



MANAAKITIA A TĀTOU TAMARIKI

Children's
Commissioner

Supplementary report from the New Zealand Children's Commissioner

TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

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Supplementary report from the New Zealand Children's Commissioner to the UN Committee on the Rights of the Child

Tena koe and warm Pacific greetings to the members of the UN Committee on the Rights of the Child.



My name is Judge Andrew Becroft and I am the new Children's Commissioner for Aotearoa New Zealand.

I took up the role of Children's Commissioner on 1 July 2016, for a term of two years, replacing Dr Russell Wills, who reported to you in November 2015. Before that, I was New Zealand's Principal Youth Court Judge for 15 years, and have been a District Court Judge for 20 years.

I look forward to meeting many of you in Geneva during the 73rd session of the Committee, which I will be attending as a representative of the Human Rights Commission, New Zealand's National Human Rights Institution, a status which has been delegated to me by the Chief Commissioner Mr David Rutherford.

Purposes of this report

I take this opportunity to prepare a brief supplementary report to:

1. Introduce myself and my priorities as the new Children's Commissioner;
2. Comment on significant developments since the last report was lodged with the Committee in 2015;
3. Identify particular opportunities to advance children's rights in the current environment; and
4. Note some specific child rights concerns in the youth justice system based on my experience as Principal Youth Court Judge.

In each section, I indicate what I think the key issues should be in the examination.

This short supplementary report should be read in conjunction with the suite of supplementary reports from Action for

Children and Youth Aotearoa and members of the NGO delegation, and the Human Rights Commission.

Together, these reports give the Committee a detailed and holistic view of current developments for children's rights in New Zealand.

Because of the wide breadth of supplementary reports I know the Committee is receiving, I keep my comments brief and tightly focused on certain key priority areas.

1. PRIORITY ISSUES FOR THE CHILDREN'S COMMISSIONER

A. Endorsement of previous Commissioner's report

When my predecessor, Dr Russell Wills, reported to you in November 2015, he identified three areas of urgent need and attention that the New Zealand Government should be examined on. These were:

1. New Zealand's unacceptably high rates of child poverty and deprivation;
2. The quality of care and outcomes being achieved for children in the care of the State; and
3. Systemic inequities and poor outcomes for Māori children.

I endorse the comments of my predecessor. These issues underpin and drive poor outcomes for many New Zealand children and compromise children's rights. If these three issues were a key focus of Government activity and investment, there would be significant

Children's Commissioner Judge Andrew Becroft represents the 1.1 million people in Aotearoa New Zealand under the age of 18, who make up 24 percent of the total population.

He advocates for their interests, ensures their rights are upheld, and helps them have a say on issues that affect them.

More information about the work of the Commissioner and his office at www.occ.org.nz

progress toward full realisation of children's rights under the Convention, and considerable positive impact on the lives and outcomes of New Zealand children.

B. Current priorities for my term in office

As I take up the role of Commissioner for the shortened term of two years, I have chosen to focus my efforts on three discrete priorities, which overlap considerably with those of the previous Commissioner:

1. Providing high quality advice and input into the current reform of the care and protection and youth justice systems to ensure the new operating model is fully child-centred and achieves better outcomes for children;
2. Supporting better outcomes for Māori children by encouraging meaningful engagement with whānau, hapū and iwi;
3. Influencing the decision to include 17 year olds in the youth justice system.

In addition, I intend to encourage Government agencies to take a child-centred approach to policy and service design, both for policies and services targeted directly at children, and for those that may have indirect impacts on children.

Since Dr Wills reported to you in November 2015, there have been significant developments in a number of these areas which I now wish to bring to the Committee's attention.

2. SIGNIFICANT DEVELOPMENTS SINCE NOVEMBER 2015

A. Monitoring and coordinating activity under the Convention

As Children's Commissioner, I have a statutory responsibility to advance and monitor the application of the Convention by departments of the State and other Instruments of the Crown. The chief way my office carries out this function is by convening the UNCROC Monitoring Group (UMG), a coalition of NGOs working on children's rights.

In April 2016, the UMG entered into formal terms of engagement with the Social Sector Deputy Chief Executives Forum, which has been designated as the Government's coordinating mechanism for the Convention. This is a significant development, both

because the New Zealand Government has named a coordinating mechanism for the Convention for the first time, and because there is now a formal relationship between this group and the informal NGO monitoring mechanism that will last between UN reporting cycles.

The Terms of Engagement acknowledge that the two groups share a common goal of improving the lives and upholding the rights of children in New Zealand, and that they will work together according to principles of partnership, good faith, no surprises, openness, and the best interests of the child to achieve this. In practice, I expect that these two groups will together consider the Committee's Concluding Observations and use these to establish a refreshed UNCROC Work Programme with specific items to advance following the Conclusion of the examination.

