NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi

to the

Social Services Select Committee

on the

Vulnerable Children Bill

P O Box 6645
Wellington
October 2012

1. Summary of recommendations

1.1. The Bill must incorporate recognition of the importance of the social and economic determinants of child abuse and their association with child poverty by establishing child poverty reduction targets which are reported to Parliament six-monthly.

1.2. Crown Law's advice should be reconsidered by the Attorney-General and an adequate vet under s 7 of the New Zealand Bill of Rights Act 1990 should be undertaken.

1.3. The Select Committee should draw attention to the working conditions in which the children's workforce are able to fulfil their professional, legal, moral and ethical obligations to ensure that the welfare of all children is protected and improved.

1.4. That the purpose of subpart 1 (cl 4) of the Bill is amended to include a purpose of "meeting New Zealand's obligations under the United Nations Convention on the Rights of the Child (UNCROC)."

1.5. That the vulnerable children's plan (cl 8) be extended to cover all children in New Zealand. This fits with the February 2012 recommendation from the United Nations Committee on the Rights of the Child that a comprehensive plan of action for all children living in New Zealand be created.

1.6. We strongly support the requirement for services to have policies on the reporting of child abuse and neglect. We recommend that the Ministerial Oversight Group be directed to develop template child protection policies and supporting resources in consultation with service providers, NGOs and union representatives.

1.7. Insufficient policy assessment has been undertaken on the workforce restriction. We recommend that further research is undertaken to determine the rates of child abuse by the children's workforce in New Zealand either by way of better data collection or careful expert review of the international literature or both to ascertain whether this proposal will have a significant

effect before the restriction is bought into force (and whether the list of specified offences captures all of those which indicate a greater risk and none of those which do not).

1.8. If the Committee decides to press ahead with the workforce restriction, despite the lack of evidence of risk or efficacy, we recommend that an exemption from the workforce restriction should be considered as part of the sentencing process for the specified offences. This provides a robust process without requiring the further cost of an application for exemption.

1.9. Removing requirements for employers to follow a procedurally fair process and to pay suspended employees whom they suspect of being convicted of a specified offence is unfair, unwise and ironically will subject employers to greater litigation risk and costs if their suspicions prove incorrect. We recommend the following changes to cl 28(3)(b) (proposed additions in bold and deletions struck through):

> (3) On and after the date that is 1 year after the date on which this subpart comes into force, a specified organisation— …
>
> (b) is entitled, in accordance with this section, to suspend or terminate the employment or engagement of a core worker to whom this section applies, and in that case—
>
> ~~(i) no compensation or other payment is payable in respect of the suspension or termination, despite anything to the contrary in any contract or agreement; and~~
>
> ~~(ii)~~ the ~~suspension or~~ termination is deemed to be a ~~justifiable action or, as the case requires,~~ a **substantively** justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000.

1.10. It is crucial that unions representing the children's workforce, national and international experts on prevention of child abuse be fully engaged in the development of the safety check regulations including any risk assessment tool to ensure that these are robust, reliable and fit for purpose. Clause 32 should specifically contain this requirement in the development of the regulations.

2. Table of contents

3. Introduction

3.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 332,000 members, the CTU is one of the largest democratic organisations in New Zealand.

3.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.

3.3. As one of New Zealand's largest civil society organisations we want to see all children grow up in an environment in which they are valued, that meets their emotional and physical needs and to ensure they have the necessary support, protection and respect to have good and thriving lives.

3.4. New Zealand had the shameful record in 2003 of ranking third highest among rich nations for its child maltreatment rates (UNICEF, 2003). New Zealand must do better in preventing child abuse. The recent Child Poverty Action Group (CPAG) report noted:[1]

> There is reason to be concerned about child abuse (mistreatment and neglect) in New Zealand: children's mortality rates from intentional injury almost doubled over the 1980s, and have improved little since then (Craig & et al, 2011, p. 59; 2012, p. 56)….. The public is understandably anxious following a number of highly publicised cases of intentional child maltreatment and death.

3.5. Maltreatment has significant enduring effects on a child's development, health and wellbeing in later life. The costs are immense and are far reaching in human, social and economic terms.

[1] Donna Wynd (2013) Child abuse: what role does poverty play? Child Poverty Action Group Monograph, at 5. Available at: http://www.cpag.org.nz/assets/Publications/130610%20CPAG%20Child%20Abuse%20Report%201%20June%202013.pdf

3.6. Therefore the overall intention of the Vulnerable Children's Bill to improve and protect the wellbeing of vulnerable children and "*children who are at significant risk of harm to their wellbeing now and into the future as a consequence of their environment in which they are raised and in some cases due to their complex needs*" is supported by the CTU.

3.7. However, the means proposed in the Bill are too narrow to achieve this objective, and critical components are missing with no attention in the Bill on the factors that cause children to be vulnerable in the first place. The most significant 'missing pieces of the puzzle' are methods to address the social and economic determinants of children's safety, health and wellbeing. Solutions to improve children's outcomes must include policies to promote adequate parental income and employment, affordable housing, effective parental support and strong communities. These are absent from the Bill.

3.8. The tenor of the Bill is that children face major risks from those working to care for them. This risk is real but relates to a small number of dangerous individuals. The overwhelmingly majority of the children's workforce has a deep sense of service and concern for the children they work with.

3.9. Research commissioned by the Public Service Association this year proved evidence of the strong motivation and commitment that public sector workers have to making a different in society and who report that they are under increasing pressure.[2]

3.10. The CTU affiliated unions in the core and wider state sector directly affected by the employment provisions in Part 1 of the Bill include the New Zealand Public Service Association, the New Zealand Nurses Organisation, the New Zealand Education Institute, the Post-Primary Teachers Association, the Tertiary Education Union, the New Zealand Engineering Printing and Manufacturing Union, the Service and Food Workers Union and the Association of Salaried Medical Specialists, the Tertiary Insititute Allied Staff

[2] Plimmer, G., Wilson, J., Bryson, J., Blumenfeld, S., Donnelly, N., & Ryan, B. (2013). *Workplace dynamics in New Zealand public services*. Wellington: Public Service Association & Industrial Relations Centre, Victoria University of Wellington.

