

Convention on the Rights of the Child

Introduction

1. Families for Justice is a charitable organisation established in 2016 by men and women who were suffering at the hands of the Family Court and New Zealand's Ministry for Children (Oranga Tamariki—Maori for "Care of Children").
2. The purpose of our group has been to make known the failures of the Family Court and Oranga Tamariki and to make it a more fair and just system.
3. Families for Justice has no gender preference, it is non-political and non-religious. Using our combined lived experience we have been able to help people going through the Family Court system and as a result we have consulted in more than 1000 cases over the past six years.
4. Our members assist people with their paperwork and legal support as a McKenzie Friend (a McKenzie friend assists a litigant in a court of law). We also support people with a buddy system and we are connected to a suicide awareness group as people going through this system are very vulnerable and sadly, at times, suicidal.
5. A common denominator in the removal of children from the family home our group has noticed is how the protective parent who is fighting for the children is the person the State fights the hardest in its effort to oppose them. It is a David and Goliath battle that most people are not capable of taking on, which is why our group has been able to have some success in returning children to parents and in exposing the unjustness of this system which most people have no awareness of until they have been dragged into the fray.
6. This submission has been put together because we believe if the Convention for the Rights of the Child were being applied in our Family Court and with out State child welfare system we would not be having the problems we do have. Instead we have an excessively large number of children in State care which can now be seen as generational, and a Family Court system that traumatises children as well as parents.

Background

7. New Zealand's child welfare services have undergone various iterations and name changes, from Social Welfare to Child Youth and Family and now currently Oranga Tamariki. These name changes occur usually after an investigation and report into the

inadequacy of

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their services. Unfortunately, the name is often the only significant change made, the rest remains very much the same. Oranga Tamariki have a consistent record of intervening and uplifting children for often spurious reasons, claiming potential abuse where there is none and doubling down on parents and caregivers if they oppose their reasons and methods.

8. The Family Court (which doubles as the Mental Health Court) is also fraught with difficulty. It makes legal decisions regarding the welfare of children and the access (or no access) for parents, family and caregivers. It is an adversarial legal system that pits parties involved against one another, fuelled by their lawyers, social workers and psychologists.

9. Our group has noticed a common theme within these agencies where the person who is the protective parent of the child(ren) is often the one attacked most by social workers, lawyers, psychologists and even judges.

10. These issues are not new. There have been numerous reviews of child welfare services and the Family Court that have highlighted the problems yet nothing substantial has changed.

The Family Court

11. The Family Court receives \$315 million approximately per year which includes \$23.2 million for 64 Family Court judges' salaries.¹ Some people are paying hundreds of thousands of dollars for lawyer's fees in this system. It is big business.

12. The warring nature of the Family Court where factions play one side off against the other, with the children in the middle, means more harm and trauma for the children as well as the parents. Often the conflict can be fuelled by the lawyers, social workers as well as psychologists and even judges.

13. *Auckland clinical psychologist April Trenberth says there's a stack of research on the long-term effects on children who are stuck between warring parents or caregivers. Take your pick: mental health, social, behavioural and emotional issues; anxiety; depression; a higher risk of substance abuse and addiction. And without good role modelling, children can have difficulty establishing healthy relationships in the future.*²

14. The Family Court does not require a high threshold of evidence when it comes to determining the care of a child. In fact much of the Family Court's work is done in secret

¹ Families at war: why kids get trapped in bitter Family Court battles, by Jane Phare, NZ Herald 24 Aug 2023

² Warring parents: Family Court experts warn of damage to children, by Jane Phare, NZ Herald 24 Aug 2023 (attached)

and is a closed court, not open to public scrutiny.

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15. This means the parent(s) who are brought before the Family Court face an adversarial system where they are being forced into trying to prove they are not an abusive parent yet they do not always have full access to the evidence held against them and the ability to challenge it.

16. Expert evidence in the Family Court provided by psychologists are based on social science theory such as "bonding", "attachment" and "parental attitude". These factors, when looked at closely, are matters of opinion rather than fact. They are often arbitrary and hard to counter as they are not based on specifics. Psychological assessments are invariably done during the trauma of parents engaged in a court dispute or after the removal of their child.

17. The problems with the Family Court were documented in a 2019 independent report³ that found the system was not fit for purpose. It cited a custody dispute over a 10-month-old baby that was not resolved until the girl was nearly five - a delay described as typical - and no plans were made for her schooling because the relationship between parents and caregivers failed.⁴

18. The review said the current system made decisions based on the most efficient use of judges and court staff as opposed to the interests of children and families.

19. One of the practices has been to get "without notice" court orders so as the parent can get legal aid and access to a free lawyer. These notices require attention from the court because they are notifications for protection orders or for risk requiring an uplifting of the child. They are often misused and they can make it almost impossible to get people talking to each other and working with mediators to negotiate a resolution.