The Committee may wish to ask the Government:

- > How does it interpret the role of the Social Sector Deputy Chief Executives as the coordinating mechanism for the Convention?
- > Will it consider further elevating the status of the UMG via regulation and establishing an engagement process with a Ministerial Group?

B. Update on the UNCROC Work Programme

As has previously been reported to the Committee, the New Zealand Government has a formal UNCROC Work Programme which was developed in conjunction with the UMG following the 2011 Concluding Observations. The current UNCROC Work Programme has three items:

1. Improving the input of children and young people's views in the formulation of legislation and policies associated with rights under the Convention (Concluding Observations 27(a) and (b) and article 12)
2. Investigating raising the age that young people leave care to 18 (articles 1, 3 and 20)
3. Facilitating consideration of children's rights in the development of major policy and legislative initiatives, to ensure that New Zealand's obligations

under the Convention are taken into account (Concluding Observations 27(a) and (b), and article 3).

As the reporting cycle draws to a close, I am pleased to note that item two – raising the age that young people leave care – has effectively been actioned. At the time of writing, there is a bill before Parliament that would raise the upper age limit for inclusion in the care and protection system, as part of legislation giving effect to the Government's wider reforms in the care and protection and youth justice systems. I anticipate that in the next phase of legislation for these reforms, an optional right to return to care up to age 21 will be introduced, along with further supports available to care leavers until they turn 25. I strongly endorse these changes.

Items one and three on the UNCROC Work Programme were effectively merged into one work item, on which progress has been extremely slow. The Ministry of Social Development has drafted an optional guideline for taking children's rights, interests and views into account in the formulation of policy – effectively an optional Child Rights Impact Assessment template for New Zealand. The OCC and UMG provided feedback on various drafts of this guideline. At the time of writing, the guideline is near final and is expected to be used in all policy and legislation concerning the reform of the care and protection and youth justice system in the first instance. I am broadly comfortable with its content.

While this is welcome progress, it has been much slower than I would have liked. Ideally the guideline would have been in use by core social sector agencies at least a year ago, and be ready to be extended to a wider group of government agencies working on policies that impact children more indirectly by now

The Committee may wish to ask the Government:

- > How does it plan to embed and encourage the use of the optional child impact assessment guideline across both core social sector and wider Government agencies?
- > How will it ensure that UNCROC work programme items are advanced in a more timely manner between reporting cycles?

C. Reform of the care and protection and youth justice systems

When Dr Wills reported to you in November 2015, the Minister of Social Development, Hon. Anne Tolley, had recently announced the appointment of an Expert Panel to review Child, Youth and Family and develop a business case for the modernisation of New Zealand's care and protection and youth justice systems.

In the intervening months, that review has been completed. The Expert Panel's final report was released in April 2016, along with the Government's response. At that time, the Minister announced her intention to replace Child, Youth and Family with a new (as yet unnamed) children's entity, and establish a new, fully child-centred operating model for all vulnerable children. These announcements included an intention to raise the age of care and protection to 18, but not (as yet) the age of youth justice, meaning New Zealand is still in breach of the Convention.

In June 2016, my Office released its second annual State of Care report, which is a public aggregation of our monitoring of Child, Youth and Family. In light of the planned reforms, we focused our findings and recommendations on ways to ensure a child-centred system, both in the interim for the children currently in the system, during the period when the new operating model is designed and implemented, and in the new model when it is fully operational.

I am very encouraged by the direction of these reforms (known as the Investing in Children programme). I share the goal of a child-centred operating model, and consider that many of the specific changes proposed will greatly benefit children who are in general not well served by the current system. The Minister is likely to make these reforms a strong focus of her presentation to the Committee, for good reason: they represent the most significant reform of New Zealand's care and protection and youth justice system since 1989, and represent a once-in-a-lifetime opportunity to deliver a truly child-centred and transformation system that respects children and their rights.

However, such an ambitious reform programme is not without risk. I have some

concerns about the reforms which are worth bringing to the Committee's attention.

i. There is a risk to children and young people currently in the care and protection and youth justice systems

Organisational change management literature shows that with any major organisational change, a reduction in performance is to be expected in the short-term. During this period, performance can temporarily decline while staff deal with uncertainty, accept change, and adapt to new ways of working. For the care and protection and youth justice systems, this expected dip in performance represents a real risk to children and young people. It would be counterproductive and dangerous if they experienced a reduced standard of care while changes are made that are intended to make the system more child-centred – as well as detrimental to their rights. Anecdotally, I have heard about significant problems with staff morale, recruitment and retention within Child, Youth and Family as they attempt to continue services to children and young people while the reforms are designed and implemented. This is very concerning.

