
**NEW ZEALAND LAW SOCIETY
HUMAN RIGHTS COMMITTEE**

**SUBMISSION TO THE 96TH SESSION OF
THE HUMAN RIGHTS COMMITTEE:**

**SHADOW REPORT TO NEW ZEALAND'S
FIFTH PERIODIC REPORT UNDER THE
ICCPR**

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1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1 This Shadow Report has been written for the Human Rights Committee to assist it in its consideration of New Zealand's Fifth Periodic Report under article 40 of the International Covenant on Civil and Political Rights (ICCPR), scheduled to occur during its 96th session. It has been written in response to New Zealand's Fifth Periodic Report (CCPR/C/NZL/5).

1.2 This Shadow Report has been prepared by the Human Rights Committee of the New Zealand Law Society (NZLSHRC). The New Zealand Law Society is the body that regulates all lawyers in New Zealand. The NZLSHRC is a committee within the New Zealand Law Society that monitors and comments on human rights issues in New Zealand, with particular regard to New Zealand's compliance with international human rights norms.

1.3 In summary, the NZLSHRC encourages the Human Rights Committee to ask the New Zealand Government the following questions when considering New Zealand's Fifth Periodic Report:

Article 2

Q1: What steps is the New Zealand Government taking to ensure that legislation is consistent with human rights, including those contained in the New Zealand Bill of Rights Act 1990 and in the ICCPR?

Q2: What steps is the New Zealand Government taking to increase Parliament's awareness of the possible human rights implications of proposed legislation?

Q3: What steps is the New Zealand Government taking to respond to statements from the courts that legislation is inconsistent with human rights, including those contained in the New Zealand Bill of Rights Act 1990?

Q4: What steps is the New Zealand Government taking to ensure that all of the rights protected by the ICCPR are protected by New Zealand law?

Article 14

Q5: Why has the New Zealand Government not taken steps to amend the Misuse of Drugs Act 1975 in order to uphold the right to be presumed innocent until proven guilty under article 14(2) of the ICCPR, in light of the decision of the Supreme Court in *R v Hansen*?

Q6: What steps is the New Zealand Government taking to review other legislation for reverse onus provisions that may be inconsistent with the right to be presumed innocent until proven guilty?

Article 26

- Q7: Why did the New Zealand Government not make explicit reference to the human rights issues and discrimination issues relating to the Foreshore and Seabed Act 2004 when it recently announced the establishment of an expert committee to consider the future of that Act?

First Optional Protocol

- Q8: How successful has the Parenting Hearings Programme of the Family Court been in providing a better balance between the right to an expeditious resolution and fair hearing rights?
- Q9: What formal procedure does the New Zealand Government have in place for responding to the findings of international human rights committees?

- 1.4 The NZLSHRC further encourages the Human Rights Committee to recommend in its concluding observations on New Zealand's Fifth Periodic Report that New Zealand:

Articles 12 & 13

- (a) provide information in its next periodic report on the passage of the Immigration Bill 2007;

Articles 12 & 13

- (b) provide information in its next periodic report on any developments to electoral law, and in particular developments to the regulation of financial support for the activities of political parties and developments to the regulation of the political activities of third parties during the time period before an election;

Article 26

- (c) amend the terms of reference of the Ministerial Review Panel on the Foreshore and Seabed Act 2004 to require the Panel to consider the human rights issues and discrimination issues relating to the Act;
- (d) ensure that any measures New Zealand takes regarding the Foreshore and Seabed Act 2004 are fully consistent with human rights; and

First Optional Protocol

- (e) implement a formal procedure for responding to Views issued by the Human Rights Committee in communications taken under the First Optional Protocol.

2. **ARTICLE 2 - THE NEW ZEALAND BILL OF RIGHTS ACT 1990**

- 2.1 In its concluding observations on New Zealand's fourth periodic report (CCPR/CO/75/NZL), the Human Rights Committee criticised New Zealand for not making the New Zealand Bill of Rights Act 1990 (NZBORA) supreme law.¹ The NZLSHRC believes that it is unlikely that New Zealand will adopt a supreme law bill of rights in the near future. However, it believes that the NZBORA could be amended in order to improve the protection of human rights in New Zealand and increase the likelihood of compliance with the ICCPR. These amendments would be:

- (a) amendment to section 7 of the NZBORA to ensure that a report on human rights consistency be tabled in Parliament for every bill introduced to Parliament; and

¹ Concluding observations on New Zealand's fourth periodic report (CCPR/CO/75/NZL), para 8.