Association and the Independent Schools Association. Over half of all public servants are union members.

3.11. The conditions of work for the children's workforce are inextricably tied to the objective of this Bill and improving outcomes for children. An essential requirement (that should be reflected in the Bill and the Children's Action Plan) is that the children's workforce are able to fulfil their professional, legal, moral and ethical obligations to ensure that the welfare of children is protected.

3.12. Some suggestions in the Bill relating to workforce are sensible (such as a focus on identity verification and reference-checking in response to the recommendations of the Ministerial Inquiry into the Employment of a Convicted Sex Offender). We are concerned however, that the permanent workforce restriction for workers convicted of specified offences is being introduced seemingly without evidence as to the size of the problem or the effectiveness of the proposed remedy. The restriction may prove effective but it is a 'shot in the dark.'

3.13. While the Bill affects working people in the state sector directly its reach is far wider. The thrust of this Bill and the Children's Action Plan affects all workers in their roles as members of families, communities and wider society.

3.14. The CTU has confined our comments in this submission to Part 1 of the Bill on Cross-Agency Measures (including Government priorities for vulnerable children, child protection policies, children's worker safety checking and workforce restrictions) as our area of primary expertise. Confining our submission to this part does not connote agreement or disagreement with the other measures in the Bill.

4. Child Abuse and Poverty

4.1. The CPAG report looking at the role of poverty in child abuse identified that there is a "temptation to grasp at simple explanations for child abuse and correspondingly simple solutions."[3] The hard reality is, as the CPAG document states, that are no reliable predictors for identifying which families will mistreat children and which will not. The causes of child abuse are complex and multifactorial.

4.2. There is a substantial body of evidence available about some of the risk factors that lead to child abuse and the strong association with poverty. We do not argue that it is a sole factor. We accept that the Bill is well-intentioned and the Children's Action Plan seeks to protect children. However, this Bill is another example of the Government failing to identify poverty as one of the key and known drivers of child maltreatment and neglect.

4.3. This was the point we made in the CTU submission on the Green Paper on Vulnerable Children: that there must be more recognition and resources and funding from Government on the complete range of social and economic factors that put children in vulnerable situations and create vulnerability. Achieving a reduction in child abuse rates requires responding to the structural and social forces and the community-level factors that impact on children, families and increases their risk of child abuse.

4.4. The poverty that 270,000 in New Zealand children live in each day should be top priority. A lot of work has been done on this and identifying solutions but it has not been taken up by the Government. The Expert Advisory Group into Child Poverty laid out a comprehensive plan which would, in their expert view, have the ability to reduce child poverty rates.[4] The Expert Advisory

[3] Wynd, D (2013) Child abuse: what role does poverty play? Child Poverty Action Group Monograph, at 5.
[4] Solution to Child Poverty in New Zealand (2012) Report of the Expert Advisory Group on Solution to Child Poverty.

Group report that action has only been taken on 23 of the 78 recommendations in this report.[5]

4.5. The increase in child poverty has gone hand in hand with a sharp increase in inequality since the late 1980s – one of the sharpest increases in the OECD.[6]

4.6. In a paper on Māori child maltreatment Erana Cooper and Julie Wharewera-Mika state that the assessment of factors that contribute to maltreatment have to take into account contemporary influences of Māori wellbeing and that inequality is a dominating theme.[7] Their review of the research shows that inequalities of education, employment, child disadvantage and poverty standards of living and overall health status of children and adults are identified risk factors for Māori child maltreatment.

4.7. Two out of every five children in poverty in New Zealand are in a family with at least one person in work. The poor income levels of many working people result in children living in poverty. There must be a better approach to address child poverty which ensures children live in better social and economic conditions which increases risk for children and increase their likelihood of abuse is missing in all this work.

4.8. We share the concern with many other child-focussed groups that the focus and the provisions in this Bill will divert attention and funding away from responding to the known factors that result in child abuse. What will be at risk are resources needed to reduce significant influencing factors in the incidence of child abuse: poverty and inequality.

4.9. We recommend that the Bill establish child poverty reduction targets which are reported to Parliament six-monthly.

[5] Boston, J. (2013) Radio New Zealand, National, Nine to Noon, 29 October.
[6] OECD (2011) *Divided We Stand*, at 24.
[7] Cooper, E., Wharewera-Mika (2011) Health: Towards and understanding of Māori child maltreatment.

5. International Human Rights & the New Zealand Bill of Rights Act 1990

5.1. The issue of child sexual abuse raises important human rights issues. Human rights as they relate to children are most fully articulated in the United Nations Convention on the Rights of the Child (UNCROC). Most relevant of these rights is the provision set out in art 34 that:

> States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

5.2. Art 34 should be read in conjunction with art 19 of the UNCROC, which provides that:

> (1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
> (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

5.3. Furthermore, art 39 of the UNCROC provides for measures to ensure recovery and reintegration:

> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and the dignity of the child.

5.4. The UNCROC Committee in their concluding observations on New Zealand's UNCROC compliance report in February 2011 recommended the development of a national plan of action for the implementation of the

Convention for the promotion and protection of children's rights based on a child rights approach.[8]

5.5. It is a major omission that there is no reference to UNCROC in this Bill given the importance of UNCROC as an internationally binding treaty and our obligations under this Convention.