Fortunately, change management literature also suggests that the risk of a dip in performance can be mitigated when proactive and supportive change management processes are put in place. It is vital that some additional planning and supports are introduced to ensure no children are put at additional risk of harm during the implementation of the new system.

The Committee may wish to ask the Government:

> What is being done to ensure children currently in the care and protection and youth justice systems do not experience a reduced level of service in the interim as the new operating model is established?

ii. Raising the upper age for inclusion in the youth justice system has not (yet) been included

At the time of writing, 17 year olds will continue to be included in the adult justice system, in contravention of the Convention, despite the age for inclusion in the care and protection system being raised to 18. In my view, it is both illogical and impractical to have one age for care and protection and one age

for youth justice, especially given that a significant proportion of young people appearing in the Youth Court have a care and protection history. Continuing to include 17-year-olds in the adult criminal justice system would be a significant and ongoing breach of children's rights under the Convention that the Committee should take very seriously.

I anticipate that a decision on this matter will have been made by the time the Committee meets to examine the New Zealand Government. I hope to be joining the Committee in commending the Government for making the right decision. If not, I will be lamenting the missed opportunity to once again bring New Zealand into line with the Convention on this important matter, and will be suggesting the Committee makes this continued breach a strong focus of the examination.

The Committee may wish to ask the Government:

> If the decision has been made not to include 17 year-olds in the youth justice system, how can this be reconciled with articles 1 and 40 of the UN Convention, and with the Government's stated goal of a child-centred operating model?

iii. The need for comprehensive organisational culture change

Achieving a truly child-centred operating model for vulnerable children will above all else require comprehensive culture change across the entire care and protection and youth justice workforce. My office's monitoring of the current system reveals that in fact many child-centred policies and guidelines currently exist. The problem is that they are not adhered to in practice. We attribute this to conflicting attitudes and understandings about what child-centred practice means in the New Zealand care and protection and youth justice contexts – underpinned by sometimes unhelpful values, attitudes, and beliefs.

Therefore, alongside legislative changes, the entire care and protection and youth justice workforce needs to be upskilled to understand and develop a unified vision of child-centred practice, grounded in children's rights. Each individual in the system needs to support this vision and understand how their

work contributes to its realisation. In particular, attention needs to be given to:

- > Improving how children's voices are gathered and listened to;
- > Upskilling staff to better meet children's needs;
- > Improving cultural capability, both at the organisational level and in the skills of individual staff; and
- > Working more collaboratively within and between agencies to meet children's needs.

The Committee may wish to ask the Government:

- > How does it plan to resource and achieve the organisational culture change required to work in child-centred and culturally responsive ways, alongside legislative changes?

D. Child Poverty

Each year my Office works in partnership with Otago University and J.R McKenzie Trust to produce the Child Poverty Monitor, which tracks trends in child poverty over time in the absence of an official Government measure. The latest Child Poverty Monitor was released in December 2015, shortly after my predecessor's report to you.

It found that 305,000, or 29 percent of New Zealand children live in relative income poverty and 148,000, or 14 percent, experience material hardship.¹ About 9 percent of New Zealand children live in households experiencing both income poverty and material hardship (severe poverty), and 3 in 5 children who live in poverty have done so for more than seven years (persistent poverty).

These figures are unacceptable. Children growing up in poverty in New Zealand are having their rights curtailed and their long-term outcomes compromised, at significant current and future cost to the country.

After the 2014 election, Prime Minister John Key said addressing child poverty would be a key priority in this term of Government, and we have seen some commitment of Government action and resources with the Child Material Hardship package in Budget 2015, which raised core social security benefits

rates for the first time since 1972. This was a significant and welcome step. The extra \$25 a week will be helpful for families at the hardest end of poverty with one child, though less so for those with more children, as the increase is per family, rather than per child. However, because core benefits had been unchanged for so long, this change will do little to tangibly improve the standard of life for many children, and does not constitute a comprehensive approach to reducing child poverty.

Of particular concern is the housing situation in New Zealand (see the Human Rights Commissioner's snapshot report to the Committee on current housing issues). New Zealand has significant problems with housing affordability, availability and quality which are curtailing children's rights and significantly worsening their quality of life. Children growing up in poverty in New Zealand are likely to be living in poor quality, unstable, and unaffordable housing, and current Government efforts to address the problems – for example with new regulations governing rental quality and special housing areas designed to facilitate the building of new affordable houses – are falling short of the mark.

