

# New Zealand's 6th Periodic Review under the UN Convention on the Rights of the Child

Submission of the New Zealand Human Rights Commission  
to the Committee on the Rights of the Child

Reporting Stage: List of Issues Prior to Reporting

March 2020



**NZ  
Human  
Rights.**

Human Rights Commission  
Te Kāhui Tika Tangata

## **New Zealand's 6<sup>th</sup> Periodic Review under the UN Convention on the Rights of the Child**

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The New Zealand Human Rights Commission (the Commission) is established and operates under the Crown Entities Act 2004 and the Human Rights Act 1993. The Commission is accredited as an 'A status' national human rights institution under the Paris Principles. Information about the Commission's activities can be found on our website: [www.hrc.co.nz](http://www.hrc.co.nz)

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# Submission of the New Zealand Human Rights Commission on New Zealand's 6<sup>th</sup> Periodic Review under the UN Convention on the Rights of the Child

## Reporting Stage: List of Issues Prior to Reporting

### Introduction

1. The New Zealand Human Rights Commission ('the Commission') welcomes the opportunity to provide this submission to the Committee on the Rights of the Child ('the Committee'). The Commission is accredited as an A-status National Human Rights Institution under the Paris Principles.
2. The submission is provided prior to the Committee's issuance of a List of Issues Prior to Reporting ('LOIPR') to the New Zealand government under the Committee's 6<sup>th</sup> periodic review of New Zealand under the UN Convention on the Rights of the Child ('the Convention'). The Commission notes that the 6<sup>th</sup> periodic review of New Zealand under the Convention will be undertaken, for the first time, under the Committee's Simplified Reporting Procedure.
3. Our submission is intended to provide a broad overview of developments since the Committee's concluding observations on the fifth periodic report of New Zealand in October 2016.<sup>1</sup> The submission sets out recommendations for the Committee to consider when formulating its LOIPR for the New Zealand government.
4. The Commission is a member of the Children's Convention Monitoring Group ('CMG'), a civil society group that monitors the implementation of the Convention in New Zealand.<sup>2</sup> The CMG's activities are co-ordinated by the Office of the Children's Commissioner. Under their respective organisational mandates, CMG member organisations will provide individual submissions. The submissions from individual CMG members may be considered as being mutually endorsed.

### Observations on progress made since the 5<sup>th</sup> periodic review

#### Legislation and policy reform and addressing social disparities

5. There has been considerable legislative and policy reform in New Zealand of direct relevance to children's rights since the Committee's previous concluding observations in 2016.
6. Some reforms have significantly advanced New Zealand's structural implementation of the Convention. For example, the Convention is now referred to in both the Oranga Tamariki Act 1989 and the Children's Act 2014, two of New Zealand's primary statutes concerning the rights, interests and welfare of children. Furthermore, in 2018 the New Zealand Parliament enacted the Child Poverty Reduction Act 2018, which imposes an enduring commitment upon the New Zealand government to reduce rates of income poverty and material deprivation over periodic, defined timeframes.
7. However, while there has been progress integrating the Convention's principles into New Zealand's legislative framework, progress in improving socio-economic disparities among New Zealand children has proven more difficult. Income poverty rates remain high. Rates of severe housing

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<sup>1</sup> CRC/C/NZL/CO/5, 21 October 2016

<sup>2</sup> <https://www.occ.org.nz/childrens-rights-and-advice/uncroc/uncroc-role/>

deprivation, an issue highlighted before the Committee in 2016, appear to have worsened. Structural discrimination remains at similar levels across a wide range of socio-economic indicia.

8. This indicates that the significant structural reforms since 2016 are yet to materialise into significantly improved outcomes for children. This is due, in part, to the timeframes required for change to occur. The Child Poverty Reduction Act, for example, introduces ten-year poverty reduction targets. Its effectiveness will accordingly become evident over time.
9. In addition, there is currently a large amount of reform occurring across the social sector, much of which directly affects children. This includes new legislation governing the education system and a fundamental review of the social security system. Formal inquiries are also being undertaken (including a Royal Commission of Inquiry) into historic and current failings of New Zealand's child protection and state care system.

### Structure of this submission

10. This submission is structured under the nine thematic areas of the standard Convention reporting format:
  - A. General measures of implementation
  - B. Definition of the child
  - C. General principles
  - D. Civil rights and freedoms
  - E. Violence against children
  - F. Family environment and alternative care
  - G. Disability, health and welfare
  - H. Education, leisure and culture
  - I. Special protection measures

### A. General measures of implementation

#### Reservations and treaty ratifications

11. The New Zealand government's reservations under the Convention remain in place and, to the Commission's knowledge, there been no substantive move towards removing them since the Committee issued its 2016 concluding observations.<sup>3</sup>
12. Similarly, the Commission is aware of no substantive progress towards ratification of the Optional Protocol to the Convention on a Communications Procedure (OPCP).
13. During its July 2019 adoption of the recommendations arising from New Zealand's latest Universal Periodic Review (UPR), the New Zealand government delegation informed the Human Rights Council that it agreed to consider acceding to additional international treaties, including the OPCP. The government delegation also stated it would consider removing existing reservations.<sup>4</sup>
14. However, the government delegation did not accept UPR recommendations regarding ratification of OPCP and removal of reservations, stating that it *"cannot bypass [the] domestic process of considering the implications of international conventions. We are therefore unable to accept recommendations 'to ratify/sign' or to withdraw reservations."*<sup>5</sup>

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<sup>3</sup> CRC/C/NZL/CO/5, paragraph 5(a)