5.6. The CTU recommends that the vulnerable children's plan (cl 8) be extended to cover all children in New Zealand. This fits with the February 2012 recommendation from the UN Committee on the Rights of the Child that a comprehensive plan of action for all children living in New Zealand be created.

5.7. We recommend that the purpose of subpart 1 (cl 4) of the Bill is amended to include a purpose of "meeting New Zealand's obligations under the United Nations Convention on the Rights of the Child (UNCROC)."

5.8. The rights of children to be protected from abuse co-exist with the rights of alleged or potential abusers to fair process and to earn their living by work which they freely choose (somewhat uneasily in the case of the latter) and will pose a difficult balancing act at times. New Zealand is party to both the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and the International Covenant on Civil and Political Rights ('ICCPR') which specify rights to work and protections against retrospective punishment and double jeopardy.

5.9. Art 6 of ICESCR states that:

> The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

5.10. The ICCPR contains important guarantees of citizen's rights in relation to punishment and criminal procedure. These include arts 14 and 15 which provide (*inter alia*):

[8] United Nations Committee on the Rights of the Child (February 2011): 56th Session Concluding Observations New Zealand.

Article 14…

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby….

5.11. The ICCPR rights are incorporated (in slightly different terms) into New Zealand law by ss 21-27 of the New Zealand Bill of Rights Act 1990. Section 26 is particularly relevant:

26 Retroactive penalties and double jeopardy

(1) No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred.

(2) No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

5.12. Crown Law's advice 'Consistency with New Zealand Bill of Rights Act 1990: Vulnerable Children Bill' ('the Crown Law advice')[9] notes that certain changes in the Bill "have, or at least may have, a serious adverse impact upon the most basic interests of the adult concerned."[10] However, Crown Law concludes that as the changes do not amount to criminal penalties the

[9] http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/vulnerable-children-bill

[10] See Crown Law (2013) at [3]-[5]. The changes of concern are the permanent exclusion from the core children's workforce for those committing specified offences, the imposition of Child Harm Prevention Orders and the presumption of the removal of all children from the custody of a person who commits murder, manslaughter or infanticide or has another child removed from their custody without prospect of return. We have confined our analysis to the workforce restriction, though again this does not connote our agreement that Crown Law's analysis is correct in respect of the other provisions.

balancing act prescribed by s 5 of the New Zealand Bill of Rights Act 1990 is not required.[11]

5.13. The Crown Law Advice relies heavily on the decision of the Court of Appeal in *Belcher v Chief Executive of the Department of Corrections* [2007] 1 NZLR 507. With respect, we believe that the rationale of judgment has been misstated in the Crown Law Advice.

5.14. In *R v Poumako* (1999) 17 CRNZ 294, at [22], Salmond J (quoting Words and Phrases Legally Defined), defined a penalty in the context of a minimum non-parole period to mean:

> [A]ny suffering in person or property by way of forfeiture, deprivation or disability, imposed as a punishment by law or judicial authority in respect of … an act prohibited by statute.

5.15. Salmond J *also* noted at [29] the requirement to give the New Zealand Bill of Rights Act 1990 "a generous interpretation suitable to secure to individuals the full measure of the rights and freedoms it contained." [12]

5.16. In relation to the workforce restriction, the Crown Law advice states at [5]-[10]:

> 5. The prohibitions provided in cl 28, 104-107 and 114 and in Part 2 have, or at least may have, a severe adverse impact upon the most basic interests of the adult concerned. Where the prohibition follows a conviction, that impact is in addition to any sentence or other penalty involved.
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> 6. For those reasons, these provisions raise three related questions under ss 24-26 of the Bill of Rights Act:
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> > 6.1 Whether the prohibitions amount to criminal penalties, which should be imposed only by a sentencing court following a trial conducted in accordance with criminal procedural rights under ss 24 and 25;

[11] See *Daniels v Thompson* [1998] 3 NZLR 22 for the leading expression of this principle.
[12] Following the detailed consideration of the correct approach to interpretation of the New Zealand Bill of Rights Act 1990 undertaken by the full bench of the Court of Appeal in *Ministry of Transport v Noort* [(1992) 8 CRNZ 114.

> 6.2 Whether, in the case of convictions entered prior to passage of the Bill, they amount to retrospective penalties for the same offence, contrary to s 26(1); and
>
> 6.3 Whether, in the case of prohibitions that follow a conviction, they amount to a second trial and/or penalty for the same offence, contrary to s 26(2).
>
> 7. These questions turn upon whether the prohibitions amount to a criminal penalty. That issue has been canvassed in respect of the provision for Extended Supervision Orders in the Parole Act 2002 both in the Court of Appeal decision in *Belche*r, above, and in reports under s 7 by successive Attorneys-General. As noted both in *Belcher* and by the Attorney-General, some other jurisdictions have taken a more restrictive view of the scope of penalty, but the present New Zealand approach is as given in Belcher.
>
> 8. In that case, the Court considered a number of factors also present here to be material in holding the Extended Supervision Order regime to constitute a criminal penalty:
>
> > 8.1 Jurisdiction to make an Extended Supervision Order is triggered, as in some of the cases covered by the Bill, by a conviction for a specified offence; …
>
> 9. However, a large number of other factors relied upon in *Belcher* are not present in any of the relevant parts of the Bill. In particular, and decisively in our view:
>
> > 9.1 Other than the reliance on certain convictions, the custody and employment prohibitions have none of the *Belcher* factors, both are directed to avoid risk of harm to children and each is subject to exception; …
>
> 10. It follows that, while these prohibitions are severe in character, they do not amount to criminal penalties and so do not engage ss 24-26.

5.17. The list of factors referred to by the Court of Appeal in *Belcher* at [47] is prefaced as "a number of factors which support the view that an Extended Supervision Order (ESO) is by way of punishment." It is plain that this list is not intended to be treated as an exhaustive test as to whether a penalty is criminal in nature.