The adoption of the Sustainable Development Goals in late 2015 provides a significant opportunity to make progress on reducing child poverty in New Zealand and alleviating its impacts. Goal 1 requires countries to "By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions."

To comply with this goal would require the New Zealand Government to adopt set of formal poverty measures (I would suggest the combination of income poverty, material deprivation, severe and persistent poverty used by the Child Poverty Monitor), and to develop a comprehensive action plan to reduce them by at least half by 2030. There is currently no official poverty measure, nor strategy to reduce child poverty in New Zealand.

In 2012 my office convened a panel of experts to produce a report entitled *Solutions to Child Poverty in New Zealand: Evidence for Action*. While the Government has wholly or partially

¹ For definitions of these measures, see: <http://www.nzchildren.co.nz/#PovertyIntroduction>

addressed 29 of the 78 recommendations in that report, the response is piecemeal and not likely to lead to significant or sustained change.

The Committee may wish to ask the Government:

- > Will it adopt an official set of poverty indicators (including child poverty)?
- > Will it develop a comprehensive action plan (with targets) to reduce poverty by at least half by 2030 according to SDG Goal 1, using the recommendations of the 2012 Expert Advisory Group on Solutions to Child Poverty as a starting point?
- > What plans does it have to address the short-term crisis of housing affordability and quality, particularly to mitigate the negative affects on children living in poor quality housing or in severe housing deprivation?

3. OPPORTUNITIES IN THE CURRENT ENVIRONMENT

A. Engaging with whānau, hapū and iwi to improve outcomes for Māori children

Across many of the issues already discussed, Māori children are more likely to experience disadvantage and have their rights curtailed. All of my predecessor's comments to you in November 2015 on this matter remain relevant and critical in 2016.

I intend to make the issue of disparity and disadvantage for children a major area of focus during my term as Children's Commissioner. In particular, I would like to see more meaningful engagement with whānau (extended family), hapū (sub-tribal groupings) and iwi (tribal groups) as a way of directly empowering Māori communities to improve outcomes for their tamariki (children) and rangatahi (young people).

In my view, a considerable opportunity exists with the current reform of the care and protection and youth justice system. Particularly, to highlight the importance of culturally appropriate and responsive practice, to invest in this across the system, and to empower Māori communities and organisations to take a greater role in delivering services that improve outcomes for Māori children and enhance their sense of belonging and cultural identity. The Government living up to its commitments

under the Children, Young People and their Families Act 1989 to meaningfully engage with whānau, hapū and iwi when making decisions that affect Māori children would be a great start

The Committee may wish to ask the Government:

- > How does it plan to embed and resource culturally appropriate practice into the new operating model for vulnerable children?
- > How does it plan to engage meaningfully with whānau, hapū and iwi to improve outcomes for Māori children (as has been mandated by the current legislation since 1989)?
- > How does it plan to support Māori children within the context of their whānau, hapū and iwi before they reach the threshold for statutory intervention – including supports that address the root causes of vulnerability like low income and poor housing – to ensure they grow up thriving and supported within their communities.

B. A new operating model = opportunity for a comprehensive plan for children

In recent years, there have been increasing calls for a comprehensive action plan for children in New Zealand, encompassing progressive implementation of the Convention, reducing child poverty, and getting services and supports right for vulnerable children and young people. It was hoped by many that the Children's Action Plan would fulfil this function; in the event it was closely focused on a very targeted group of children and young people and the opportunity was lost.

In my view, there is currently a unique opportunity to change the landscape for children in New Zealand and establish for the first time a comprehensive action plan for upholding the rights and improving the lives of *all* children in New Zealand. This is based on the following factors:

- > current reform of the care and protection and youth justice system
- > the planned creation of a new children's entity (possibly a Ministry for Children)
- > increased focus on working in child-centred ways and taking into account children's views, and

> the current focus on the Convention.

While I am very encouraged by the direction of the current changes, at this stage it appears that the new entity will remain focused only on a tightly defined group of vulnerable children. Another opportunity to align work around children's rights, poverty and material deprivation, and vulnerability (all of which are closely interrelated and need to be addressed together) could be missed once again.

I encourage the Committee to challenge the Government to dream big and align the UNCROC Work Programme, Child Material Hardship Package, and Investing in Children reforms into one comprehensive action plan for children in Aotearoa New Zealand. This single step would represent the most significant gain for children's rights and outcomes in New Zealand for many years, and would place New Zealand firmly on the world stage as a leader for children. New Zealand children should expect no less.

