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COOPER LEGAL'S KEY ISSUES RELATING TO NEW ZEALAND'S COMPLIANCE WITH THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS ("ICCPR")

1. Cooper Legal is a small law firm in Wellington, New Zealand, currently representing more than 1,600 clients who have suffered abuse while in the care of the State or of faith-based organisations. This includes placements in the care of Social Welfare institutions, church-run facilities, schools (private or State-run) and/or mental health facilities. We have been doing this work for nearly 30 years.

2. This submission aims to highlight the key issues that Cooper Legal recommends the UN Human Rights Committee includes in its "List of Issues Prior to Reporting" for New Zealand. For a complete list of Cooper Legal's issues submitted to the UN for New Zealand's Fourth Universal Periodic Review, please see **Document 1**.

3. The issues are split into two broad categories:

    a. Issues relating to redress for survivors of abuse in state care; and

    b. Issues relating to the current Care and Protection and Youth Justice systems.

Issues relating to redress for survivors of abuse in state care

Right to an effective remedy – Article 2(3)

4. The State has an obligation to provide an effective remedy for survivors of abuse in care. The largest proportion of those survivors have claims against MSD.

5. In December 2021, the Royal Commission of Inquiry into Abuse in Care ("the Royal Commission") issued its interim report on redress.[1] The Royal Commission criticised the existing systems which fail to provide effective remedies for survivors, and recommended that an independent holistic redress system be established. To date, the Government has only implemented one of these recommendations.

[1] *He Purapura Ora, he Māra Tipu – From Redress to Puretumu Torowhānui*.

6. In June 2024, the Royal Commission issued its final report,[2] which reiterated the recommendations on redress and made further recommendations to increase civil litigation risk against the State and other care providers, for the purpose of providing a route for survivors to seek effective remedies through the courts.

7. In November 2024, the Government announced that there will be a new redress system in place in 2025. The Government has not announced any details about this system, including whether it will abide by the extensive recommendations of the Royal Commission.

8. In early 2023, the Ministry of Social Development ("MSD") implemented its new Rapid Payment Framework ("RPF"), initially for survivors who due to age or ill-health will likely not be able to access a new redress system, but which was later opened up to all survivors.[3]

9. The RPF scheme does not and cannot provide an effective remedy to survivors of abuse in care, because:

    a. It does not substantively consider or engage with claimants' allegations, and so cannot substantively vindicate and/or compensate for those allegations;

    b. Despite not substantively considering claimants' allegations, RPF offers are "full and final" and not open to negotiation;

    c. It lacks mechanisms for review, and other aspects required for procedural fairness;

    d. The RPF scheme and its payment settings fail to take relevant considerations into account and/or are significantly out of step with relevant considerations including inflation, the cost of abuse in care, bespoke payments, the socioeconomic position and vulnerability of survivors, and consideration of remedies offered in comparative jurisdictions; and

    e. The Government has refused to confirm whether the new redress system will be available to clients who have accepted "full and final" offers.

10. In December 2024, the Chief Ombudsman published his opinion in response to a complaint we laid in 2020, setting out our concerns with MSD's process.

11. The Ombudsman found that MSD's process is unreasonable in many respects, including:

[2] *Whanaketia – Through pain and trauma, from darkness to light.*
[3] Ministry of Social Development "MSD Historic Claims Business Process and Guidance" (16 May 2023) <www.msd.govt.nz> at [6].

a. Giving inadequate reasons for decisions, including what information has been reviewed and how the settlement amounts are justified by reference to the Ministry's payment categories;

b. Refusing to accept allegations solely due to an absence of substantiating evidence in its own files;

c. The general rates of payment are arbitrary and unreasonable. The underlying benchmarks for payments are low and have not been adjusted for inflation, the degree of harm to a claimant is not considered, and there is no clear justification for the rates of payment when compared to some comparable international and domestic rates of payment; and

d. The basis for the rates of additional payments for breaches of the New Zealand Bill of Rights Act is unreasonable, and an overly narrow range of cases will be accepted for such payments.