- (b) amendment to the NZBORA to adopt a specific procedure for the Government to respond to declarations of inconsistency made by the courts, similar to the procedures found in Australian human rights instruments and in New Zealand regarding decisions of the Human Rights Review Tribunal.

Section 7 of the NZBORA

- 2.2 Under section 7 the Attorney-General is required to report to Parliament on any apparent inconsistencies between a piece of proposed legislation (a bill) and the rights contained in the NZBORA.² Although the Attorney-General receives advice from officials on every bill,³ he or she is only required to report to Parliament when aspects of a bill appear to be inconsistent with these rights.
- 2.3 The New Zealand Court of Appeal has decided that the courts do not have the ability to review the exercise of the Attorney-General's power to decide when to report on a bill.⁴ There has been controversy surrounding the failure of the Attorney-General to exercise this power during the introduction of the Electoral Finance Bill, leading to the court action that resulted in this Court of Appeal decision (see paragraph (b) below).
- 2.4 The NZLSHRC believes that section 7 could be amended with the aim of improving Parliament's awareness of the human rights implications of proposed legislation and, ultimately, making more legislation consistent with human rights. While the Attorney-General's judgement may always be affected by the political considerations of the Government, making the Attorney-General present a report on human rights consistency for every bill introduced to Parliament could achieve these aims.
- 2.5 The United Kingdom, the Australian state of Victoria and the Australian Capital Territory (ACT) all have bills of rights that are not supreme law. These bills of rights each share similarities with the NZBORA, such as a requirement that the courts try to interpret legislation consistently with human rights. However, in contrast to the NZBORA, all of these bills of rights require that every bill introduced by the Government receives a report on its consistency with human rights.
- 2.6 In the United Kingdom the Minister in charge of a bill proposed by the Government must present a written report stating whether or not they believe that the bill is consistent with human rights.⁵ In Victoria a member of Parliament introducing a bill must present a report giving their opinion on whether the bill is consistent with human rights or not.⁶ In addition to this, a parliamentary committee must also report on every bill introduced into Parliament. In the ACT the Attorney-General is required to present a report on every bill proposed by the Government.⁷ In addition to this, standing committees of the Legislative Assembly must also report on human rights issues raised by bills.⁸

² "Where any Bill is introduced into the House of Representatives, the Attorney-General shall,—
(a) In the case of a Government Bill, on the introduction of that Bill; or
(b) In any other case, as soon as practicable after the introduction of the Bill,—
bring to the attention of the House of Representatives any provision in the Bill that appears to be inconsistent with any of the rights and freedoms contained in this Bill of Rights."

³ New Zealand's Core Document (HRI/CORE/NZL/2006), para 94.

⁴ *Boscawen v Attorney-General* [2009] NZCA 12 (CA).

⁵ Human Rights Act 1998 (UK), s 19.

⁶ Charter of Human Rights and Responsibilities Act 2006 (Vic), s 28.

⁷ Human Rights Act 2004 (ACT), s 37.

⁸ Human Rights Act 2004 (ACT), s 38.

2.7 The NZLSHRC believes that New Zealand would benefit from requiring the Attorney-General to report on every bill and that this would improve New Zealand's compliance with article 2 of the ICCPR.

Q1: What steps is the New Zealand Government taking to ensure that legislation is consistent with human rights, including those contained in the New Zealand Bill of Rights Act 1990 and in the ICCPR?

Q2: What steps is the New Zealand Government taking to increase Parliament's awareness of the possible human rights implications of proposed legislation?

Declarations of inconsistency

2.8 The New Zealand Government has no formal procedure in place for responding to statements from the courts that legislation is inconsistent with the NZBORA.