20. Suicide is a consequence of injustice in this system.

21. In late 2009 Principal Family Court Judge Judge Boshier called for more support for anguished families. He said, "I feel for people that use our courts who eventually cannot cope and take their own lives".⁵

³ <https://www.justice.govt.nz/assets/family-justice-reforms-final-report-independent-panel.pdf>

⁴ <https://www.rnz.co.nz/news/national/392186/family-court-review-calls-for-70-changes-costing-up-to-60m-a-year>

⁵ <https://www.scoop.co.nz/stories/PO0911/S00201.htm>

22. He advocated for a mediation service to take out the conflict of the adversarial court system. This system is now in place yet it is limited as the mediation service are only voluntary and cannot deal with cases where there are protection orders or serious allegations which means there are still many cases that go to the Family Court. There is no record being kept of suicides and the Family Court system, nor are there any statistics of

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children in State care who have committed suicide. The State does now keep a record of children harmed in the State care system.

23. The Family Court needs to change because of the deep trauma and psychological damage it does to children.

Recommendations:

24. In all instances uphold the Convention on the Rights of the Child, especially articles 3, 5, 8, 9, 18

25. Remove the adversarial approach to dealing with disputes in the Family Court. Make mediation compulsory not optional. It is reportedly settling 70 per cent of cases, so make the service more accessible and even free. (Article 18)

26. With couples' disputes establish what the status quo was in the family before the separation to measure the parent and child relationships. Use this as the basis for ongoing care of the child.

27. Remove any incentive to misuse protection orders to gain advantage over the other party, including holding people and professionals accountable if they are misused.

28. Remove any incentive to prolong the case before the court so as resolutions are made in a timely fashion.

Oranga Tamariki (Ministry for Children)

29. New Zealand's child services or Oranga Tamariki receive something in the order of 80,000 notifications per year.⁶

30. They employ 1,800 frontline social workers dealing with an average of 219 notifications per day.

⁶ <https://www.orangatamariki.govt.nz/support-for-families/how-we-support-whanau/the-statistics/>
Notifications can be made anonymously, which can also be an abuse of the system if done vindictively.

31. There are 3,034 caregivers and the agency funds around 500 non-government organisations who provide services for children and their families.

32. There are around 5000 children in State care at any one time.

33. This is child welfare as an industry for a population of 5.123 million people.

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34. Going back to 2105, Children's Commissioner Dr Wills' State of Care report on Child Youth and Family, revealed that 117 children were abused in the previous year while in state care.

35. In that year there were 63,000 reports of concern of which 43,000 required further action and 16,000 of these had substantial findings of harm—emotional, neglect, sexual and physical.

36. It revealed how it was not uncommon for a young person leaving care at the age of 17 to quickly end up homeless, jobless, and lacking support from a sympathetic adult. Many would become parents very young; others would end up in prison.

37. *We don't have enough information to say conclusively whether children are better off as a result of state intervention, but the limited data we do have about health, education, and justice outcomes is concerning.*⁷--Dr Russell Wills, Children's Commissioner, 2015

38. In 2015 Anne Tolley, Minister of Social Development was aware that children were being traumatised by the State care system:

39. *So what the panel's report showed us is that a great deal of the work and the increase in emotional abuse has almost been caused by the system itself. They come to our attention at age 2 or 3. We churn them through the system until they're about 8 or 9, and by that time, they are severely traumatised.*⁸--Social Development Minister Anne Tolley

40. In 2017 the new Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill and Vulnerable Children Amendment Bill was having its third reading in the house. Green Party spokesperson on Maori Affairs and Human Rights, Marama Davidson, commented:

⁷ State of Care, Office of the Children's Commissioner 2015
<https://www.manamokopuna.org.nz/publications/reports/state-of-care-2015-what-we-learnt-from-monitoring-child-youth-and-family/>

⁸ <https://www.scoop.co.nz/stories/PO1509/S00373/state-may-need-tougher-line-on-contraception-tolley.htm>

41. *My particular focus, from the very start, has been on this misnomer that the well-being of children can be separate from the well-being of families—any children, actually. But the fact that over 60 percent of the tamariki in Child, Youth and Family's care are Māori makes this incredibly important. As many of our colleagues have spoken about today, we were out on the steps of Parliament, face to face, hūpē to hūpē, tangi to tangi, with a lot of the people who have come through this system, abused and harmed, and it has not just stopped with them. Their wairua [spirit] has*

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*been affected, their children have been affected, and their grandchildren have been affected. And this was at the hands of the State.*⁹

42. Marama Davidson was referring to New Zealand's child welfare system which has a 70-year history of removing Maori children from families in disproportionate numbers causing immense harm, something the Royal Commission of Inquiry into Abuse in Care is currently investigating.¹⁰

43. The Royal Commission is limited to investigating between the years 1950 to 1999 yet the situation with Oranga Tamariki and the Family Court is still happening today.

44. In the 2022 Safety of Children in Care annual report¹¹ recorded 4856 children were in State care and of those 453 children were harmed while in care—a number barely changed since 2018.

45. Unfortunately, by casting a wide net there are many cases where families have been caught up in an unrelenting and irrational child welfare system that can ruin lives for children, parents and caregivers when there has been no actual abuse of a child.