<sup>4</sup> A/HRC/41/4/Add.1, 17 June 2019, paragraph 5

<sup>5</sup> A/HRC/41/4/Add.1, 17 June 2019, paragraph 6

## Harmonisation of laws, policy strategies and co-ordination/monitoring

15. There have been substantial developments in this area since 2016. On 1 July 2019 the full amendments to the Oranga Tamariki Act 1989 came into force. These amendments harmonised the age thresholds of New Zealand’s child protection and youth justice jurisdictions with the Convention. This addressed what was the most glaring inconsistency between the Convention and New Zealand’s legal framework, a matter noted by the Committee in each of its periodic reviews of New Zealand. In addition, as noted in the introduction, the Convention is now directly referenced in the Oranga Tamariki Act 1989, which provides that a child’s rights under the Convention must be upheld in decisions made about them.<sup>6</sup>
16. Recent amendments to the Children’s Act 2014 also require the government to introduce a policy strategy “intended to help New Zealand meet its international obligations relating to children, including those [under the Convention]”.<sup>7</sup> This constituted another significant government response to a long-standing Committee recommendation.<sup>8</sup> The Child and Youth Wellbeing Strategy,<sup>9</sup> launched in August 2019, is a comprehensive strategy covering 75 actions across 20 government agencies.
17. It should be noted that, together, these reforms have discarded the term “vulnerable children” from the name of the responsible Ministry and the statutory lexicon, as the Committee recommended in 2016.<sup>10</sup> The new Ministry is named Oranga Tamariki/Ministry for Children and is overseen by New Zealand’s first Minister for Children.
18. The Deputy Chief Executives Group continues to act as the de facto government co-ordinating mechanism for the Convention<sup>11</sup> and, as part of its work, regularly meets with the CMG monitoring mechanism.<sup>12</sup> The status of the DCE Group and its relationship with the CMG remains relatively informal and is governed by terms of reference rather than a legal instrument. In this sense, the status quo has remained since 2016, although the profile of the DCE Group and the work of the CMG is now more visible. There appears to be no immediate plan to change this approach. It is, however, possible that reforms to New Zealand public service legislation, which seek to introduce new “inter-operable” ways of working in the public sector, may have some impact upon the current DCE Group-CMG arrangements.<sup>13</sup>

## Allocation of resources and data collection

19. Perhaps the most fundamental structural developments that have occurred since the 2016 review have been the amendments to the government budgetary processes under the Child Poverty Reduction Act 2018 (CPRA) and the Public Finance (Wellbeing) Amendment Bill.
20. The CPRA has introduced a Parliamentary reporting mechanism to the annual budgetary process. It requires annual reporting on progress made towards reducing child poverty and on budgetary

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<sup>6</sup> Oranga Tamariki Act 1989, section 5(1)(b) – the section also refers, not-exclusively, to children’s rights under the CRPD

<sup>7</sup> Children’s Act 2014, section 6A, which came into force in December 2018.

<sup>8</sup> See CRC/C/NZL/CO/5, paragraph 7(a)

<sup>9</sup> <https://dpmc.govt.nz/our-programmes/child-and-youth-wellbeing-strategy>

<sup>10</sup> Para 7(b)

<sup>11</sup> CRC/C/NZL/CO/5, paragraph 8

<sup>12</sup> See paragraph 4 above.

<sup>13</sup> Public Service Legislation Bill, Part 2, section 21-39

measures affecting child poverty.<sup>14</sup> This approach reflects this Committee's recommendation<sup>15</sup> to introduce a budgetary mechanism to track allocations. Its significance in this respect cannot be understated.

21. In addition, the Public Finance (Wellbeing) Bill introduces a requirement that annual Budget Policy Statements contain wellbeing objectives alongside economic and fiscal outlooks.<sup>16</sup> The Bill provides that the wellbeing objectives must relate to "social, economic, environmental, and cultural wellbeing" and explain "how they are intended to support long-term wellbeing in New Zealand." The 2019 Budget Policy Statement contained, for the first time, wellbeing objectives. Among these objectives was the reduction of child poverty. The 2020 Budget Policy Statement has continued this focus on reducing child poverty and improving child wellbeing.<sup>17</sup>

#### SDGs and data

22. There has been progress towards a more systematic approach to monitoring progress on 2030 SDG targets. New Zealand's national statistics office, Stats NZ, has developed *Indicators Aotearoa*, a data source intended to measure national wellbeing (and thus linked to the wellbeing objectives set in the budget) and track progress against the SDGs.<sup>18</sup> The *Indicators Aotearoa* indicator framework is now publicly available online.<sup>19</sup>
23. The current focus of the *Indicators Aotearoa* framework is on wellbeing. The framework is yet to incorporate any reference to the SDGs. In 2019 the New Zealand government contributed its first Voluntary National Review (VNR) to the UNECOSOC High Level Political Forum.<sup>20</sup> The VNR was a narrative report and did not report indicator data against the SDG target areas. However, it can be reasonably assumed that future VNRs may include data from *Indicators Aotearoa*.
24. More generally, obligations to collect and report data regarding children are increasing. The Children's Act 2014 requires reporting of outcomes data under the Child and Youth Wellbeing Strategy.<sup>21</sup> The CPRA also requires collection and reporting on data against several child poverty related indicators specified in the Act.<sup>22</sup>

#### Business and human rights

25. There has been little formal progress since 2016 in further implementing the principles of the UN Guiding Principles on Business and Human Rights (UNGPs). However, as an outcome of the 2019 UPR, the government accepted a recommendation to develop a national plan of action on business and human rights.<sup>23</sup> If implemented, the national plan of action will provide an opportunity to integrate the UNGPs more explicitly in public policy, including principles that relate to the government's human rights obligations towards vulnerable population groups, such as children.

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<sup>14</sup> Public Finance Act 1989, section 15EA

<sup>15</sup> CRC/C/NZL/CO/5, paragraph 9 and 36(b)

<sup>16</sup> The Bill is before Select Committee at the time of writing: [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_91229/public-finance-wellbeing-amendment-bill](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_91229/public-finance-wellbeing-amendment-bill).