2.9 The courts may issue such statements, known as declarations of inconsistency, but must still apply the inconsistent legislation, given that the NZBORA is not supreme law.⁹ For example, the Supreme Court has ruled in *R v Hansen*¹⁰ that section 6(6) of the Misuse of Drugs Act 1975 is inconsistent with the right to be presumed innocent until proven guilty. (This case is also discussed in section 4 below.)

2.10 The NZLSHRC is concerned that the Government has no formal procedure in place to monitor and formally respond to rulings made by the courts that legislation is inconsistent with human rights contained in the NZBORA.

2.11 Formal procedures for monitoring and responding to rulings made by the courts that legislation is inconsistent with human rights exist in Victoria¹¹ and in the ACT.¹² The essence of these procedures is that the Attorney-General or some other Minister must table in the legislature a copy of the court's declaration of inconsistency and the Government's formal written response to the court's decision. A similar procedure is in place in New Zealand, but only in respect of decisions of the Human Rights Review Tribunal regarding the right to be free from unjustified discrimination (see paragraphs 79 and 80 of New Zealand's Fifth Periodic Report).¹³

2.12 The NZLSHRC believes that a formal procedure for responding to statements from the general courts that legislation is inconsistent with any of the rights contained in the NZBORA would help raise awareness of human rights issues and may ultimately see more legislation become consistent with human rights.

Q3: What steps is the New Zealand Government taking to respond to statements from the courts that legislation is inconsistent with human rights, including those contained in the New Zealand Bill of Rights Act 1990?

⁹ New Zealand's Core Document (HRI/CORE/NZL/2006), para 118.

¹⁰ *R v Hansen* [2007] 3 NZLR 1 (NZSC).

¹¹ Charter of Human Rights and Responsibilities Act 2006 (Vic), s 37.

¹² Human Rights Act 2004 (ACT), s 33.

¹³ Note that at the time that New Zealand's Fifth Periodic Report was written the Human Rights Review Tribunal had not yet issued a declaration of inconsistency (as stated in para 80 of New Zealand's Fifth Periodic Report). Since then, the Human Rights Review Tribunal has issued a declaration of inconsistency in *Howard v Attorney-General* [2008] NZHRRT 10.

- 2.13 The lack of a formal policy for responding to findings of international human rights committees is discussed in section 8 below.

Incomplete protection of ICCPR rights

- 2.14 The NZBORA does not enumerate all rights contained in the ICCPR. The result is that New Zealand's principal human rights statute does not fully give effect to the ICCPR. This means that mechanisms such as the Attorney-General's reporting procedure only apply to some ICCPR rights, but not others.

Q4: What steps is the New Zealand Government taking to ensure that all of the rights protected by the ICCPR are protected by New Zealand law?

3 ARTICLES 12 & 13 - IMMIGRATION BILL 2007

- 3.1 New Zealand's Fifth Periodic Report discusses the Immigration Bill 2007. The NZLSHRC considers that this Bill raises issues regarding the human rights contained in articles 12 and 13 of the ICCPR.
- 3.2 At paragraph 138 of New Zealand's Fifth Periodic Report it is stated that "a detailed description of the legislation, if enacted, will be provided in New Zealand's next periodic report to the Human Rights Committee." As at May 2008 the Bill was still being considered by Parliament.
- 3.3 The NZLSHRC recommends that the Human Rights Committee request in its concluding observations on New Zealand's Fifth Periodic Report that New Zealand provides information on the progress of this Bill in New Zealand's next periodic report. Given guideline E.1 of the consolidated guidelines for State reports under the ICCPR (CCPR/C/66/GUI/Rev.2), this may assist the Human Rights Committee to continue to monitor this Bill.

4 ARTICLE 14(2) - PRESUMPTION OF INNOCENCE REGARDING DRUG POSSESSION

- 4.1 In February 2007 the New Zealand Supreme Court released a decision called *R v Hansen*.¹⁴ A finding of the case was that section 6(6) of the Misuse of Drugs Act 1975 is inconsistent with the right to be presumed innocent until proven guilty. This right is found in section 25(c) of the NZBORA¹⁵ and article 14(2) of the ICCPR.
- 4.2 New Zealand's Fifth Periodic Report attaches the case as Annex B and discusses it at paragraphs 14, 15, 16 and 19, but does not discuss the case in relation to article 14.