46. Oranga Tamariki have powers similar to the police but without many of the checks and balances surrounding the police. Social workers can investigate complaints, conduct interviews, gather evidence, apply to a Family Court Judge for warrants for uplifts of children and young people, they can uplift without a court order and make a case for the Family Court.

47. This is parallel with what the police do in criminal matters but with one major exception, their criteria of harm is broad and arbitrary. Social workers are allowed to present scant and flimsy evidence based on accusations and hearsay to the Family Court to justify their intervention.

⁹ Marama Davidson, Green Party leader, Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill and Vulnerable Children Amendment Bill — Third Readings 2017
https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20170706_20170706_32

¹⁰ <https://www.abuseincare.org.nz/>

¹¹ <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/safety-of-children-in-care/2021-22/OT-Safety-In-Care-2022.pdf>

48. Also, unlike the police, there is no independent complaints authority to review the actions of social workers and Oranga Tamariki.

49. Parents of children newly in Oranga Tamariki care are faced with these prospects:
- Within three months of coming into care, permanent goals for the child are agreed.

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- Within six months of coming into care, the child's ongoing permanent care is being assessed.

- Within 12 months of coming into care, the child will be in a Home for Life placement if they haven't been able to return home or social workers think they won't be.

- Within 18 months of coming into care, legal orders for the Home for Life placement are sought.

50. This means that from three months of the children coming into Oranga Tamariki care they are starting to organise to place them in permanent Home for Life care until they are 17 years old and in special circumstances up to the age of 25.

51. After around six to eight months of coming into care the parents will not be able to get their children back, no matter how much they change their lives or circumstances. If the natural parents then go on to have more children and successfully bring them up, the child in Home for Life care still cannot go home.

Recommendations

52. In all instances of the State intervening with families over matters concerning children they must uphold the Convention on the Rights of the Child, especially articles 3, 5, 8, 9, 19, 20

53. Social workers should be held accountable for any false or misleading reports regarding parents, caregivers and children.

54. The family should be kept intact as much as possible to minimise the trauma for children.

55. Provide immediate remedies for parents if wrongly or falsely accused of harming a child.

56. Provide proper welfare for children who are in care, and make it possible for them to safely report any abuse.

Cases

57. Attached to this submission are details of six examples of cases who have been battling with the Family Court and Oranga Tamariki in recent years. These cases, like most we work with, are long and involved. Below is a brief outline of each, and for a more complete description please read the annex.

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58. Case 1: Mother and Grandmother

This woman had her 12-year-old daughter removed from her care in 2003 on a false allegation made by a counsellor that there was a risk of sexual abuse by the mother's partner. Years later the mother removed three children from the daughter's care because of the abuse and neglect. The daughter and her partner were convicted of child neglect.

59. The children now in the grandmother's care were removed by Child Youth and Family in 2016 due to false allegations by a distant relative.

60. There have been numerous efforts to have the children returned to the grandmother. Upon investigation by an Oranga Tamariki official, everything claimed by the grandmother is true, but two of the children are in a boy's home and the third is with the distant relative. The oldest grandchild is also in state care.

61. Case 2: Father

He has been involved in the Family Court since 2014. Initially he was granted shared care, but lost this when the mother of their child took out a protection order which meant he was allowed no contact with the child until resolved. He filed several complaints against Family Court judges for their lack of objectivity with no success. He was accused of breaching the protection orders thus creating more year-long periods of not being able to see his child.

62. Case 3: Father

He had a protection order filed against him by the mother of the child and it took six months to get a hearing to determine an interim protection order. It took five years of battling in the court to finally win equal shared care, with a huge toll on the child who had resorted to violent behaviour toward his mother to be able to see his father more.

63. Case 4: Mother

She lost her five children in 2016 when social workers uplifted all of them from the school they were going to. The mother was given no notification. She has been challenging this ever since because she never harmed any of the children. After many appearances and appeals she is still unable to have any access to her children.

64. Case 5: Father

The father notified child welfare about mistreatment of his daughter by the (separated) mother and her parents and instead social workers, court psychologist and other actors turned on him ostracising him from the child and even denied him proper access to the court processes.

65. Case 6: Father

Two children were living with their mother with her new partner who was dealing and making methamphetamine in the house. The father sought to have the children removed

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by child welfare, the Family Court and the police as it was known there were weapons involved. Rather than remove the children the Family Court and the police turned against the father and further denied his rights to access and custody of the children. The father went to extraordinary lengths to try and get them back and even involved Asian drug intelligence agencies to help investigate. The police protected their drug operation and child welfare did not get involved until the drug dealers were arrested. The father eventually won custody of his son after two years and his daughter returned later after the mother left the country.¹²

Steve Evans

Families for Justice

stevedogulasevans@gmail.com

¹² <https://www.nzherald.co.nz/nz/judge-slams-cyf-for-ignoring-fathers-cries-for-help-as-children-live-with-gangster-in-alleged-p-lab/KBLUJALXHVQY46HCTBYF5WMLRE/>