5.18. Most of the *Belcher* factors listed relate to the integration of the ESO into the criminal legal framework (including terminology and procedure). Many of these are intended to provide a modicum of natural justice (such as

protections around summonses and warrants, rights to be present at a hearing and appeal rights). It is perverse to create a law which does not include these protections and then use this as a justification to avoid undertaking a rights-based analysis.

5.19. Further, the Court states at [48] that:

> We do not see it as decisive that the aim of the ESO scheme is to reduce offending and that the incidents of an ESO order are associated with this aim as opposed to the direct sanctioning of the offender for the purposes of denunciation, deterrence or holding to account.

5.20. This is exactly the factor that the Crown Law advice treats as decisive above in apparently direct contradiction of *Belcher*.

5.21. The real nub of the decision in *Belcher* is set out at [49]:

> [W]e have concluded that the imposition through the criminal justice system of significant restrictions (including detention) on offenders in response to criminal behaviour amounts to punishment and thus engages ss 25 and 26 of the NZBORA. We see this approach as more properly representative of our legal tradition. If the imposition of such sanctions is truly in the public interest, then justification under s 5 is available and, in any event, there is the ability of the legislature to override ss 25 and 26.

5.22. The imposition of a permanent workforce restriction in response to criminal behaviour clearly meets this test and engages s 26 of the New Zealand Bill of Rights Act 1990. As the Court of Appeal goes on to state however, the Government may justify the decision to impose the restriction and, irrespective of justification, may impose the restriction if it believes such restriction justified. It is disappointing however, that this analysis has not been undertaken due to, in our view, a mistaken view of the law by Crown Law.

5.23. Crown Law's advice is inadequate and should be reconsidered by the Attorney-General: An adequate vet in accordance with the New Zealand Bill of Rights Act 1990 should be undertaken.

6. Cross Sector Agency Plan

6.1. The Bill requires prescribed chief executives to work together to produce and report progress on implementing a cross-sector agency plan (the vulnerable children's plan).

6.2. Measures to protect children from abuse and maltreatment should be part of an action plan for all children and not siphoned into an Action Plan for Vulnerable Children. The term "vulnerable children" is narrow, limiting and is likely to exclude children who have hidden vulnerability. As a UNICEF briefing paper noted, "the best way to do better for vulnerable children is to do better for all children."[13]

6.3. We agree that the Children's Action Plan should apply across all agencies and there should be inter-governmental and Chief Executive Accountability on policies and initiatives to reduce child maltreatment.

6.4. A multi-targeted approach to achieve the goal and intention of the Children's Action Plan and the purpose of the Bill is essential. The approach has to be achieved throughout the whole workforce and there must be a process to involve the workers and their representatives in achieving this outcome and the intention of the Bill. The Government must harness their capability and developing a climate of child protection and children's rights. This requires training and investment and support.

6.5. The current context for thousands of public sector workers is one of budget constraints, incessant restructuring, staff cuts and work intensification. Restructuring and reorganisations take a huge toll on staff, create unsettled workplaces and foster uncertainty. Within the core public sector in the last four years there have been at least 500 restructuring exercises.

6.6. The PSA in their submission to the Public Advisory Services Group noted that the workforce needs to be at the centre of public services and not at the

[13] UNICEF (2012), All children thriving, belonging and achieving- what will it take – A Community Briefing Paper, July 2012

margins, quoting Charles Leadbetter and Sue Goss, who said on this subject:

> We need a value-creating public sector which is capable of resolving complex social problems, such as educational underachievement, rather than simply processing it. That shift in emphasis means shifting the terms of the debate about the future of the state away from an obsession about its appropriate size and structure and towards an examination of the capacity and skills it needs to learn and change swiftly.[14]

6.7. Any initiative or plan to improve the welfare of children and reduce child abuse must be developed in a consultative way and participative framework that involves the workforce and organisations working to support children's welfare.

6.8. There are numerous levers to achieve this. For example, the Government may consider directions and letter of expectations from ministers; amendments to the Public Service Code of Conduct; or use of provisions in the recently amended Crown Entities Act 2004 and the State Sector Act 1988 such as workforce policy orders and whole of government directions.

7. Child Protection Policies

7.1. This part requires State services to have policies in place containing provisions on the identification and reporting of child abuse and neglect, and to ensure that their funded and contracted services also have such policies in place.

7.2. We strongly support the requirement for services to have policies on the reporting of child abuse and neglect. For most public sector organisations and NGOs this will not be a new requirement. What is more critical is training for people to identify abuse and neglect. These issues are not straightforward. Policies must be workable, and adequately resourced.

7.3. There are other considerations too. For policies to be established and implemented effectively, they must be understood and owned by the

[14] Leadbetter, Charles and Goss, Sue, *Civic Entrepreneurship*, Demos, 1999, at 16, available at www.demos.co.uk

workforce who will deliver them. A problem with simply having a requirement to develop policies without any support, training or follow up is that they may sit on a shelf for three years till review then another three years.

7.4. To support the requirement to develop child protection policies we recommend that the Ministerial Oversight Group be directed to develop template child protection policies and supporting resources in consultation with service providers, NGOs and union representatives

7.5. We urge the Select Committee to focus on the need for investment in the children's workforce and for conditions and processes that enable effective identification and reporting of child abuse and neglect.

8. Permanent workforce exclusion

8.1. In principle, the CTU supports the idea that certain criminal convictions may be sufficiently grave to disqualify a person from working with children and young people if those offences predict a real risk of future abuse.

8.2. However, we have three primary concerns with the system set out in the Bill:

- **Risk.** There is very little evidence in the regulatory impact statements, cabinet papers or the White Paper on Vulnerable Children ('the White Paper') that the risk reduction of a workforce ban will be significant (or proportionate to the intrusion on the rights of the convicted offenders).