¹⁴ *R v Hansen* [2007] 3 NZLR 1 (NZSC).

¹⁵ "25 Minimum standards of criminal procedure
Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

...

(c) The right to be presumed innocent until proved guilty according to law:

..."

- 4.3 The Supreme Court found that the effect of section 6(6) of the Misuse of Drugs Act 1975 is that a person possessing a quantity of illegal drugs above a certain level is presumed to possess those drugs with the intent to supply them. Possession with intent to supply is a more serious offence than simple possession and attracts significantly more severe penalties. The Court found that, based on the clear wording of the Act, a person accused of possessing a quantity of illegal drugs above a certain level must themselves prove that they did not possess the drugs with the intent to supply them. This is known as a reverse onus provision. The Court (with one judge dissenting) found that this was inconsistent with the right to be presumed innocent until proven guilty and that this inconsistency could not be justified in a free and democratic society. The NZLSHRC notes that the Supreme Court's decision is in line with decisions on similar provisions in other jurisdictions, such as Canada, South Africa and the United Kingdom.
- 4.4 The Attorney-General accepted the Supreme Court decision when he reported on the Misuse of Drugs (Classification of BZP) Amendment Bill in August 2007. This Bill added further drugs to the list of illegal drugs. The presumption in section 6(6) would apply to people who possessed these drugs over a certain quantity. In his role under section 7 of the NZBORA (see paragraph 0 above) the Attorney-General reported to Parliament that the Bill was inconsistent with the right to be presumed innocent until proven guilty.
- 4.5 The Bill passed its first vote on 11 September 2007 and was finally passed by Parliament on 13 March 2008 as the Misuse of Drugs (Classification of BZP) Amendment Act 2008.
- 4.6 Section 6(6) of the Misuse of Drugs Act 1975 remains in force. Furthermore, with the enactment of the Misuse of Drugs (Classification of BZP) Amendment Act 2008, the section now applies to a greater range of conduct than when the Supreme Court released its decision in *R v Hansen*.
- 4.7 In March 2008 the Law Commission (an independent body that recommends law reform projects to the Government) announced that it would undertake a review of the Misuse of Drugs Act 1975, including the issue of the presumption contained in section 6(6). However, as at May 2009, the Law Commission has not published any documents relating to this review other than its terms of reference. As the review is a broad review it will take some time for final recommendations to be made. An amendment to the Misuse of Drugs Act 1975 to prevent the breach of further accused persons' rights to be presumed innocent until proven guilty could easily be made before the Law Commission releases its recommendations.
- 4.8 The NZLSHRC is concerned about the ongoing breach of the right to be presumed innocent until proven guilty and the Government's failure to take immediate steps to amend the Misuse of Drugs Act 1975 to prevent this ongoing breach.
- 4.9 In addition, the NZLSHRC is concerned that no broader review of New Zealand legislation has been undertaken to assess whether there are provisions similar to section 6(6) of the Misuse of Drugs Act 1975 and whether those similar provisions are also inconsistent with the right to be presumed innocent until proven guilty.

Q5: Why has the New Zealand Government not taken steps to amend the Misuse of Drugs Act 1975 in order to uphold the right to be presumed innocent until proven guilty under article 14(2) of the ICCPR, in light of the decision of the Supreme Court in R v Hansen?

Q6: What steps is the New Zealand Government taking to review other legislation for reverse onus provisions that may be inconsistent with the right to be presumed innocent until proven guilty?