<sup>17</sup> <https://treasury.govt.nz/system/files/2019-12/bps2020.pdf>

<sup>18</sup> <https://www.stats.govt.nz/indicators-and-snapshots/indicators-aotearoa-new-zealand-nga-tutohu-aotearoa/>

<sup>19</sup> [https://wellbeingindicators.stats.govt.nz/?\\_ga=2.72180051.1740853771.1581283364-1349476237.1556684937](https://wellbeingindicators.stats.govt.nz/?_ga=2.72180051.1740853771.1581283364-1349476237.1556684937)

<sup>20</sup> <https://www.mfat.govt.nz/assets/Uploads/New-Zealand-Voluntary-National-Review-2019-Final.pdf>

<sup>21</sup> Children's Act 2014, section 7B

<sup>22</sup> Child Poverty Reduction Act, section 38

<sup>23</sup> Report of the Working Group on the Universal Periodic Review - New Zealand, A/HRC/41/4, 1 April 2019, p 14, 122.57

## *General measures of implementation: Recommendations*

The Commission recommends that the Committee seek the following information from the New Zealand government:

- (a) Further to its 2019 UPR statement, information regarding any concrete measures the New Zealand government has taken towards considering whether to accede to the OPCP and remove the reservations to the Convention.
- (b) Details of additional resources, if any, provided to support the current monitoring and co-ordination of the Convention carried out by the CMG and the DCE Group.
- (c) Information on the extent to which the reforms to public services legislation impact upon current Convention monitoring and co-ordination arrangements and the implementation of the Child and Youth Wellbeing Strategy.
- (d) Information on the extent to which the government's commitments under the Convention, other human rights treaties and the SDGs are considered and incorporated into the formation of wellbeing priorities under Budget Policy Statements.
- (e) Details of how Stats NZ intends to incorporate, measure and report progress against the SDG targets within the Indicators Aotearoa framework.
- (f) Details of the data sources that will be used to report on outcomes for children under the Child and Youth Wellbeing Strategy and the Child Poverty Reduction Act, including whether they disaggregate data on children by age, sex, disability, geographic location, ethnic origin, nationality and socioeconomic background.
- (g) Information on steps taken to date towards issuing a national plan of action on business and human rights, including details on how the plan intends to include and address the rights of children and other vulnerable population groups.

### **B. Definition of the child**

- 26. In the 2016 Concluding Observations, the Committee recommended that the minimum legal age of marriage be amended to 18. A 2018 amendment to the Marriage Act 1955 retains the minimum legal age at 16, while introducing a requirement that a marriage involving a 16 or 17-year-old requires approval from a Family Court judge.<sup>24</sup> The judge must consider, among other things: voluntariness; risks of undue influence or coercion; the views, age and maturity of the young person as well as parents' or guardians' views; and the young person's interests.<sup>25</sup>
- 27. While this amendment provides a stronger safeguard than previously available, the Commission considers that, in accordance with the Convention, the Marriage Act should set a minimum age of 18 without exception.<sup>26</sup> In 2018 the CEDAW Committee recommended that the New Zealand government restrict the legal age of marriage to 18 years and only provide for court-approved

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<sup>24</sup> Marriage Act 1955, section 18

<sup>25</sup> Marriage Act 1955, section 18(4)

<sup>26</sup> See the Human Rights Commission submission on the Marriage (Court Consent to Marriage of Minors) Bill [https://www.parliament.nz/resource/en-NZ/51SCJE\\_EVI\\_BILL\\_73911\\_A565358/afe35d47dd363a9e34ef526aac285d8c91c227b7](https://www.parliament.nz/resource/en-NZ/51SCJE_EVI_BILL_73911_A565358/afe35d47dd363a9e34ef526aac285d8c91c227b7) where the Commission made this point in a submission to Parliament's Justice and Electoral Select Committee when the amendment bill was being considered.

marriage of 16 and 17-year-olds in exceptional circumstances.<sup>27</sup> The “exceptional circumstances” criteria recommended by the CEDAW Committee are not reflected by the relevant Marriage Act provisions.

28. As noted above, the Oranga Tamariki Act 1989 (formerly the Children, Young Persons and their Families Act 1989) has brought the age thresholds of the youth justice and child protection jurisdiction into general conformity with the Convention. However, the Commission notes that the minimum age of criminal responsibility in New Zealand under the Crimes Act 1961 remains below international human rights standards.<sup>28</sup> This issue will be elaborated on in Section I: Special Protection Measures.

### **Definition of the child: Recommendations**

**The Commission recommends that the Committee seek the following information from the New Zealand government:**

- (a) Information on the number of times and circumstances under which a Family Court judge has approved a marriage involving a 16 or 17-year-old since the enactment of the Minors (Court Consent to Relationships) Legislation Act 2018.**
- (b) The government’s position on whether it intends to amend the Marriage Act to:**
- i. Restrict the minimum legal age of marriage to 18 years in all circumstances; or**
  - ii. Introduce the “exceptional circumstances” criteria recommended by the CEDAW Committee.**

## **C. General principles**

### **Non-discrimination**

29. Māori, disabled and Pacific children continue to experience structural discrimination across several socio-economic indicia. The recent Māori Inquiry into Oranga Tamariki (New Zealand’s child protection agency) found that the proportion of Māori and Pacific children entering into state care has increased by 7% between 2009/10 and 2018/19.<sup>29</sup> As at 30 June 2019, 68% of the 6450 children in state care under a custody order identified as Māori or Māori/Pacific.<sup>30</sup> The Child Poverty Monitor 2019: Technical Report also reported disparate outcomes for Māori or Pacific children across a range of indicia regarding health, mortality, household income and standard of living.<sup>31</sup>
30. The report noted some positive progress, including that Māori and Pacific students showed the steepest increases among ethnic groups in achieving the (secondary school) NCEA Level 2 and University Entrance qualifications.<sup>32</sup> Conversely, a 2017 survey of almost 1700 school students by

