

3 February 2021

**SUBMISSION TO THE SOCIAL SERVICES SELECT COMMITTEE  
ON THE ORANGA TAMARIKI (YOUTH JUSTICE DEMERIT POINTS) AMENDMENT BILL**

***Youth is not something to be analyzed in the abstract. Indeed, “youth” does not exist: there exist only young people, each with the reality of his or her own life.***

Pope Francis: *Christus Vivit* (paragraph 71), 2019

1. The Archdiocese of Wellington Ecology, Justice and Peace Commission and Wellington Catholic Social Services oppose this Bill and do not wish it to proceed.
2. We see this proposal as being fundamentally in conflict with the key principles outlined in Section 5 of the Oranga Tamariki Act 1989. These principles acknowledge the importance of recognising the young person and the specific circumstances of their lives, including their whakapapa, the circumstances of their whānau, their own development potential as well as health and educational needs, and the many aspects of their identity.
3. In contrast, this proposed amendment proposes reducing all the complex situations of young offenders to a simple numbering system which takes into account only a police officer’s assessment of the severity of the crime and of the offending.
4. The process outlined contains no mention of legal advice or support offered to young people, no involvement of whānau other than being the recipient of an enforcement officer’s decision, no voice for victims as currently provided by Family Group Conferences (FCG). It separates consideration of offending from the wider social work and community support which can professionally identify, assess and respond to family and community factors which may be contributing to behaviour. It takes decisions out of the hands of judges, whānau and the FCG process which are currently made with their involvement.
5. We see this proposal as a simplistic response to complex social problems, which will divert much needed resources away from work which more effectively makes a difference in the lives of young offenders.

**Specific concerns**

6. **Racism/unconscious bias:** This Bill is being considered by the Select Committee at a time when the failure of Oranga Tamariki to adequately partner with, consult and involve Māori in decisions about care and protection of young people is the subject of investigations by the Waitangi Tribunal, Office for the Commissioner for Children, Whānau Ora commissioning agency and the Ombudsman. However, there is no specific reference or consideration to how this new proposed process will address those concerns in relation to youth offending.

7. This Bill is fundamentally in conflict with the duties of the Chief Executive of Oranga Tamariki to provide a practical commitment to the principles of the Treaty of Waitangi, as outlined in Section 7AA, particularly Section 2(b):  
*...the policies, practices, and services of the department have regard to mana tamaiti (tamariki) and the whakapapa of Māori children and young persons and the whanaungatanga responsibilities of their whānau, hapū, and iwi.*  
We see this proposal moving away from this requirement, rather than towards it.
  8. The responsibility for the assessment and allocation of demerit points in the Bill would appear to lie with an enforcement officer alone, without oversight from a judge, and without input from whānau, victims, social workers, and other groups in the community. Despite this, a large amount of discretion without oversight exists in the allocation of demerit points. Recent reports, such as the analysis by Just Speak earlier this year, shows that racism and/or unconscious bias leads to poorer outcomes for Māori and Pasifika offenders in these circumstances, with a greater proportion of Māori being charged and facing harsher penalties than non-Māori.
  9. In considering creating another level of discretionary assessment by police, the Select Committee must consult with Māori and seriously examine how it will address racism and unconscious bias in the application of the proposal.
  10. **Natural justice/right to legal advice and support:** Section 5 of the Oranga Tamariki Act 1989 provides that any court or person who exercises any power under the Act must be guided by the principle that a child or young person must be encouraged and assisted, wherever practicable, to participate in and express their views about any proceeding, process, or decision affecting them, and their views should be taken into account.
  11. It is clear from the proposed Amendment that there would be consequences for a young person issued even a single demerit point under Clause 210B, as this would automatically lead to further action by police under Clause 210C. Despite this, there is no mention of access to legal advice or advocacy for young people who may potentially be allocated demerit points. Even information to parents under Clause 210F follows the allocation of demerit points, rather than at the time the decision is being considered.
  12. Young people must have the right to access legal advice and support, and to have their views taken into account, in any process or proceeding, including this one.
  13. **Diversion of resources from prevention of crime to assessment of offenders:** The experience of Challenge 2000 working with young people is that opportunities provided under Section 141E of the Act for police to undertake a range of preventative actions are grossly underused at present. We believe that if passed, this proposal would further divert resources from crime prevention towards police assessment of offenders.
  14. Clause 210I would require a police officer to discuss matters including a young person's education, employment, living arrangements and other factors with an offender and their parents following the allocation of demerit points. This would require additional training for police, who are not social workers or psychologists. The FGC process brings the wider expertise of the community into consideration of the particular contexts of young offenders. It diminishes this well-developed process to reduce this to a visit by an enforcement officer.
  15. **Exclusion of victims:** Victims currently have a voice in the FGC process. There is no mention in the demerit point allocation process of a voice for victims. This is one indication among many that the purpose of the scheme is primarily punitive rather than restorative.
  16. We would like to speak to the Select Committee about our submission. The contact person for this submission is Lisa Beech, Ecology Justice and Peace Advisor, Archdiocese of Wellington.
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