5 ARTICLES 19 & 25 - ELECTORAL FINANCE

- 5.1 New Zealand's Fifth Periodic Report was submitted on 24 December 2007. In the period of time before this date there was significant controversy in relation to the passing of the Electoral Finance Act 2007. The NZLSHRC does not feel that New Zealand's Fifth Periodic Report accurately documents the human rights activity surrounding the passing of this Act (see paragraphs 383 to 385 of New Zealand's Fifth Periodic Report). The NZLSHRC made this point to the Government when the Government circulated a draft of its report for public consultation.¹⁶
- 5.2 In particular, the NZLSHRC believes that New Zealand's Fifth Periodic Report does not clearly explain the following activity surrounding the passing of this Act:
- (a) There was significant opposition to this Act based on implications for human rights. Extensive public submissions were received on the Bill, including submissions from the New Zealand Law Society (calling for the Bill to be withdrawn) and the Human Rights Commission (calling for the Bill to be withdrawn or substantially redrafted and a further round of public consultation) on the basis that the Bill breached the right to freedom of expression affirmed in the NZBORA and the right of informed citizens to participate in the electoral process affirmed under article 25 of the ICCPR.
 - (b) The Attorney-General's decision not to issue a report to Parliament on apparent inconsistencies between the Electoral Finance Bill and the rights contained in the NZBORA (in accordance with his/her function under section 7, discussed at paragraph 0 above) was criticised by many groups, including the New Zealand Law Society. Some people applied for a judicial review of the Attorney-General's decision not to issue a report.¹⁷
- 5.3 After the November 2008 election there was a change of government in New Zealand and the new Parliament has repealed the Act (replacing it with the electoral law that existed before it was passed).¹⁸ The new Government has initiated a review of electoral law to determine what legislation should be passed before the next election.¹⁹ This means that in future years New Zealand will re-examine electoral law and issues surrounding freedom of expression and electoral rights.
- 5.4 The NZLSHRC advises the Human Rights Committee to request in its concluding observations on New Zealand's Fifth Periodic Report that New Zealand provides information on developments to electoral law in New Zealand's next periodic report, and that it ensure that any law in this sensitive field is completely compliant with human rights law. In particular, the Human Rights Committee should request that New Zealand provides information on developments to the regulation of financial support for the activities of political parties and developments to the regulation of the political activities of third parties during the time period before an election. Given guideline E.1 of the consolidated guidelines

¹⁶ New Zealand's Fifth Periodic Report (CCPR/C/NZL/5), para 4.

¹⁷ *Boscawen v Attorney-General* [2008] NZAR 44 (HC); *Boscawen v Attorney-General (No 2)* [2008] NZAR 468 (HC); and *Boscawen v Attorney-General* [2009] NZCA 12 (CA).

¹⁸ Electoral Amendment Act 2009.

¹⁹ See www.justice.govt.nz/electoralfinancereform

for State reports under the ICCPR (CCPR/C/66/GUI/Rev.2), this may assist the Human Rights Committee to continue to monitor this ongoing law reform issue.

6 ARTICLE 26: FORESHORE AND SEABED ACT 2004

- 6.1 New Zealand's Fifth Periodic Report addresses the Foreshore and Seabed Act 2004 at paragraphs 400 to 410. The NZLSHRC does not feel that New Zealand's Fifth Periodic Report accurately describes the legal issues surrounding this Act. The NZLSHRC made this point to the Government when the Government circulated a draft of its report for public consultation.²⁰
- 6.2 In particular, the NZLSHRC believes that New Zealand's Fifth Periodic Report does not clearly explain the following features of the Act:
- (a) The effect of the Act vesting the foreshore and seabed in the Crown is that it removes the ability of Māori applicant groups to apply to an independent tribunal to argue that customary rights in the foreshore and seabed exist according to common law.
 - (b) Had it not been for the Act, then a Māori applicant group, if it could prove that it had rights in the foreshore and seabed, would have been entitled to fair and just compensation fixed by an independent tribunal according to common law. Māori groups now have to negotiate for redress from the Crown, rather than have compensation fixed by an independent tribunal. The Report states, at paragraph 403, "Now that the legislation is in place several Māori groups have taken up the opportunity to seek recognition and protection of their rights and interests in the foreshore and seabed." This could be read to mean that Māori did not have such an opportunity before the Act was passed. That meaning is incorrect.
 - (c) The Act treats customary title and existing freehold interests in the foreshore and seabed differently. Foreshore and seabed that may be subject to customary title is vested in the Crown while foreshore and seabed that is subject to a freehold interest is not.²¹ The statement in paragraph 401 of the Report that "The foreshore and seabed is secured as an area to be preserved for all New Zealanders" is, therefore, misleading because not all foreshore and seabed in New Zealand is vested in the Crown. This is recognised in paragraph 410 of the Report, which notes that existing freehold interests in the foreshore and seabed are preserved.
- 6.3 The Report also does not mention the significant opposition to the passing of the Act.
- 6.4 The Committee on the Elimination of Racial Discrimination (UNCERD) reviewed the compatibility of the Foreshore and Seabed Act 2004 with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and released its decision in March 2005 (CERD/C/66/NZL/Dec.1).²² The Report does not mention this decision.