- **Specified offences.** Are there any other offences that should be caught? Is the exemption process the best way to deal with specified offences that capture a wide range of possible behaviours including some less serious ones?

- **Suspension and dismissal of core workers convicted of a specified offence.** The provisions creating an exemption from unjustified disadvantage and dismissal law for employers who suspend or dismiss a worker convicted of a specified offence are clumsy, will have unintended consequences and represent poor public policy.

Risk

8.3. The White Paper did not recommend workforce exclusion for those convicted of specified offences. In her Cabinet Paper 'Paper B: Vulnerable Children's Bill- Standard Safety Checks' the Minister of Social Welfare notes:[15]

> 5. I also propose that the regime include a workforce restriction (a list of disqualifying offences) that will prevent known child abusers and other serious offenders from having control of, or working alone with, children. This goes further than the proposals in the White Paper for Vulnerable Children (the White Paper) and makes a statement about the level of integrity considered necessary in the children's workforce.

8.4. The associated regulatory impact statement 'Safeguarding the children's workforce through standard safety checks'[16] ('the regulatory impact statement') notes bluntly at [83] and [84] "There is no information available about the prevalence of child abuse perpetrated [sic] individuals within the children's workforce in New Zealand." Government agencies are being asked to consider how to record this information to "identify the size of the current problem and monitor the impact of the policy over time."

8.5. This is not evidence-based policy-making. Without evidence of prevalence it is difficult if not impossible to know what proportion of child abuse in the children's workforce is committed by those who have been convicted of specified offences. It is difficult to see how this therefore meets the proportionality requirement required by the New Zealand Bill of Rights Act 1990.

8.6. To give a sense of the number of people who have been convicted of specified offences we can add up the number people convicted of specified offences between 2003 and 2012 in the table at 22 of the regulatory impact

[15] Available at http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/legislation/paper-b-vulnerable-children-s-bill-standard-safety-checks-for-the-children-s-workforce.pdf

[16] Available at: http://www.minedu.govt.nz/~/media/MinEdu/Files/TheMinistry/PublicationsAndResources/RIS_SafeguardingChildrensWorkforce.pdf

statement. This gives a figure of 13,237 specified convictions in a ten-year period (though of course people's working lives are generally much longer than 10 years and some offenders will have convictions for multiple specified offences).

8.7. Volume Two of the White Paper sets out the evidence and research for various proposals. Although the workforce ban is not part of the proposals in the White Paper, some of the comments are apposite to the workforce ban:

> 52 It is important to note that some international reviews have identified limitations to the use of criminal checks. There is a risk that the sense of security provided by enforcing safety checks will reduce levels of vigilance and thereby promote environments where it is easier for child abuse to occur. In particular, checks based on criminal records are limited, given that many who may pose a risk to children do not have criminal convictions. Risk-assessment tools that consider future risks rather than simply past convictions are also problematic in this regard, given the lack of a consistent 'profile' for those who are likely to perpetrate maltreatment against children in an organisation. Some argue that a more protective environment is fostered if there is an acceptance that it is impossible to exclude from the workforce all individuals who may pose a risk to children. This suggests the need to guard against the presumption that imposing safety checks necessarily results in a safe workforce.

8.8. These comments are important as they point to a real risk that undue faith in safety checking and workforce restrictions will lead to complacency and risk of further abuse.

8.9. Without baseline data, we are unlikely to ever know what impact the proposals in the Bill will have on abuse rates. We know that they will have significant impacts on the lives of those convicted of specified offences.

8.10. This system does not meet the criteria set for a good vetting and screening system at [16] of the Regulatory Impact Statement. It does not manage risk appropriately because the risk is simply unknown.

8.11. Insufficient policy assessment has been undertaken on the workforce restriction. We recommend that further research is undertaken to determine the prevalence and nature of child abuse by the children's workforce in New Zealand either by way of better New Zealand research, or careful expert

review of the international literature or both. This research should also review what sorts of crime predict likely future child abuse. Until this research is undertaken (and it may be completed as a matter of urgency) the workforce restriction should not be bought into force.

Specified offences

8.12. We do not believe that there is a sufficient evidential basis to indicate that the list of specified offences acts as a good proxy for increased risk of future child abuse. Our suggestions below are predicated on the presumption that the Select Committee decides to press ahead with the workforce restriction rather than deferring it for further policy work.

8.13. What is apparent from the list of specified offences is that a broad range of possible behaviour is captured. As the regulatory impact statement notes:

> 57. Some conviction categories span a range of offending behaviours, including lower level offending (e.g. assault on a child) or unintended harm (e.g. manslaughter), and some offenders may have successfully undertaken rehabilitation and, supported by their employers, provide enormous value in their work with adults and at-risk young people because of their history. It is therefore considered beneficial that the workforce restriction include a process for exemptions.

8.14. Where the specified offence is of sufficiently low level or unintentional, there is a good case for the granting of an exemption in appropriate cases as part of the criminal sentencing process. This provides for a hearing to be held on these matters through the usual sentencing process (including a plea in mitigation, victim impact statements and character references). This prevents the expense and waste of resources of an application for exemption. It is notable that appeals regarding exemptions are proposed to be heard in the High Court (cl 37) where trial and sentencing would occur for many of the specified offences anyway (the more serious crimes, admittedly).

8.15. Obviously, this consideration could not be undertaken retrospectively for those already convicted of the specified offences and those convicted before

the coming into force of the Vulnerable Children Act would need to apply for exemption in the usual manner.

8.16. The major stumbling block to this approach appears to be the attempt to mask the workforce exclusion as a civil penalty. As we discuss in part 5 of our submission above, this approach is unsustainable and should be reconsidered.

