



ARCHIVES AND RECORDS ASSOCIATION OF NEW ZEALAND

<http://aranz.org.nz/>

Submission

To the Social Services Select Committee

Submission on the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill

1. About ARANZ

1.1 Founded in 1976 with the aim of promoting the understanding and importance of records and archives in New Zealand, the Archives and Records Association of New Zealand is a national sectoral organization broadly representative of archives and record management interests with over 400 corporate and individual members. Corporate members include government departments, local authorities, businesses, libraries, historical societies, schools, museums, and universities. Individual members comprise archivists, records managers, librarians, genealogists, and local and academic historians. There are six regional branches. Its patron is the Governor-General.

1.2 Amongst the Association's purposes directly relevant to this submission are:

- To foster the care, preservation and use of archives and records, both to public and private, and their effective administration.
- To provide an authoritative voice on matters of concern relating to archives and records.
- To maintain and increase public awareness of the importance of archives and records in all matters affecting their preservation and use.
- To promote professional competence in the administration and preservation of archives and records; by providing advice to the appropriate authorities on levels and standards of professional education and training, and by promoting the training of archivists, records keepers, curators, librarians and others by the dissemination of specialised knowledge.

2. Who has been consulted

This submission is an outcome of a round-table discussion workshop, run by ARANZ in conjunction with the NZ Centre for Human Rights Law and the Records Continuum Research Group (based at Monash University), on issues relating to the records of children who have been in out-of-home care. This workshop was held on 24 February 2017 and participants included archivists and records managers who manage records relating to people who were in care; people who were in out-of-home care as children; legal representatives of those children and academics with expertise in information and records management and human rights law. (See <https://www.aranz.org.nz/Site/events/calendar.aspx#H52007-3>)

In addition, ARANZ Council members sanctioned the making of this submission at an ARANZ Council meeting held on 2 March 2017.

3. Scope of this submission

This submission relates to the Information Sharing sections of this Bill, specifically sections 65 and 66.

4. ARANZ Position on this Bill

ARANZ Council is concerned that the rights of children in care and adults who have been in care as children to accurate, complete and accessible information about their time in care are not sufficiently protected by the provisions in this Bill.

The following comments relate to the current experience of adults who have been in care and are suffering continuing trauma due to issues regarding lack of access to information about their time in care. Note that a "care leaver" is defined as an adult who was in care as a child.

1. Care leavers may find that the only personal records that exist of their childhood are held by government departments, who often choose to redact much (or most) of the personal information about the people they were surrounded by in childhood - and these redactions are inconsistent.. Withholding of records of a care leaver's childhood is experienced as abuse or torture: "a beating that leaves no marks".
2. The records may be complete in terms of legislative requirements, but not in terms of what the children need and want to know (for example, family history, educational achievements, photographs, medical history...)
3. Care leavers accessing records find that information is often misleading, inaccurate, and incomplete. Sometimes libellous statements are made about the child, birth parents or siblings. Often many or most records have disappeared.
4. Many care leavers' files contain little or nothing but negative comments

5. Records are often distributed between several or many different agencies, making it difficult both for care leavers and for archivists or records managers to locate them when needed.

6. Care leavers are required to approach the agency that provided their care in order to obtain the records relating to their time in care. This can be problematic, particularly in cases where abuse was involved.

4.1 Recommendations from the workshop.

1. Care leavers and children in care need to be able to add retrospective statements to information held about them, to provide their point of view.

2. Children in care should be allowed to make and record statements about how they are feeling, with photographic / video / sound recordings in support, particularly in cases of abuse.

3. Current retention requirements for records relating to children in care need to be revisited, particularly with regard to staff records and police complaints, as individuals may not feel confident to act on abuse for many decades after it has happened.

4. Legislation relating to records of children in care, as well as adopted children and those born with assisting technologies, needs to acknowledge, meet the needs of and address the rights of those most affected, the children themselves. People who were in care as children have the right to records that support their identity, including records relating to their biological parents, siblings, education, medical history, information about the places they were in care, the identity of the people looking after them, and other life events of significance to the child. An overarching standard of what types of records should be created and kept by care providers, and who should have control over access, creation, management and destruction is needed. This standard needs to be based on the needs of the child.