12. While the Chief Ombudsman's recommendations to the Ministry were somewhat limited due to the promised Government redress scheme that we are expecting to learn more about in 2025, we welcome the opinion. We appreciate the official acknowledgment that the current process is inadequate, and that survivors' claims are being dealt with in an unreasonable manner. There are several helpful interim recommendations for improvement, as well as guidance that will assist in the development of that redress scheme.

Right to not be subjected to torture (Article 7) and right to security of person (Article 9)

13. The right to security of the person does not exist as a standalone right in New Zealand. Limited aspects of the right to security of the person are protected elsewhere in the New Zealand Bill of Rights Act 1990 ("NZBORA").[4]

14. New Zealand has reserved the right to award compensation to torture victims only at the discretion of the Attorney-General, despite being repeatedly urged to remove this reservation by other States and NGOs, among others.

15. A standalone right to security of the person would protect the right to bodily and mental integrity for all persons in all care settings.

16. For further comments on this issue from Cooper Legal, please see **Document 2,** submitted to the Ministry of Justice in considering amending the New Zealand Bill of Rights Act (1990) to introduce a stand-alone right to security of the person.

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[4] Section 8: Right not to be deprived of life; Section 9: Right not to be subjected to torture or cruel treatment; Section 10: Right not to be subjected to medical or scientific experimentation; Section 11: Right to refuse to undergo medical treatment; Section 21: Unreasonable search and seizure; and Section 23(5): Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

17. We consider that such an addition would add accountability for caregivers and staff in care settings and help ensure safety for those taken into 'care'. New Zealand's history and current record show we desperately need this, or the incessant and widespread abuse, that we work with on a daily basis and which was exposed by the Royal Commission, will be able to continue.

18. To protect the right to not be subjected to torture, there must be an effective remedy available to survivors of torture. New Zealand does not currently provide this.

19. The right not to be deprived of life in section 8 of NZBORA is interpreted narrowly. Overseas jurisdictions have widened the scope of comparative rights to life to include quality of life issues, however in those jurisdictions the right to life is typically enshrined alongside broader concepts of liberty and security of the person. The wording of the right "not to be deprived of life" in section 8 of NZBORA is, comparatively, highly constrained. Legislating a specific right to security of the person in NZBORA would clarify that the scope of NZBORA is wide enough to address similar quality of life issues, including but not limited to the right to be free from physical, sexual, and mental abuse and neglect.

20. As it currently stands, the right in section 9 of NZBORA not to be subjected to torture or cruel, degrading or disproportionately severe treatment or punishment covers the most severe forms of abuse. The vast majority of abuse in care would not be captured by section 9 of NZBORA, despite nevertheless amounting to physical or mental pain and suffering, often intentionally inflicted as a punishment (but not exclusively) by someone acting under the direction of a public official, and in circumstances which inherently make such actions unjustifiable (caring for children and vulnerable adults). As the Royal Commission noted in its final report, "Aotearoa New Zealand courts have found that this right [contained in section 9 of NZBORA] only applies in "truly egregious" or "outrageous" cases."[5]

21. In our view, many of our clients have been subjected to torture because we consider that seriously physically and/or sexually abusing a vulnerable child, who has been placed in the care of their abuser by the State, amounts to torture. The court case mentioned above related to treatment in prison. We consider that State care can be distinguished from a prison setting, especially when a child is taken into 'care' for care and protection reasons. Depending on how the Government intends to amend NZBORA, we are looking to challenge this in the courts.

22. For instance, in our experience, the conditions of the BMR programme at issue in the above mentioned case, *Taunoa v Attorney-General*[6], the one case in New Zealand that has closely considered the meaning of "torture" under section 9 of NZBORA, are common in care settings such as youth justice residences and

[5] The Royal Commission of Inquiry (Abuse in Care), *Whanaketia*, Part 9 (July 2024) at [673].
[6] *Taunoa v Attorney-General* (2004) 7 HRNZ 379 (HC); *Taunoa v Attorney-General* [2007] NZSC 70, [2008] 1 NZLR 429.

cause immense and long-lasting harm to survivors. However, this treatment does not meet the intentionally high threshold of section 9.