8.17. The binary nature of a list of specified offences creates difficult issues at the margins. For example, the offence of abduction of a young person under 16 (s 210 of the Crimes Act 1963) is a specified offence. This offence involves the taking, enticing away or detaining of a young person with the intent to deprive a parent, guardian or other responsible adult of possession of the young person. It is punishable by up to 7 years in prison. However, the more serious offence of kidnapping (s 209 of the Crimes Act 1963) is not a specified offence. Kidnapping involves the taking away or detaining a person without their consent (and according to s 209A young persons under 16 cannot consent in law) and with the intent of ransoming them, causing them to be confined or imprisoned, or taking them out of New Zealand.

8.18. It is odd and somewhat perverse that a similar but more serious crime has less serious consequences for the offender. These sorts of boundary issues[17] place considerable power in the hands of prosecutors deciding which section to change an alleged offender under (some fact situations may disclose either offence).

[17] Other examples might include:

- The distinction between the killing of a child (s 159 of the Crimes Act 1963) which is homicide (and therefore a specified offence) if the child completely proceeds in a living state from the body of its mother regardless of whether it dies of injuries received before birth and the killing of an unborn child (s 182 of the Crimes Act 1963 and not a specified offence). The effective difference of the two crimes is whether the child is born alive or not and the specified offence provision makes this line very significant. In some cases it will also be very blurred (see Adams on Criminal Law [CA 159.04] for more detail);
- The distinction between injuring with reckless disregard for safety (which falls under injuring with intent s 189 of the Crimes Act 1963 and is therefore a specified offence) and injuring by unlawful act including negligent injuring (s 190 of the Crimes Act 1963 and not a specified offence);
- The distinction between failure to protect a child or vulnerable adult (s 195A of the Crimes Act 1963 and a specified offence) and the duties of parents or guardians to provide necessaries and protect from injury (s 152 of the Crimes Act 1963 and not a specified offence).

8.19. Allowing the sentencing judge to include consideration of the workforce restriction and possible exemption would significantly help ameliorate this problem.

Suspension and dismissal of core workers convicted of a specified offence

8.20. Clause 28 of the Bill provides responsibilities and rights of specified organisations in relation to core workers suspected or convicted of a specified offence. It is helpful to set it out in full:

> **28 Core worker convicted of specified offence not to be employed or engaged**
>
> (1) This section applies to a person who—
> (a) has been convicted of a specified offence; and
> (b) does not hold an exemption granted under section 34.
> (2) On and after the date on which this subpart comes into force, a specified organisation must not employ or engage a person to whom this section applies as a core worker.
> (3) On and after the date that is 1 year after the date on which this subpart comes into force, a specified organisation—
> (a) must not continue to employ or engage a person to whom this section applies as a core worker, regardless of when that worker commenced employment or was engaged; and
> (b) is entitled, in accordance with this section, to suspend or terminate the employment or engagement of a core worker to whom this section applies, and in that case—
> (i) no compensation or other payment is payable in respect of the suspension or termination, despite anything to the contrary in any contract or agreement; and
> (ii) the suspension or termination is deemed to be a justifiable action or, as the case requires, a justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000.
> (4) On and after the date referred to in subclause (3), if a specified organisation believes on reasonable grounds that a worker whom it employs or engages is a person to whom this section applies, the organisation must immediately suspend the worker from all duties that require or enable him or her to act as a core worker, and must tell the worker the reason for the suspension and the grounds for the organisation's belief.
> (5) If a worker is suspended under subsection (4), the employer must not terminate the worker's employment or engagement until at least 5 working days after the suspension begins (unless the person's employment or engagement is terminated sooner for reasons unrelated to that suspension).

(6) A specified organisation that contravenes subsection (2) or (3), knowing that, or being reckless as to whether, the person is a person to whom this section applies, commits an offence and is liable on conviction to a fine not exceeding $50,000.
(7) A specified organisation that contravenes subsection (4) or (5) commits an offence and is liable on conviction to a fine not exceeding $50,000.
(8) Subsection (3)(b)(i) does not limit or affect the Wages Protection Act 1983.

8.21. Removing the requirements for employers to follow a procedurally fair process and to pay suspended employees whom they suspect of being convicted of a specified offence is unfair, unwise and ironically will subject employers to greater litigation risk and costs if their suspicions prove incorrect.

8.22. The Employment Relations Act 2000 is the most significant piece of employment law in New Zealand. It sets out the fundamental rights of workers in negotiating their contracts (including collectively), minimum content of those contracts, rights of workers and employers to challenge unlawful behaviour, the operation of unions and employment institutions and even the meaning of employee itself. In doing so, it gives application to several of New Zealand's international treaty obligations.

8.23. There are a number of laws which exempt workers from parts of the Employment Relations Act 2000 in favour of alternative systems[18] however this Government has shown a disturbing willingness to exclude categories of workers from fundamental legal protections such as the effective removal of employment and collective bargaining protections for film and television workers through the Employment Relations (Film Production Work) Amendment Act 2010 and the removal of personal grievance rights for new workers for the first 90 days of their employment under the Employment Relations Amendment Acts 2008 and 2010.

[18] For example, the exemption of police from entitlement to take industrial action in favour of a system of final offer arbitration under the Police Act 1958 or the precedence of fatigue management systems under the Civil Aviation Act 1990 or the Land Transport Act 1998 over the statutory meal and rest breaks in the Employment Relations Act 2000. Similar, more minor, exemptions apply to State servants in restructuring situations under the State Sector Act 1988 and to real estate agents and sharemilkers under their respective acts.