²⁰ New Zealand's Fifth Periodic Report (CCPR/C/NZL/5), para 4.

²¹ See Foreshore and Seabed Act 2004, section 13 and the definitions of "public foreshore and seabed" and "specified freehold interest" in section 5.

²² See also Claire Charters and Andrew Erueti "Report From the Inside: the CERD Committee's Review of the Foreshore and Seabed Act 2004" (2005) 36 VUWLR 257. (Available from www.nzlii.org)

6.5 The UNCERD expressed concern that there may not have been sufficient consideration given to alternative responses to the *Ngati Apa* decision that might have accommodated Māori rights within a framework more acceptable to both Māori and all other New Zealanders.²³ The UNCERD came to the following conclusion:²⁴

Bearing in mind the complexity of the issues involved, the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Māori, in particular in its extinguishment of the possibility of establishing Māori customary title over the foreshore and seabed and its failure to provide a guaranteed right of redress

6.6 The Waitangi Tribunal also found that the policy behind the Act treats Māori customary property rights in the foreshore and seabed differently from other rights, is discriminatory and is therefore a breach of the Treaty of Waitangi.²⁵ The Report also does not mention this decision.

6.7 In its concluding observations on New Zealand's fourth periodic report (CCPR/CO/75/NZL), the Human Rights Committee encouraged New Zealand to reinforce its efforts to ensure the enjoyment of human rights by Māori.²⁶

6.8 After the November 2008 election there was a change of government in New Zealand and the new Government has initiated a review of the Act. A Ministerial review panel will report to the Attorney-General by 30 June 2009. The NZLSHRC is concerned that the Panel's terms of reference do not expressly ask the Panel to provide advice on or consider the human rights issues and discrimination issues relating to the Act, or the UNCERD decision.²⁷

Q7: Why did the New Zealand Government not make explicit reference to the human rights issues and discrimination issues relating to the Foreshore and Seabed Act 2004 when it recently announced the establishment of an expert committee to consider the future of that Act?

6.9 The NZLSHRC advises the Human Rights Committee to recommend in its concluding observations on New Zealand's Fifth Periodic Report that New Zealand amend the terms of reference of the Ministerial Review Panel on the Foreshore and Seabed Act 2004 to require the Panel to consider the human rights issues and discrimination issues relating to the Act.

6.10 The NZLSHRC also advises the Human Rights Committee to urge the New Zealand Government to ensure that any measures it takes regarding the Act are fully consistent with human rights.

²³ Decision 1 (66): New Zealand Foreshore and Seabed Act 2004 (CERD/C/66/NZL/Dec.1), para 4.

²⁴ Decision 1 (66): New Zealand Foreshore and Seabed Act 2004 (CERD/C/66/NZL/Dec.1), para 6.

²⁵ Waitangi Tribunal "Report on the Crown's Seabed and Foreshore Policy" (WAI1071), available from www.waitangi-tribunal.govt.nz. See, for example, pages 124, 129 and 134.

²⁶ Concluding observations on New Zealand's fourth periodic report (CCPR/CO/75/NZL), para 14.

²⁷ The terms of reference can be seen on <http://www.justice.govt.nz/ministerial-review/>