23. In addition, the Ombudsman has addressed the issue of the treatment of prisoners at risk of suicide and self-harm. The Department of Corrections has been found wanting in its treatment of at-risk prisoners, using tie-down beds and mechanical restraints in ways that do not adhere to the guidelines and may amount to torture.[7] There is an ongoing dispute between the Ombudsman and the Department of Corrections about the ability of prison staff to view prisoners while they are toileting.

24. Some abuse in care may meet the threshold of section 9 of NZBORA. The Royal Commission found that sexual offending may constitute torture; rape has been recognised as torture where at least one of the purposes for the rape was a prohibited purpose (to punish, to intimidate or coerce, or for a discriminatory purpose), and the rape was committed by or with the consent of acquiescence of a person acting in an official capacity.[8] The Royal Commission has indicated that survivors' experiences at Marylands School and Hebron Trust may amount to torture.[9]

25. The Royal Commission further described survivors' experiences at the former Lake Alice Hospital as amounting to 'torture' in line with the definitions of UNCAT in its interim report.[10] The Government has recently acknowledged that this treatment amounted to torture, although has not recognised similar treatment in other institutions as torture.

26. A further issue is "whether section 9 of NZBORA places an obligation on the state to prevent the infliction of torture, or cruel, degrading or disproportionately severe punishment or treatment. No New Zealand case has directly considered this question."[11] The Royal Commission found that "Aotearoa New Zealand likely has a positive obligation to take effective measures designed to ensure that individuals within its jurisdiction are not subjected to torture or cruel, inhuman or degrading treatment or punishment, including such ill-treatment by private individuals", but again, this issue has not been legally determined.[12]

27. As noted by the Royal Commission, less severe abuse may in some instances be covered by the right set out in section 23(5) of NZBORA to be treated with humanity and with respect for the inherent dignity of the person, however, this right only applies to people deprived of their liberty.[13] The rights in section 23 generally apply to those "arrested or detained". While the meaning of those "deprived of liberty" in section 23(5) may arguably be construed as broader than

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[7] *A Question of Restraint: Care and Management for prisoners considered to be at risk of suicide and self-harm: observations and findings from OPCAT inspectors* (Office of the Ombudsman, Wellington, 1 March 2017, Chief Ombudsman).
[8] The Royal Commission of Inquiry (Abuse in Care), *Stolen Lives, Marked Souls* (July 2023), at [308] (citations omitted).
[9] The Royal Commission of Inquiry (Abuse in Care), *Stolen Lives, Marked Souls* (July 2023), at [185], [302] and [308].
[10] The Royal Commission of Inquiry (Abuse in Care), *Beautiful Children* (December 2022) at 104.
[11] Butler & Butler at [10.13.1].
[12] *Whanaketia*, Part 6, at [107].
[13] *Whanaketia*, part 9, at [673].

just those arrested or detained, it still does not capture every person in care. For instance, children placed in community care settings under care and protection orders, or Family Group Conference decisions made under the Oranga Tamariki Act 1989 are not necessarily “deprived of their liberty”, and therefore section 23(5) does not guarantee them the right to be treated with humanity and respect for their inherent dignity. Abuse and neglect occur in all care settings, not just those of arrest, detention, or other forms of deprivation of liberty. In contrast, as explained by the Royal Commission, “the international human right to security of the person applies to everyone, whether or not they are in detention.”[14]

28. The rights contained in ss 10 and 11 of NZBORA are obviously limited to the specific circumstances of being forced to participate in medical or scientific experimentation or to undergo medical treatment, respectively. While certain instances of abuse in care may amount to breaches of these rights, the vast majority of abuse in care would not be captured by these provisions. People are not protected from general physical, sexual, and mental abuse and neglect in care settings (including disability, psychiatric and other healthcare settings) by these provisions. Again, a general right to security of the person may provide protection against such forms of abuse.