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<sup>27</sup> CEDAW Committee, Concluding observations on the eighth periodic report of New Zealand, 25 July 2018, paragraph 48(e)

<sup>28</sup> Crimes Act 1961, section 2

<sup>29</sup> *Ko Te Wā Whakawhiti, It’s Time For Change - A Māori Inquiry into Oranga Tamariki – Report*, Whānau Ora Commissioning Agency, 2020, <https://whanauora.nz/assets/6f126cc001/ORANGA-TAMARIKI-REVIEW-REPORT.pdf>, p 21

<sup>30</sup> *ibid*

<sup>31</sup> <http://nzchildren.co.nz/>

<sup>32</sup> *ibid*, see Figure 51



the Office of the Children’s Commissioner reported that many of the students who participated in the survey had experienced racism at school.<sup>33</sup>

31. Disabled children experience significantly worse socio-economic outcomes than non-disabled children. Stark disparities exist across social indicia. For example, disabled children are more likely to live in low-income households<sup>34</sup> and in overcrowded inadequate housing conditions;<sup>35</sup> and are more likely to experience violence and abuse.<sup>36</sup>
32. Disabled young people are also more likely to be excluded from education and employment. Stats NZ data shows a NEET (Not in Employment, Education or Training) rate for disabled young people of 34.9 percent, more than three times the rate for non-disabled youth.<sup>37</sup> There is a probable correlation with youth justice outcomes, where the prevalence of neuro-disability has been estimated at between 50 and 75 percent.<sup>38</sup>
33. Recent legislative reforms have focused on addressing these disparities. The 2018 amendments to the Children’s Act 2014 require the Minister for Children to report on achievements under the Child and Youth Wellbeing Strategy for, specifically, Māori and Pacific children, disabled children, and children with a disabled parent, guardian, or caregiver.<sup>39</sup>

#### Countering hate speech and online extremism

34. The attack by a white supremacist on two Christchurch mosques on 15 March 2019 left 51 worshippers dead, including young children. It highlights deep challenges for human rights in New Zealand, including the human rights of New Zealand’s increasingly diverse child and youth population. The atrocity cast a spotlight on the existence, fermentation and dissemination of discrimination and hatred in New Zealand, particularly in the online environment where children and young people are vulnerable to being exposed to harmful information.
35. The government has launched several initiatives in the aftermath of the attacks, including a Royal Commission of Inquiry, the international “Christchurch Call” initiative to counter online extremism, and a review of New Zealand’s laws on hate speech. In October 2019 the Department of Internal Affairs held community workshops, including specific workshops with young people, to get feedback on proposed changes to New Zealand’s online classifications and harmful digital communications laws.<sup>40</sup>
36. To date, the Ministry of Justice review of the Human Rights Act 1993 provisions regarding incitement of racial disharmony (commonly referred to as New Zealand’s hate speech law) is not yet complete. In December 2019, the Human Rights Commission published an overview of the domestic and international legal frameworks regarding hate speech in order to assist current dialogue on the issue.<sup>41</sup>

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<sup>33</sup> <https://www.occ.org.nz/assets/Uploads/OCC-STA-Education-Matters-to-Me-Key-Insights-24Jan2018.pdf>

<sup>34</sup> Wynd D, *It shouldn’t be this hard – children, disability and poverty*, Child Poverty Action Group, 2015, p 3  
<https://www.cpag.org.nz/assets/150317ChildDisability.pdf>

<sup>35</sup> <https://www.stats.govt.nz/reports/disability-and-housing-conditions-2013>, p 5

<sup>36</sup> <https://nzfvc.org.nz/disabled-people>

<sup>37</sup> This data is up to the June 2019 quarter: <https://www.stats.govt.nz/information-releases/labour-market-statistics-disability-june-2019-quarter>

<sup>38</sup> [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12107909](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12107909)

<sup>39</sup> Children Act 2014, sections 7B and 7C

<sup>40</sup> See at paragraph 51 below.

<sup>41</sup> Human Rights Commission, *Kōrero Whakamauāhara: Hate Speech – An overview of the current legal framework*. December 2019 [https://www.hrc.co.nz/files/2915/7653/6167/Korero\\_Whakamauahara-Hate\\_Speech\\_FINAL\\_13.12.2019.pdf](https://www.hrc.co.nz/files/2915/7653/6167/Korero_Whakamauahara-Hate_Speech_FINAL_13.12.2019.pdf)

## Best interests of the child

37. The recent reforms to the Children’s Act 2014 and the Oranga Tamariki Act 1989 have strengthened the legal obligations to give primary consideration to the rights, interests and welfare of children. The Children’s Act provides that a responsible Minister *must* have regard to child-related principles when making decisions under that legislation. The principles include “upholding and respecting” the legal rights of the child under the Convention, acknowledging the “intrinsic value and inherent dignity of the child” and viewing the child “in the context of their families, whānau, hapū, and iwi, other culturally recognised family groups, and communities.”<sup>42</sup>
38. Of additional note has been the Ministry of Social Development’s 2018 publication of a Child Impact Assessment tool for “assessing whether policy proposals will improve the wellbeing of children and young people.” The tool includes templates to use for assessing proposed laws or policies for consistency with the “intent” of the Convention.<sup>43</sup> The tool was initially developed in response to the 2011 recommendations of the Committee and certainly constitutes a notable implementation outcome in this respect. However, it is difficult to precisely ascertain the extent to which the tool is currently applied and referred to in policy and legislative design.