7 COMMUNICATIONS UNDER THE FIRST OPTIONAL PROTOCOL

- 7.1 New Zealand has ratified the First Optional Protocol to the ICCPR. Since adopting its concluding observations on New Zealand's fourth periodic report, the Human Rights Committee has issued Views on a communication regarding New Zealand in Communication 1368/2005 (CCPR/C/89/D/1368/2005). This Communication related to proceedings before the New Zealand Family Court.
- 7.2 The Committee found (with one member dissenting) that the author's right to an expeditious trial under article 14 was violated²⁸ and stated that "The State party should ensure that such violations do not recur in the future."²⁹
- 7.3 The Committee requested information about the measures taken to give effect to the Committee's views.³⁰ The New Zealand Government responded stating, amongst other things, that the Family Court would implement a "Parenting Hearings Programme" initiative aimed at reducing delays and costs by shortening families' involvement in litigation.³¹
- 7.4 New Zealand's Fifth Periodic Report addresses article 14 at paragraphs 259 and 260. It does not address this Communication, despite guideline F.1 of the consolidated guidelines for State reports under the ICCPR (CCPR/C/66/GUI/Rev.2), which encourages a State to comment on the implementation of any Views given on communications since its last periodic review.

Q8: How successful has the Parenting Hearings Programme of the Family Court been in providing a better balance between the right to an expeditious resolution and fair hearing rights?

8 GOVERNMENT RESPONSE TO FINDINGS OF INTERNATIONAL HUMAN RIGHTS COMMITTEES

- 8.1 The NZLSHRC is also concerned that the New Zealand Government has no formal procedure in place for responding to the findings of various international human rights committees on New Zealand's human rights observance. These includes Views issued by the Human Rights Committee under the First Optional Protocol to the ICCPR; Views issued by the United Nations Committee Against Torture under article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and decisions issued by the UNCERD under the early-warning and urgent action procedure for the CERD.
- 8.2 The Human Rights Committee has released General Comment 33 which comments on the obligations of State parties to the First Optional Protocol to the ICCPR (CCPR/C/GC/33). In this Comment the Committee emphasises the importance of the Committee's concluding views in communications made to it under the Protocol and concludes that "parties must use

²⁸ Views on Communication 1368/2005 (CCPR/C/89/D/1368/2005), paras 9.4 and 10.

²⁹ Views on Communication 1368/2005 (CCPR/C/89/D/1368/2005), para 11.

³⁰ Views on Communication 1368/2005 (CCPR/C/89/D/1368/2005), para 12.

³¹ The New Zealand Government Response to the Views of the Human Rights Committee in Relation to Communication 1368/2005, para 20. This document is available from <http://www.justice.govt.nz/pubs/reports/2007/response-un-hrc/index.html>

whatever means lie within their power in order to give effect to the views issued by the Committee.”³²

- 8.3 The Committee also recently expressed its concern at Australia’s failure to give effect to the Committee’s views on a number of communications that had been brought successfully against it and noted that such a failure would call into question Australia’s commitment to the First Optional Protocol.³³ The Committee also recently criticised Spain for its lack of information on concrete measures taken by Spain to follow up on the Committee’s views.³⁴ It has also expressed concern at the absence of any mechanisms ensuring the systematic follow up of its views in Austria.³⁵
- 8.4 The NZLSHRC believes that New Zealand also does not have in place any concrete measures to respond to findings of international human rights committees and should put in place a formal procedure. Such a formal procedure might be similar to a procedure for responding to declarations of inconsistency issued by domestic courts, discussed above at paragraphs 2.8 to 2.12.
- 8.5 A formal procedure for responding to the findings of international human rights committees would provide a level of assurance to communicants and their advisors that the New Zealand Government respects the outcome of the international process. It would enable communicants to take a complaint to an international human rights committee knowing that it ought to be able to provide them with a meaningful result if they succeed.
- Q9: What formal procedure does the New Zealand Government have in place for responding to the findings of international human rights committees?*
- 8.6 The NZLSHRC also advises the Human Rights Committee to urge the New Zealand Government to implement a formal procedure for responding to Views issued by the Committee in communications taken under the First Optional Protocol.

Andrew Butler
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 22.5.09

³² “General Comment No 33” CCPR/C/GC/33 (5 November 2008), para 20.

³³ “Concluding observations of the Human Rights Committee: Australia” CCPR/C/AUS/CO/5 (2 April 2009), para 10.

³⁴ “Concluding observations of the Human Rights Committee: Spain” CCPR/C/ESP/CO/5 (5 January 2009) para 8.

³⁵ “Concluding observations of the Human Rights Committee: Austria” CCPR/C/AUT/CO/4 (30 October 2007) para 7.