8.24. Rights of challenge against unfair disadvantage and dismissal are fundamental to a good employment law system. This is reflected in the provisions of the International Labour Organisation Convention 158 on Termination of Employment. Articles 7 to 10 of this Convention state that:

> **Article 7**
>
> The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity. …
>
> **Article 8**
>
> 1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.
>
> 2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.
>
> 3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.
>
> **Article 9**
>
> 1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.
>
> 2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:
>
> (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
>
> (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

> 3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.
>
> **Article 10**
>
> If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

8.25. While New Zealand has not ratified Convention 158, we have endorsed the underlying principles. As the Labour Court commented in *NZ Food Processing etc IUOW v ICI (NZ) Ltd* (1989) ERNZ Sel Cas 395, 408:

> We understand that New Zealand has not ratified this Convention on the footing that safeguards already exist here which give effect to the Convention. This is understandable in view of the provisions of Article 1 of the Convention which does not require Member States to do anything if the provisions of the Convention are "otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice". The provisions which we have quoted from the Convention (which includes, also, the requirement that the burden of proving the existence of a valid reason for the termination shall rest on the employer) are already in force as part of the law of New Zealand. **It is obviously the view of all civilised nations that that should be the universal law.** [Emphasis added]

8.26. The effect of cl 28 is to remove any requirement for an employer to undertake a fair process for suspension or termination of employment and effectively to remove a right of appeal to the Employment Relations Authority or Employment Court by deeming the suspension or dismissal justified and no compensation payable. There is an odd lacuna in cl 28 whereby the employer must "tell the worker the reason for the suspension and the grounds for the organisation's belief" (cl 28(4)) and "must not terminate the

worker's employment or engagement until at least 5 working days after the suspension begins" (cl 28(5)) but is not required to listen to the worker's explanation as to why the organisation's belief might be wrong.

8.27. This brings to mind Megarry J's famous comment in *John v Rees* [1969] 2 All ER 274 at 402:

> It may be that there are some who would decry the importance which the Courts attach to the observance of the rules of natural justice. 'When something is obvious,' they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.' Those who take this view do not, I think, do themselves justice. As everybody who has had anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.

8.28. Removal of the requirement for an employer to act fairly and reasonably is deeply problematical. An employer may, for example, cause a worker great reputational and emotional damage by disclosing their criminal history in front of their co-workers at a staff meeting.

8.29. There is well-established case law regarding the requirements for procedural fairness and substantive justification. Compensation is usually limited for dismissals which are procedurally unfair but substantively justified. In addition, the process will remain subject to s 103A(5) of the Employment Relations Act 2000 which states:

> (5) The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were—
>
> (a) minor; and
>
> (b) did not result in the employee being treated unfairly.

8.30. Requiring employers to observe procedural fairness is a safeguard for their interests also. We note that cl 28(1) states that cl 28 (therefore including protections for employers) applies to a person who has been convicted of a specified offence and has not been exempted. An employer who unjustifiably suspends or dismisses a worker based on an *incorrect* belief that they have committed a specified offence will not be protected and is likely to incur significant liability for unjustified action and dismissal (particularly where they have done so in a procedural unfair manner).

8.31. It appears to us that cl 28 is intended to create something like a strict liability offence for core children's workers convicted of a specified offence. However, doing so incentivises bad employer behaviour and (somewhat ironically) exposes employers to risk. We submit that clause 28(3)(b)(i) should be removed and the word "substantively" should be added before justifiable in cl 28(3)(b)(ii) so that it reads:

> (ii) the suspension or termination is deemed to be a **substantively** justifiable action or, as the case requires, a **substantively** justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000.
>
> [Note also our submission around the removal of suspension from clause 28(3)(b) which is not incorporated here].

8.32. A particularly odd situation is created by the proposal around unpaid suspension in cl 28((3)(b)(i). *Brookers Online Employment Law* usefully sets out the general rules around suspension and payment for suspension at [ERA103.7]:

> **7) Suspension**
>
> (a) General
>
> Employers commonly suspend an employee upon learning of an allegation of serious misconduct, to enable an investigation to proceed without prejudice or to preserve evidence or for reasons of health and safety. As a general rule there must be either statutory or contractual justification for suspension, or contemporaneous agreement by the employee. The Court of Appeal has referred to suspension as a "drastic measure

which if more than momentary must have a devastating effect on the [employee] concerned": *Birss v Secretary for Justice* [1984] 1 NZLR 513 (CA) at 521. ….

(b) With or without pay

Suspension will ordinarily be on pay, unless there is contractual provision for suspension without pay. In *Barry v Advanced Hair Studio Pty Ltd ERA Auckland* AA173/04, 14 May 2004, the Authority usefully reviewed the principles and precedents of suspension decisions, and found that a suspension was unjustified and a consequential suspension without pay was itself disciplinary. The employee was awarded lost wages, but the award of compensation was reduced for contribution. However, even where there is an express contractual provision that gives the employer power to suspend "with or without pay", it will not necessarily be open to the employer to suspend without pay: *Shone v Gisborne Intermediate School Board of Trustees* (2007) 8 NZELC 99,055 (ERA). There the Authority held that the presumption of innocence precluded the Board as a good employer from suspending a teacher without pay in circumstances where the teacher was awaiting trial on serious criminal charges. The Authority said at [50]

> "… the Applicant must be presumed innocent until the decision in his trial on criminal charges, when the decision of the Court will either confirm or displace that presumption. A teacher innocent of the charges should not have to bear the financial burden of losing his or her income while awaiting trial — and that is the benefit of the presumption to which the Applicant is entitled until the Court makes its decision. Accordingly, if the Applicant is presumed innocent, then [sic] can be no basis for suspending his pay while he awaits trial, and that, I find, must have been the mutual intention of the parties in agreeing the present wording of [a clause in the collective agreement which allowed for an employee to 'be either suspended with or without pay or transferred temporarily to other duties' in cases of alleged serious conduct]."