## Child and youth mortality

39. The Child Poverty Monitor 2019 Technical Report reported that child mortality rates have declined significantly since the mid-1990s. Rates for Māori children have had the steepest decline among ethnic groups. However, the report notes that mortality rates have been consistently higher for Māori and Pacific children when compared to other ethnicities.<sup>44</sup>
40. These disparities are particularly apparent in rates of suicide, where rates for Māori children and youth aged 10-24 have continued to steadily increase over time, approximately doubling between 2007/8 and 2019/19 (and increasing significantly since 2016).<sup>45</sup> These outcomes are highly concerning and can be seen as indicative of pervasive structural discrimination and social inequity.
41. The Commission notes that a considerable amount of work on suicide prevention is going on in the health sector. The Ministry of Health has recently released the Suicide Prevention Strategy 2019–2029 and the Suicide Prevention Action Plan 2019–2024 that includes the establishment of a Suicide Prevention Office, which is intended to carry out oversight of the implementation of the Action Plan and related work.

## The right to participation

42. There have been notable legislative developments since 2016. The 2018 amendments to the Children’s Act 2014 require the Minister for Children to consult with children and children’s representatives in respect of the Child and Youth Wellbeing Strategy and any proposed changes to it.<sup>46</sup>

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<sup>42</sup> Children’s Act 2014, section 6C

<sup>43</sup> Ministry of Social Development, July 2018 <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>

<sup>44</sup> <http://nzchildren.co.nz/>, Figure 32

<sup>45</sup> *Annual provisional suicide statistics for deaths reported to the Coroner between 1 July 2007 and 30 June 2019*, Table 5: Provisional suicide deaths of Māori ethnicity by age group and gender between July 2007 and June 2019

<sup>46</sup> Children’s Act 2014, section 6D

43. The July 2019 Oranga Tamariki Act amendments also provide that decision-makers under the Act (including courts) must “[encourage and assist children and young people] wherever practicable, to participate in and express their views about any proceeding, process, or decision affecting them, and their views should be taken into account.”<sup>47</sup> The equivalent provision under the Care of Children Act 2004 provides a slightly weaker right of participation, requiring in contrast “reasonable opportunities” for the child to express views in proceedings under that Act (which regard, among other things, day-to-day care and guardianship matters).<sup>48</sup>
44. The Education and Training Bill currently before Parliament provides that the Minister must make reasonable efforts to consult with children and young people when developing a statement on National Education and Learning Priorities (NELP). This carries over a 2018 amendment to the incumbent Education Act 1989 requiring this consultation.<sup>49</sup> As referred to above in paragraph 30, the Office of the Children’s Commissioner has undertaken independent consultation with children, which contributed to the NELP process.

### ***General principles: Recommendations***

**The Commission recommends that the Committee seek the following information from the New Zealand government:**

- (a) An account of progress made under the Child and Youth Wellbeing Strategy in respect of outcomes for Māori and Pacific children, disabled children, and children with a disabled parent, guardian, or caregiver.**
- (b) All other legislative and policy measures taken that specifically seek to address disparities experienced by Maori and Pacific children, children belonging to ethnic minorities, refugee children, migrant children, children with disabilities and LGBTI children.**
- (c) Any specific measures, including protective measures, taken to counter hate speech and discrimination towards children from ethnic and religious minorities since the 15 March 2019 Christchurch mosque attacks.**
- (d) The procedures regarding the application of the “child-related principles” under s6C of the Children’s Act 2014 when making decisions under that legislation.**
- (e) The number of times assessments made under the Child Impact Assessment tool are referred to in regulatory impact statements, departmental disclosure statements, cabinet papers and other government documentation regarding formation of policy and legislation that affects children.**
- (f) Details of training for government officials on children’s rights, the Convention and the use of the Child Impact Assessment tool, including numbers of attendees.**
- (g) All measures taken under the Suicide Prevention Strategy 2019–2029, the Suicide Prevention Action Plan 2019–2024 and by the Suicide Prevention Office directed at reducing child and youth suicide rates, including suicide rates for Māori children and youth aged 10-24.**

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<sup>47</sup> Oranga Tamariki Act 1989 section 5(1)(a)

<sup>48</sup> Care of Children Act 2004, section 6

<sup>49</sup> Education Act 1989, section 1A(4) – inserted by section 4(3) of the Education (National Education and Learning Priorities) Amendment Act 2018 (2018 No 43).

- (h) The procedures used for consulting with children and young people in respect of the Child and Youth Wellbeing Strategy and the statement on National Education and Learning Priorities, and the results of those consultation processes.**
- (i) An evaluation of the impact of s5(1)(a) of the Oranga Tamariki Act 1989 on the participation of children and young people in procedures and proceedings under that Act.**

## **D. Civil rights and freedoms**

### The right to identity

- 45. Recent legislative developments have strengthened the duties of schools and child protection and youth justice sector decision-makers to recognise and uphold the right to identity of Māori children, a specific concern of the Committee in its 2016 Concluding Observations.<sup>50</sup>
- 46. The Education and Training Bill introduces new provisions that increase schools' obligations to recognise and respect the Treaty of Waitangi in their work. These obligations include requiring that school boards ensure that their plans, policies and local curriculum reflect local tikanga Māori (Māori cultural values and traditions), mātauranga Māori (Māori knowledge, wisdom and understanding), and te ao Māori (the Māori world); and make instruction available in tikanga Māori and te reo Māori (the Māori language).<sup>51</sup>
- 47. Similarly, new provisions in the Oranga Tamariki Act require decisions under the Act to take a holistic approach in affirming the right to identity of children and young people subject to those decisions.<sup>52</sup> The Act places new obligations upon the Chief Executive of Oranga Tamariki regarding commitments under the Treaty of Waitangi, including that policies, practices, and services must have regard to mana tamaiti (the intrinsic value and dignity of the child), the whakapapa (genealogy) of Māori children and young persons, and the whanaungatanga (kinship) responsibilities of their whānau, hapū, and iwi.<sup>53</sup>