29. A standalone right to security of the person could and should cover, at a minimum, the concepts of a right to physical/bodily integrity (including the right to be free from physical and sexual violence and neglect) and mental/psychological integrity. In this regard, a drafting approach similar to that of section 12 of South Africa’s Bill of Rights, in terms of including concepts such as physical and psychological integrity and freedom from violence in NZBORA’s framing of the right to security of the person. However, there are many rights outside of this area of law that such a right could cover, and accordingly, such a right should not be limited to addressing concerns of abuse and neglect in care. Any definition of such a right should not be worded in a closed manner.

30. Further, the phrase “disproportionately severe” used in NZBORA does not appear in Article 7. The wording of NZBORA should be amended to better align with the ICCPR.

The right to privacy – Article 17(1)

31. While section 21 of NZBORA protects against arbitrary interference with personal privacy in specific contexts (such as searches of a person, property, or correspondence), it does not explicitly enshrine a broader, standalone right to privacy.

32. A right to privacy, if not added as a standalone provision in NZBORA, could be embedded within the right to security of the person. A right to privacy within the context of security would explicitly recognise that violations of privacy directly threaten the security of a person and protect against the psychological harm caused by privacy violations.

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[14] Ibid.

Right to be free from discrimination – Article 26

33. Access to redress services under the Ministry of Social Development ("MSD") redress scheme, currently the primary redress scheme for survivors of abuse in care in New Zealand, is not provided equitably, or in particularly accessible ways, towards minority ethnic communities, especially Māori and Pasifika communities.

34. The MSD redress scheme covers abuse in Social Welfare care. The current scheme does not provide effective redress, because it fails to adequately compensate survivors for the actual abuse they suffered in care, the breaches of NZBORA attributable to that abuse, or the impact on the survivor's *mana* (personal status or prestige).

35. Māori and Pasifika youth have been historically overrepresented in care.[15] As a result, the MSD's inadequate redress schemes disproportionately affect Māori and Pasifika adults, effectively discriminating against these ethnic groups.

36. Despite their inadequacy, survivors are forced to use the out-of-court redress schemes, because litigation is not a valid option.[16]

37. Further, the current redress schemes, including those operated by the Ministries of Education ("MOE") and Health ("MOH"), are not "accessible for ethnic communities". Many survivors are engaging in multiple redress schemes at once. This is confusing and negatively impacts the accessibility of obtaining redress for all survivors – who are disproportionately Māori and Pasifika.

38. Many survivors suffered abuse in multiple placements, and as a result, it is common for survivors to seek redress against more than one agency. Each agency has a different redress scheme and different evidential thresholds for considering allegations, among other differences. Engaging in multiple redress processes at one time is confusing for survivors, especially those who are unrepresented or who suffer from a disability. The multiplicity of these bureaucratic redress processes negatively impacts the accessibility of obtaining redress for all survivors.

Legal Aid

39. New Zealand's legal system further discriminates through its poor Legal Aid system.

[15] Māori youth have been overrepresented in Social Welfare care since at least the 1960s, and possibly earlier than this. Although there is less historical data on the representation of Pasifika youth in Social Welfare care, it is clear that from at least the early 1980s there has been an overrepresentation of Pasifika youth in Social Welfare care.

[16] Among other barriers to litigation, New Zealand has the Limitation Act (Limitation Act 1950 or Limitation Act 2010, depending on the time frame of the allegations.) This means that if a survivor is over the age of 24 years when they bring a claim, which is the vast majority of survivors, this claim can be barred for Limitation reasons. It is now well-established that the average time a survivor takes to report sexual abuse is over 20 years. Other States have incorporated exceptions to their Limitation Acts for abuse survivors.

40. Legal Aid lawyers received a 12% increase in remuneration rates in 2022, the first increase since 2008. This increase was insufficient to provide equitable access to justice in New Zealand, and far less than it needed to be, to keep up with inflation.[17]

41. The low remuneration for Legal Aid lawyers severely impacts access to justice in New Zealand. Many lawyers in New Zealand will not undertake Legal Aid work.[18] This results in the lawyers who perform Legal Aid work having high workloads, and delays in proceedings, which impedes clients' rights to be tried without undue delay, and right to justice.