4. PARTICULAR YOUTH JUSTICE CONCERNS

Finally, I wish to draw the Committee's attention to a number of specific concerns I have about compliance with the Convention in the area of Youth Justice. These are informed by my experience as Principal Youth Court Judge for 15 years prior to taking up the post of Children's Commissioner.

A. Use of Police cells to detain young people

One situation I am particularly concerned about is when children and young people are held in Police cells under Police custody. Under the Children, Young Persons and their Families Act, a child or young person who has been arrested may be detained in Police custody until they appear before the Youth Court for up to 24 hours. They may also be detained in Police custody following a court appearance, by order of the Court, either because they are likely to abscond or be violent, or because no other suitable facilities are available for them to be held safely in custody – usually the latter.

The continued use of Police cells to detain young people is an ongoing breach of their rights to be held in an appropriate custodial environment as well as a breach of the age-mixing provision of the Convention. In my view, the Government should commit to a

timeframe for the phasing out the use of police cells as a custodial remand environment.

Holding children in police cells is a breach of Article 37(C) as the cells are adult police cells not suitable for children. To my knowledge there are no special constructed cells suitable for children in New Zealand. Indeed, the Police have specifically refrained from building such cells as they do not wish to encourage the use of Police cell confinement for children.

Age-mixing is also likely in police cells. While efforts will often be made to prevent age-mixing by holding young people in separate cells, inevitably young people will mix with adult prisoners during movement from cell to showering and washing facilities, or during transport to and from court.

Furthermore, holding a young person in solitary confinement in order to prevent age-mixing creates other rights breaches. Police cells are not an appropriate custodial environment for children and young people. They often experience inadequate food, round-the-clock lighting, and little access to appropriate support.

B. Age-mixing in adult prisons

The Government has stated that it is not ready to lift New Zealand's reservation to Article 37(C) of the Convention, regarding age-mixing in places of detention. This is disappointing. In my view, little is being done in practice to work towards preventing age-mixing.

Furthermore, age-mixing consistently takes place for young women under the age of 18 who are sentenced to a term in an adult prison. Because there are no youth units in women's prisons in New Zealand, all young women under 18 in the adult prison system must mix with adult prisoners. As far as I can tell, little is being done to remedy this.

In male prisons, youth units are not restricted to offenders under age 18 and some units contain young adult male prisoners aged 18 and 19. The Department of Corrections justifies this age-mixing by stating that it will take place only where it is in the best interests of the younger prisoners only. While this is a permitted consideration under the Convention, I am not convinced that in practice, the best interests of the younger

inmates are in fact always the driver of this decision.

C. Ages for inclusion in the Youth Justice system

As noted earlier in this report, it is a particular concern of mine that, at the time of writing, 17-year-olds continue to be included in the adult justice system. By the time the Committee meets to examine the New Zealand Government, a decision will have been made on this issue one way or another. If the decision has been made not to include 17-year-olds in the youth justice system, I will be speaking out against this in strong terms.

A related concern is that the Government currently has no plans to address the minimum age of criminal responsibility, currently set at age 10 for murder and manslaughter, 12 for murder and manslaughter and certain other very serious offences, and 14 for all other offences. The Committee has previously recommended that the Government raise the age of criminal responsibility. I concur with this view, and endorse the Human Rights Commission's recommendation that, in order to facilitate this, the Government should review the minimal age of criminal responsibility, with particular consideration of expert evidence regarding child and adolescent brain development.

CONCLUSION

As I commence my term as Children's Commissioner I am excited at the current opportunities to advance children's rights and improve their outcomes in New Zealand.

The current reforms of the care and protection and youth justice systems present a once-in-

a-lifetime opportunity to put children at the centre of these systems and drastically improve the services they receive. The New Zealand Government is rightly proud of this reform agenda and will likely emphasise it to the Committee in September.

While I share this optimism, there are risks to children associated with the current change agenda. Careful attention will be needed to ensure there are no unintended negative consequences for children and young people.

Furthermore, while these reforms are encouraging, it is important to remember that the Convention is about the rights of *all* children, not just those who come into contact with the care and protection and youth justice systems. There is much more that can be done to advance the rights of all children in New Zealand, not least devoting attention to the systemic inequities that persist between certain groups of children, and the root causes, such as poverty and material hardship, that contribute to so many other poor outcomes.

To date, the New Zealand Government's initiatives for children have tended to be piecemeal and ad hoc, lacking the commitment needed to address underlying factors and consider children's rights across all domains of their lives.

There is a significant opportunity to harness the current energy and enthusiasm for the Government's Investing in Children programme into one comprehensive action plan for children and their rights. I urge the Committee to encourage the Government to seize this opportunity.