### The right to privacy

- 48. The current use of predictive risk modelling in the child protection system is unclear. Reforms to the Oranga Tamariki Act enable agencies to more freely share information about children, young people and their families, including enabling the creation of group data sets.<sup>54</sup> Furthermore, the legislation provides that the wellbeing and best interests of the child override duties of confidentiality that otherwise exist.<sup>55</sup> To balance these more intrusive provisions, the legislation requires the development of an information sharing code to guide practices. An information sharing guidance document was released in 2019.<sup>56</sup>
- 49. The Privacy, Human Rights and Ethics (PHRAE) framework, developed as a procedural safeguard in the development of predictive risk modelling and information sharing initiatives, has been publicly

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<sup>50</sup> Paragraph 19

<sup>51</sup> Clause 9(1)(d), Education and Training Bill

<sup>52</sup> Oranga Tamariki Act, section 5(1)(b)(vi), see also section 4(1)(g)

<sup>53</sup> Oranga Tamariki Act, section 7AA(2)(b)

<sup>54</sup> Oranga Tamariki Act sections 65A-66Q

<sup>55</sup> Oranga Tamariki Act sections 65A(2)

<sup>56</sup> <https://orangatamariki.govt.nz/assets/Uploads/Information-sharing/Information-sharing-Guidance-OT-Act-1989.pdf>

released.<sup>57</sup> However, the PHRAE is not referred to in any legislation, nor in the information sharing guidance referred to above.

50. More generally, the government recently issued its Data Protection and Use Policy (DPUP), a non-legislative policy instrument that applies across the public sector. The DPUP's Manaakitanga (right to dignity) principle specifically refers to the participation rights of children and young people and the duty of agencies to support them to participate in decisions regarding their personal data.<sup>58</sup>

### Access to information

51. As mentioned above, in October 2019 the Department of Internal Affairs held workshops across New Zealand to discuss a number of proposed changes to legislation and policy to counter online extremism, including regulatory gaps that became evident when agencies and internet companies attempted to take down and prevent the dissemination of live-streamed video footage of the March 2019 Christchurch mosque attacks. The workshops and proposals arose as part of New Zealand's domestic response to the international "Christchurch Call" initiative, led by the New Zealand Prime Minister and the President of France.<sup>59</sup> Cabinet papers indicate that resultant changes are likely to entail, among other things, changes to classifications legislation so that it can apply more readily to online content hosts.<sup>60</sup>
52. More generally, the proportion of children with access to the internet is increasing. It is reported that almost all (99.7%) of New Zealand school students have internet access at school. It is anticipated that 87% of New Zealand's population will have access to ultra-fast broadband by 2022. However, reports indicate that digital inclusion remains a problem in New Zealand, particularly for low-income and rural households. Census data indicated 13% of households do not have internet access at home.<sup>61</sup>

### *Civil rights and freedoms: Recommendations*

**The Commission recommends that the Committee seek the following information from the New Zealand government:**

- (a) Information on the implementation of the Treaty of Waitangi duties of the Chief Executive of Oranga Tamariki under s7AA of the Oranga Tamariki Act.**
- (b) Information on the implementation of Treaty of Waitangi duties of the education sector following enactment of the Education and Training Bill.**
- (c) Information on the use of the PHRAE tool when assessing information sharing and data analytics practices and proposals, including frequency of use and details of the outcomes of PHRAE assessments, including any impact on policy and practices.**
- (d) Details of safeguards to protect children's rights, including protection from discrimination, in information-sharing practices authorised under the Oranga Tamariki Act 1989 and the Family Violence Act 2018.**

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<sup>57</sup> <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/phrae/phrae-on-a-page.pdf>

<sup>58</sup> <https://dpup.sia.govt.nz/principles/manaakitanga/>

<sup>59</sup> <https://www.christchurchcall.com/>

<sup>60</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases/\\$file/cabinet-material-relating-to-counter-violent-extremism-online.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases/$file/cabinet-material-relating-to-counter-violent-extremism-online.pdf)

<sup>61</sup> <https://thespinoff.co.nz/business/22-11-2019/nzs-internet-is-faster-than-ever-but-challenges-still-lay-ahead/>

- (e) Details of specific legislation and policy changes to counter online extremism, including details of any child rights impact assessments undertaken.
- (f) Any measures to increase equity of internet access for children from low income or rural households.

## E. Violence against children

### Violence, abuse and neglect

- 53. As already noted, since the 2016 Concluding Observations, the care and protection system has been subject to extensive reform, culminating in the full commencement of the Oranga Tamariki Act 1989 on 1 July 2019. The Act has no mandatory reporting requirement, although the changes to its information sharing provisions are designed to enable agencies to share information as a matter of course.<sup>62</sup>
- 54. The Family Violence Act 2018, which, like the Oranga Tamariki Act, came into force on 1 July 2019, extensively updated New Zealand’s family violence legislation and introduced new information sharing provisions. The changes enable family violence agencies and social services practitioners to request and release information regarding risk and need assessments and plans, or other information to help to protect victims. Like the Oranga Tamariki legislation, the information sharing provisions in the Family Violence Act expressly emphasise the protection of the victim in precedence to duties of confidentiality and the disclosure principles in the Privacy Act.<sup>63</sup>
- 55. It is important to note that the enactment of the Family Violence Act 2018 occurred against a backdrop of reform and policy focus on reducing and preventing family and sexual violence. This has included working towards a strategy and action plan to reduce and prevent family and sexual violence, the establishment of a Ministerial Group, and the formation of a joint venture between government departments.<sup>64</sup>
- 56. However, despite these developments, currently there appears to be no consolidated reporting of family violence data to provide an overall profile of family violence in New Zealand. The most recent available report providing consolidated family violence data regarding children was produced by the non-government New Zealand Family Violence Clearinghouse (NZFVC) in 2017.<sup>65</sup>
- 57. In its last periodic review of New Zealand undertaken in 2018 the Committee on the Elimination of Discrimination Against Women noted its concern at “the lack of a single integrated data source encompassing all data regarding domestic violence, disaggregated by sex, ethnicity, type of violence and the relationship of the perpetrator to the victim, including data on femicide, and the lack of sufficient funding for data-collecting agencies, including non-governmental agencies.”<sup>66</sup>

