy to answer questions about the points made in this submission or provide further details on any of the points. We would welcome the opportunity to make an oral submission.

Sally Kedge and Alayne McKee
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