42. On 25 July 2023, the Chief High Court Judge and the Chief District Court Judge sent an open letter to all High Court and District Court Judges setting out concerns about the well-being of Legal Aid lawyers, because of the high workloads and the inability to attract younger practitioners to do legally aided work because of, among other things, the poor pay rates.

43. If New Zealand is to have an equitable legal system, Legal Aid rates should be increased to be equal to the significantly higher rates of lawyers contracted by the Crown.

44. Furthermore, the income threshold to qualify for Legal Aid in New Zealand needs urgent review.

45. As of 1 July 2024, a single person with no assets and no dependents would need to have a gross income of $28,444 NZD or less to qualify for Legal Aid.[19,20] This is significantly lower than the yearly income of an adult working 40 hours per week on the minimum wage ($48,152 NZD).[21]

46. We compare this to the Legal Aid eligibility thresholds of Queensland, Australia. The same single person with no dependents and no assets would qualify for fully funded Legal Aid if they earn less than $36,140 AUD ($39,964 NZD),[22] and would qualify, but have to make an initial contribution if their income is less than $54,080 AUD ($59,834 NZD).[23, 24]

47. A large amount of New Zealand's population – disproportionately Māori and Pasifika – is unable to access justice due to the income threshold to receive legal aid services.

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[17] For context, according to the Reserve Bank of New Zealand's inflation calculator, inflation from 2008 Q1 to 2022 Q1 was 34.1%.
[18] This is because of the low rates of remuneration, and because of the administrative workload associated with Legal Aid funding.
[19] This is approximately equivalent to $15,984 USD or £12,723 GBP.
[20] New Zealand Ministry of Justice "Eligibility Resource" <www.justice.govt.nz> at 1.
[21] This is approximately equivalent to $27,057 USD or £21,538 GBP.
[22] This is approximately equivalent to $22,476 USD or £17,884 GBP.
[23] This is approximately equivalent to $33,636 USD or £17,884 GBP.
[24] Legal Aid Queensland "Can I Get Legal Aid?" (March 2019) <www.legalaid.qld.gov.au> at 3.

Care and Protection and Youth Justice issues

Rights of children – Article 24(1)

48. This article states that every child shall have, without discrimination, the right to measures of protection as required by their status as a minor, on the part of their family, society and the State.

49. In its final report, the Royal Commission made wide-ranging recommendations regarding establishing protective measures to prevent the abuse of children in care. Key recommendations concern the establishment of a 'Care Safe Agency' which would administer a national safety strategy to prevent and respond to abuse, as well as to regulate the whole system of care through setting standards, vetting service providers, and prosecuting breaches.

50. We are concerned that the Government has not yet responded to these recommendations or provided any commitment to implementing these recommendations.

Rights of juvenile offenders – Articles 10(3) and Article 14(4)

51. These articles state that juvenile offenders deprived of their liberty are accorded treatment appropriate to their age, and the criminal procedure should take account of their age and the desirability of promoting their rehabilitation.

52. The Government has introduced legislation to increase the jurisdiction to institute criminal proceedings against children aged 12 and 13 years.[25]

53. We are seriously concerned by this measure to effectively lower the minimum age of criminal responsibility in relation to certain offences.

54. We note that lowering the minimum age of criminal responsibility is inconsistent with modern neuroscientific research.[26]

55. The Government has also carried out a pilot programme for a military-style academy (i.e. boot camps) for young offenders. A Bill is currently progressing

[25] In response to a perceived increase in children and young people committing 'ram raids' (a style of burglary typically involving using a stolen car to damage a storefront to enter the premises and steal goods), on 29 August 2023, the New Zealand Government introduced the 'Ram Raid Offending and Related Measures Amendment Bill' into Parliament. The Bill purports to introduce a new criminal 'ram raid' offence (defined as "using a motor vehicle to damage a building and enter the building without authority and with intent to commit an imprisonable offence in it") and allow criminal proceedings to be instituted against children aged 12 and 13 years where they are charged with this offence. Children aged 12 to 13 years are currently unable to be subjected to criminal proceedings for 'ram raid' style burglaries, as the current maximum available penalty for burglary is 10 years imprisonment.