### *Violence against children: Recommendations*

**The Commission recommends that the Committee seek the following information from the New Zealand government:**

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<sup>62</sup> See above at paragraph 48

<sup>63</sup> Family Violence Act 2018, section 21

<sup>64</sup> <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/reducing-family-and-sexual-violence/work-programme/>

<sup>65</sup> <https://www.nzfvc.org.nz/our-work/data-summaries/children-and-youth>

<sup>66</sup> CEDAW Committee, Concluding observations on the eighth periodic report of New Zealand, 25 July 2018, paragraph 25(f)

- (a) Details on the current progress in developing a strategy and action plan to reduce family and sexual violence, including information on aspects of the strategy and action plan that specifically regard children and young people.
- (b) In light of the 2018 concerns of the CEDAW Committee, any information regarding the development of a single integrated data source on family and sexual violence, disaggregated by age, ethnicity, disability status, and other indicia.

## F. Family environment and alternative care

### Inquiries into the state care system

- 58. The passage into law of the extensive reforms to New Zealand’s child protection legislation brought about by the Oranga Tamariki Act has been accompanied by a number of formal inquiries into historic and current failings of New Zealand’s state care and protection system.
- 59. This includes a Royal Commission of Inquiry into Abuse in Care, which is inquiring into abuse in state care experienced by children and vulnerable adults between 1950 and 1999. The Terms of Reference for the Royal Commission note relevant observations made by United Nations human rights treaty bodies<sup>67</sup> and provide that the Royal Commission may also inquire into “current frameworks to prevent and respond to abuse in care; and any changes to legislation, policies, rules, standards, and practices, including oversight mechanisms, that will protect children, young persons, and vulnerable adults in the future.”<sup>68</sup>
- 60. In parallel, the findings of *Ko Te Wā Whakawhiti, A Māori Inquiry into Oranga Tamariki* were released in February 2020.<sup>69</sup> The Inquiry identified three action points, with several recommendations under each point. The action points include strengthened, specific support services for whānau Māori (Māori families) who come into contact with Oranga Tamariki; a structural analysis and review of Oranga Tamariki’s systems, policies, processes and practices; and establishing a “By Māori - For Māori, with Māori” funding authority with responsibility for fostering service delivery, workforce development and sustained financial and research investment.<sup>70</sup>
- 61. Furthermore, both the Children’s Commissioner and the Ombudsman are undertaking reviews of current practices regarding pēpē Māori (infant Māori aged 0-3 months). The Children’s Commissioner’s review is focused on what reforms are required to support pēpē Māori to remain in the care of their whānau in situations where a statutory care and protection intervention occurs.<sup>71</sup> This is complemented by a systemic investigation by the Ombudsman into uplifts of newborns into state care via interim urgent custody orders under the Oranga Tamariki Act.<sup>72</sup> These reviews were

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<sup>67</sup> Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018, Schedule, Preamble

<sup>68</sup> Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018, Schedule at 10.6

<sup>69</sup> See footnote 29 to paragraph 29 above

<sup>70</sup> *Ko Te Wā Whakawhiti, It’s Time For Change - A Māori Inquiry into Oranga Tamariki – Report*, Whānau Ora Commissioning Agency, 2020, <https://whanauora.nz/assets/6f126cc001/ORANGA-TAMARIKI-REVIEW-REPORT.pdf>, p 69-72

<sup>71</sup> <https://www.occ.org.nz/publications/news/scope-of-review-into-oranga-tamarikis-care-and-protection-practice-for-tamariki-maori-announced/>

<sup>72</sup> Office of the Ombudsman, *Systemic Improvement Investigation: Oranga Tamariki – newborn removal* [https://www.ombudsman.parliament.nz/sites/default/files/2019-11/orangatamarikinewbornremovalinvestigation-termsofreference\\_0.pdf](https://www.ombudsman.parliament.nz/sites/default/files/2019-11/orangatamarikinewbornremovalinvestigation-termsofreference_0.pdf)

preceded by media reporting of a Hawkes Bay case in which a newborn pēpē Māori was uplifted from their mother in the hospital after birth.<sup>73</sup>

### Disabled children and parents

62. The Oranga Tamariki Act reforms repealed provisions of the former Children and Young Persons and their Families Act 1989 that provided for a separate regime of care and custody orders in respect of disabled children.<sup>74</sup> Care and protection proceedings regarding disabled children now proceed under the same statutory criteria as those for non-disabled children. The principles section of the Act affirms both Conventions on the Rights of the Child and the Rights of Persons with Disabilities.<sup>75</sup>
63. However, the Act is largely silent as to specific support for disabled parents. Oranga Tamariki has a Parent Assessment Manual for assessing parenting abilities of intellectually disabled parents, although the manual appears not to be publicly available.<sup>76</sup> The Commission is also aware of significant delays in the Family Court due to difficulties locating and obtaining funding required to appoint a litigation guardian (*guardian ad litem*) in cases where a parent lacks capacity to participate on their own behalf.
64. Research surveying parents of disabled children has reported a lack of accessible support services, such as carer support and respite care, as well as considerable difficulties accessing those services.<sup>77</sup> Funding of these services appears tenuous, with reports of services closing for financial reasons.<sup>78</sup> In January 2020, a major provider of rehabilitation and respite care services announced it can no longer afford to keep its centres open.<sup>79</sup>

### Adoption

65. In its 2016 decision in *Adoption Action v Attorney-General*, the Human Rights Review Tribunal declared six provisions of the Adoption Act 1955 and one provision of the Adult Adoption Information Act 1985 to be inconsistent with the right to freedom from discrimination under the New Zealand Bill of Rights Act 1990. The declarations covered a range of discrimination grounds, including race, disability and age.<sup>80</sup>
66. Despite that decision, there has been no move by the government to reform the Adoption Act 1955 to bring it into conformity with New Zealand's domestic human rights law and, as it follows, international human rights standards. Furthermore, reforms recommended by the New Zealand Law Commission in 2000 to modernise New Zealand adoption law remain unaddressed.