5. Related policy and legislation

5.1 Australian examples

Australia is making considerable advances relating to rights in records for people who have been in care as children. For example, a model for managing the records of children in care can be seen in the New South Wales standards for statutory out of home care

(http://connectingcarersnsw.com.au/wp-content/uploads/2015/03/Outofhomecare_standards_2013.pdf).

Details of Standard 16 “Documentation and Recordkeeping”, reproduced from page 19 of the document:

Objective

Children and young people have a record of their time in care.

Standard

Children and young people have a permanent record of their histories which contains all relevant documentation

Legislation

Children and Young Persons (Care and Protection) Act 1998

Sections: 14, 142, 149B-K, 160, 162, 165, 167-170, 245,

Chapter 16A, 248

Children and Young Persons (Care and Protection) Regulation 2012

Clauses: 8, 13, 14, 37(a), 42, 65

Schedule 3 - Clause 4

Key messages

- An accurate record of their time in care can assist children and young people understand their history and develop a sense of identity
- Omissions and inaccuracies in record keeping contribute to flawed decision making
- Good record keeping is an integral component of casework practice

Assessment Criteria

1. All available information, documents and records about a child or young person are collected and maintained
2. Records pertaining to a child or young person and their family are maintained in a safe and secure manner for the time specified in the relevant legislation
3. Children and young people have access to their information when requested
4. Children and young people are provided with support when accessing information about their personal and family histories
5. When leaving care, young people are provided with the original of their identity documents and life story materials and copies of other documents.

The 1997 report on the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families

(https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf) listed the following recommendations regarding records and archives:

“First, all records which may be of assistance to Indigenous people seeking to re-establish family and community links or establish Indigenous identity must be preserved.

Second, access to records must be made easier and less hurtful. This involves improving access procedures, ensuring culturally appropriate access and involving

the counselling and support assistance of Indigenous family tracing and reunion services.

Third, in the longer term Indigenous communities should have an opportunity to manage their own historical documentation”.

In Australia, government funding has allowed for the development of a service called “Find and Connect” (<https://www.findandconnect.gov.au/>), a central point where information about orphanages, children’s homes and other institutions throughout Australia is available for people wishing to find their own records and related support services. Developing a similar resource in New Zealand would support the rights of people who have been children in care to have access to information which preserves their identity, enables them to participate more fully in society and also allows them to seek justice for abuse they suffered as children. Although the development of this resource is not part of this legislation it is important that the need for this resource is taken into consideration when designing the aspects of this bill relating to records.

5.2 International obligations

In further support of this submission, ARANZ wishes to draw the attention of the Select Committee to Article 8 of the United Nations Convention on the Rights of the Child:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Ensuring appropriate recordkeeping occurs will assist in fulfilling New Zealand’s obligation to this Convention.

Conclusion

ARANZ Council recommends that new clauses are added to the Bill requiring that:

1. All available information, documents and records about a child or young person are collected and maintained, including but not limited to birth certificate, medical, educational, and other life events
2. Records pertaining to a child or young person and their family are maintained in a safe and secure manner for the time specified in the relevant legislation
3. Records relating to the identity of staff caring for children and the institutions responsible for their care are maintained and are accessible to the child and the adult care leaver they become

4. Care leavers and children in care have the right to add retrospective statements to information held about them, to provide their point of view.
5. Children in care have the right to make and record statements about how they are feeling, with photographic / video / sound recordings in support if the child wishes, particularly in cases of abuse.
6. Children and young people and care leavers have access to their information when requested
7. Children and young people and care leavers are provided with support when accessing information about their personal and family histories
8. When leaving care, young people are provided with the original of their identity documents and life story materials and copies of other documents.

The ARANZ Council would like to thank the Select Committee for the opportunity to make this submission.