8.33. So the general rule (applicable unless the core worker is actually guilty of the specified offence and does not have an exemption) is that the employer must generally pay a worker who is suspended.

8.34. This presents an employer who suspects that an employee is guilty of a specified offence with a conundrum. Do they suspend on pay and hope to recoup the money later by agreement with the worker (it is unlikely that they will be able to deduct the money from final pay due to the operation of the Wages Protection Act 1983 or do they suspend without pay and brace for the unjustified disadvantage grievance if they are wrong?

8.35. We submit that the best option is simply to remove the references to suspension in cl 28(3)(b). An employer must then follow the normal rules as to suspension (which will generally include payment during the period of suspension). As amended, cl 28(3)(b) would then state:

> (3) On and after the date that is 1 year after the date on which this subpart comes into force, a specified organisation— …
>
> (b) is entitled, in accordance with this section, to suspend or terminate the employment or engagement of a core worker to whom this section applies, and in that case—
>
> (i) no compensation or other payment is payable in respect of the ~~suspension or~~ termination, despite anything to the contrary in any contract or agreement; and
>
> (ii) the ~~suspension or~~ termination is deemed to be a ~~justifiable action or, as the case requires,~~ a justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000.

8.36. Consolidating our proposed changes to cl 28(3)(b) gives the following (additions in bold and deletions struck through):

> (3) On and after the date that is 1 year after the date on which this subpart comes into force, a specified organisation— …
>
> (b) is entitled, in accordance with this section, to suspend or terminate the employment or engagement of a core worker to whom this section applies, and in that case—
>
> ~~(i) no compensation or other payment is payable in respect of the suspension or termination, despite anything to the contrary in any contract or agreement; and~~
>
> ~~(ii) the suspension or~~ termination is deemed to be a ~~justifiable action or, as the case requires,~~ a **substantively** justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000.

9. Safety checks and risk assessment

9.1. In principle, the CTU supports more rigorous pre-employment checking of the children's workforce if this will reduce risk to children.

9.2. In particular, we note the strong comments of the Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector around the importance of identity verification and reference checking.[19] We agree that these elements should be implemented immediately and we do not see the logic of a proposed exemption for local government.

9.3. The CTU and our State Sector affiliates have been engaged in discussions with the various Government agencies around the development of the best practice 'Safer Recruitment Guidelines.' This discussion has been productive and we are hopeful that the Guidelines will be the better for it.

9.4. A key area of concern for us is the potential validity of risk assessment measures. We reiterate the previous quote from Volume Two of the White Paper:

> 52 It is important to note that some international reviews have identified limitations to the use of criminal checks. There is a risk that the sense of security provided by enforcing safety checks will reduce levels of vigilance and thereby promote environments where it is easier for child abuse to occur. In particular, checks based on criminal records are limited, given that many who may pose a risk to children do not have criminal convictions. Risk-assessment tools that consider future risks rather than simply past convictions are also problematic in this regard, given the lack of a consistent 'profile' for those who are likely to perpetrate maltreatment against children in an organisation. Some argue that a more protective environment is fostered if there is an acceptance that it is impossible to exclude from the workforce all individuals who may pose a risk to children. This suggests the need to guard against the presumption that imposing safety checks necessarily results in a safe workforce.

9.5. According to officials, the risk assessment process is loosely based on the Values-Based Interviewing process proposed by the UK National Society for

[19] Part four, section three.

the Prevention of Cruelty to Children (NSPCC) in their publication *Toward Safer Organisations*.

9.6. The executive summary of *Towards Safer Organisations* notes:[20]

> The reason why it is difficult to identify potential offenders is that, as the evidence gathered for this study suggests, those who have a propensity to abuse share many relevant characteristics with the "general population". At best, they can be described along the lines of Doran and Brannan (1996), for instance, who divided "typical" institutional abusers into two categories: the "charismatic, articulate, well-networked 'caring professional' who is usually a part of the leadership of the institution"; and the "…isolated but dutiful staff member who is perhaps over-helpful to colleagues and children, and frequently does things outside normal duties". Another study suggests that while some abusers are "authoritarian" or "charismatic", others are "quiet, unassuming" or "inadequate" (Rowlands, 1995). As highlighted in the inquiry into the case of the student Jason Dabbs, there may be nothing in an offender's past that gives an indication of a propensity to abuse. Dabbs was in fact noted as having "an ability to relate…to individual children with sympathy and understanding" (Hunt,1994, para 6.4.5). All this lends support to the argument that there is no "typical" profile. As summed up in the inquiry report of the Beverley Allitt case: "…she did indeed appear to be like everybody else" (Clothier, 1994). It follows that for organisations striving to prevent unsuitable people from working with children, it will be difficult if not impossible to detect potential abusers.

9.7. We are not expert in this field but our research indicates that creating a reliable risk assessment tool is extremely difficult and (aside from looking for obvious red flags such as previous disciplinary processes, professional performance issues, criminal proceedings) may prove impossible.

9.8. It is crucial that unions representing the children's workforce, national and international experts on prevention of child abuse be fully engaged in the development of any risk assessment tool to ensure that it is robust, reliable and fit for purpose.

[20] Erooga (2009) *Towards Safer Organisations Executive Summary,* NSPCC at 4. Retrieved from: http://www.nspcc.org.uk/Inform/research/findings/towardssaferorganisationssummary_wdf63929.pdf

9.9. Clause 32 should specifically require this consultation as a part of the development of the regulations.

10. Conclusion

10.1. New Zealand needs to be better at looking after our children. Elements of this Bill and the surrounding recommendations of the White Paper will assist with this.

10.2. Other elements do not appear adequately grounded in evidence and some may lead to problems. We hope to work constructively with the Committee and the Government to deliver the best outcomes for New Zealand's children and New Zealand's workforce.