[26] It is now well-established that children under the age of 14 years do not have the developmental maturity to comprehend the impact of their offending behaviour or the nature of criminal proceedings, and that punitive measures are ineffective for reducing recidivism amongst children who offend, whose welfare concerns precede their offending behaviour. For example, we refer to the recent reports of the New Zealand Chief Science Advisor for the Justice Sector, Professor Ian Lambie, *What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand* (2020) and *How we fail children who offend and what to do about it: 'A breakdown across the whole system'* (2022).

through the legislative process to introduce a new ‘Serious Young Offender’ label which, among other things, would allow a young person to be sentenced to a boot camp for between three and 12 months.[27]

56. We are seriously concerned about this overly punitive response to youth offending. Domestic and international evidence is clear that boot camps are ineffective at rehabilitating young offenders and reducing their risk of recidivism, and, in fact, increase the risk of crime.[28] We refer to the Royal Commission’s case study on the Whakapari boot camp. Every one of the survivors involved in the Royal Commission who attended the Whakapakari boot camp has spent time in prison since they attended the programme.

57. In New Zealand, boot camps such as Whakapakari have been sites of “State-funded violence and abuse of children and young people needing care and protection”.[29] The Royal Commission described physical, sexual and psychological abuse, extreme neglect, and acts of torture committed by staff members at this boot camp.

58. The Government’s reintroduction of boot camps contravenes the rights of juvenile offenders deprived of their liberty to receive age-appropriate treatment which promotes their rehabilitation.

Right to be free from discrimination – Article 26

59. New Zealand further fails to meet the ICCPR Article 26 standards through its Youth Justice system.

60. Māori youth continue to be consistently overrepresented in the criminal justice system.[30]

61. The Government is presently progressing legislation that reverses the rights of Māori children and young people within the State care and youth justice systems.

62. Firstly, the Government is in the process of repealing section 7AA of the Oranga Tamariki Act 1989, which governs the ‘care and protection’ and ‘youth justice’ systems of New Zealand. Section 7AA places duties on the Chief Executive of Oranga Tamariki – the Ministry for Children in order to recognise a practical commitment to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.[31] The

[27] Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill.
[28] Gluckman, P, It’s never too early, never too late: A discussion paper on preventing youth offending in New Zealand (Office of the Prime Minister’s Chief Science Advisor, 12 June 2018, page 7, para 13).
[29] Royal Commission of Inquiry into Abuse in Care *Boot Camp: Te Whakapakari Youth Programme* within its Final Report, *Whanaketia* (2024).
[30] Over the past decade, the proportion of children and young people who have been charged in the Youth Court who are Māori has fluctuated between 62 to 67 per cent. In 2022, 63 per cent of children and young people charged in the Youth Court were Māori. See Ministry of Justice *Children and young people with charges finalised in the Youth Court data tables* (2023).
[31] The Treaty of Waitangi/Te Tiriti o Waitangi was an agreement signed in 1840 by the Crown and rangatira Māori (chiefs). It is considered the founding document of Aotearoa New Zealand. It guaranteed the protection of Māori rights. Due to contradictions between the English and te reo Māori texts of the agreement, over approximately the past 50 years, the courts have developed ‘Treaty principles’ which

Government is seeking to remove this statutory provision and therefore remove the specific rights of young Māori who are disproportionately overrepresented within the care system.

63. Secondly, the Government has introduced a Bill which seeks to unilaterally redefine the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.[32] The Bill distorts the existing principles of the Treaty/Te Tiriti to the point of rendering them obsolete. It ignores the guarantees in the Treaty/Te Tiriti which protected the existing rights of Māori prior to colonisation, and instead mandates that all New Zealanders (Māori and non-Māori) must have strictly equal rights. This will affect both the interpretation of the law relating to children and young people, as well as broader issues across our society (such as the environment, and other civil and political rights).

64. We are deeply concerned by the Government's discriminatory policies and laws and the contravention of the right to be free from discrimination. Both Bills mentioned above lack any evidence-based policy motive, and are instead driven by discriminatory rhetoric against Māori.[33]

65. We further note that Māori and Pasifika youth remain significantly overrepresented in Youth Justice residences (juvenile custodial detention centres).[34]

66. New Zealand's Youth Justice and Care and Protection residences were subjected to a national review in 2021.[35] The review found that "there are significant and persistent gaps in the provision of consistent and child-specific care and treatment options provided at … the residences", particularly in mental health services. The review identified five areas for immediate attention, including:

> the significant unmet demand for acute care places and the urgent need for more options for secure therapeutic care;

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intend to broadly reflect the spirit of the Treaty/Te Tiriti. These principles include (amongst other things): tino rangatiratanga (the right to Māori autonomy and self-government), kāwanatanga (the right of the Crown to govern British subjects), parternship between Māori and the Crown, active protection of Māori by the Crown, options (the right of Māori to govern themselves along customary lines, or engage with the developing settler and modern society, or a combination of both), equity and equal treatment (the Crown must actively address inquities experienced by Māori), good government (the Crown must not act outsidfe the law), and redress (the Crown must provide compensation when it breaches the Treaty/Te Tiriti and its principles).

[32] Principles of the Treaty of Waitangi Bill.

[33] See: *Regulatory Impact Statement: Repeal of section 7AA* and *Regulatory Impact Statement: Providing certainty on the Treaty principles.*

[34] An Oranga Tamariki report examining changes in the size and composition of the youth justice custody population between July 2017 and April 2023 found that, on average, Māori youth accounted for 81 per cent of all children in custody each day (fluctuating daily between 67 and 93 per cent). On average, Pasifika youth accounted for 19 per cent of the youth justice custody population each day (fluctuating daily between 9 and 26 per cent). Over the period examined, 85% of custody placements were in a youth justice residence, 9% were in community remand homes or specialist youth homes, and 2% were in a variety of other placements. For the remaining 5%, the placement was not recorded in the structured data. See Oranga Tamariki *Youth Justice Custody Trends* (2023).

[35] *Review of provision of care in Oranga Tamariki residences: Report of the Ministerial Advisory Board* (August 2022).

…

the need to provide a holistic and therapeutic approach for each tamaiti [child] in the care of the residences …

67. Unfortunately, from our perspective, we have seen no evidence that the Government has implemented any measures. In fact, in 2023, these residences were subjected to another 'rapid review' following claims of sexual misconduct by residential staff.[36]

68. Despite the ongoing concerns regarding the conditions of Youth Justice residences, the number of children in residences, primarily Māori and Pasifika youth, has continued to increase to date.[37] In July 2023, the Government announced its intention to build two new Youth Justice residences, in response to the increased youth custodial population. The 'rapid review' called the plan "confused" and "not conducive to securing good therapeutic outcomes".

Conclusion

69. Thank you for the opportunity to provide our submissions. We hope that the issues identified are added to the List of Issues Prior to Reporting.

Yours sincerely,

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[36] *Oranga Tamariki Secure Residences & A Sample of Community Homes – Independent, External Rapid Review* (September 2023). We note that Oranga Tamariki has referred 28 complaints regarding staff conduct to the New Zealand Police since the review began in June 2023. At the time of writing this submission, three Oranga Tamariki staff members have been charged by New Zealand Police for offences under the Crimes Act 1961.

[37] The *Youth Justice Custody Trends* report found that total daily custody numbers averaged 131 through 2017/18 and 2018/19. Numbers increased after the upper age was raised to 17 years in youth justice in 2019, reaching 161 in early-March 2020. Throughout 2020 and early 2021, the numbers dropped to an approximate average of 101 due to pandemic restrictions. As Covid restrictions eased from mid-2021, daily custody numbers have continued to increase – averaging 164 through April 2023, with a peak of 175 on 2 April 2023.