### ***Family environment and alternative care: Recommendations***

**The Commission recommends that the Committee seek the following information from the New Zealand government:**

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<sup>73</sup> <https://www.newsroom.co.nz/2019/06/19/643569/ombudsman-launches-independent-investigation-into-oranga-tamariki>

<sup>74</sup> Children, Young Persons and their Families Act 1989, sections 141-143 (repealed)

<sup>75</sup> Oranga Tamariki Act, section 5(1)(b)

<sup>76</sup> <https://practice.orangatamariki.govt.nz/previous-practice-centre/knowledge-base-practice-frameworks/disability/resources/parental-intellectual-disability/>

<sup>77</sup> Wynd D, *It shouldn't be this hard – children, disability and poverty*, Child Poverty Action Group, 2015, p 24

<sup>78</sup> <https://www.stuff.co.nz/nelson-mail/news/91154144/proposed-closure-of-respite-facility-leaves-parents-without-options>, August 2017

<sup>79</sup> <https://www.stuff.co.nz/national/health/118861324/disabled-injured-patients-hugely-disappointed-to-be-moved-from-laura-fergusson-rehab-centre>, 31 January 2020

<sup>80</sup> *Adoption Action v Attorney-General* [2016] NZHRRT 9



- (a) Details regarding the government’s response to (and implementation of):
- i. the recommendations of *Ko Te Wā Whakawhiti, A Māori Inquiry into Oranga Tamariki*;
  - ii. the findings of the systemic investigation by the Ombudsman into removals of newborns by Oranga Tamariki;
  - iii. the findings of the Children’s Commissioner’s review of Oranga Tamariki’s care and protection practices for pēpē Māori;
  - iv. if applicable, any recommendations of the Royal Commission of Inquiry into Abuse in Care regarding current frameworks to prevent and respond to abuse in care.
- (b) Information regarding the full range of support services funded and made available by Oranga Tamariki for disabled children and disabled parents subject to its jurisdiction.
- (c) Information regarding the levels of carer support and respite care for parents of children with disabilities, including funding measures to ensure ongoing, equitable provision of community-based services.
- (d) An explanation of the government’s position on amending the provisions of the Adoption Act 1955 and Adult Adoption Information Act 1985 declared by the Human Rights Review Tribunal to be discriminatory in *Adoption Action v Attorney-General* [2016] NZHRRT 9.

## G. Disability, health and welfare

### Disability policy and children

67. The New Zealand Disability Strategy 2016-2026 constitutes the government’s central policy platform for the disability sector. The Convention on the Rights of Persons with Disabilities (CRPD) provides the foundation for the Strategy. The New Zealand Court of Appeal has reinforced this connection, holding that government agencies must take into account their obligations deriving from the CRPD and reinforced by the Strategy.<sup>81</sup> We note also that in 2017 the New Zealand government ratified the Optional Protocol to the CRPD establishing a communications procedure.
68. The Strategy, its outcomes framework, and the associated Disability Action Plan 2019-2023 do not have a specific focus on children or other population groups. Rather, they cover sector areas, such as education, health and justice; principles, such as accessibility, choice and control; and societal factors, such as leadership and attitudes.<sup>82</sup> Further, as referred to above,<sup>83</sup> the Children’s Act and Oranga Tamariki Act reforms have elevated consideration of disabled children’s rights within the child welfare sector and are intended to address the current levels of disparity that are evident across a range of sectors.
69. The government recently announced legislative amendments to the Ministry of Health’s funded family care policy that funds home-based care by disabled people’s family members. The amendments extend funding coverage to include funding for care of children under the age of 18 and lower the minimum age of a family carer eligible to receive funding to 16.<sup>84</sup> The amendments

<sup>81</sup> *Chamberlain v Minister of Health* [2017] NZCA 619 at [76]

<sup>82</sup> <https://www.odi.govt.nz/nz-disability-strategy/>

<sup>83</sup> In paragraphs 33 and 62

<sup>84</sup> <https://www.health.govt.nz/funded-family-care-2020>

also repeal legislative provisions that prevent family carers from lodging Human Rights Act discrimination complaints about policy decisions that affect them. This aspect implements a 2014 recommendation of the Committee on the Rights of Persons with Disabilities.<sup>85</sup>

70. However, the Commission notes that there remain a number of systemic gaps, particularly regarding children with neuro-disabilities.<sup>86</sup> Prevalence is high, with approximately 10% of the school population estimated to have dyslexia, for example.<sup>87</sup> The proportion of young people with neuro-disabilities in the youth justice system is estimated to be much higher based on prevalence in comparable countries.<sup>88</sup> These issues will be addressed in more detail below.<sup>89</sup>
71. Foetal Alcohol Spectrum Disorder (FASD) is estimated among 3% of births or around 30,000 New Zealand children.<sup>90</sup> However, FASD is yet to be recognised by the Ministry of Health as meeting its criteria for disability support and assessment services. Delegates to a recent conference to inform the development of a future Ministry of Health FASD Action Plan recommended, among other things, that FASD be granted this recognition to ensure that “children and young people who receive a diagnosis have a clear pathway for support under the umbrella of disability services.”<sup>91</sup>

#### Health outcomes with a socio-economic gradient

72. The Child Poverty Monitor Technical Report 2019 reports that Pacific children experienced consistently higher hospitalisation rates for medical conditions when compared to their peers of other ethnic groups.<sup>92</sup>
73. The report also recorded that respiratory system diseases had the steepest socio-economic gradient of all medical conditions and injuries experienced by children, noting that the hospitalisation rate for respiratory conditions was three times as high for children in areas with the highest deprivation compared with those living in areas with the lowest deprivation.<sup>93</sup>

#### Mental health

74. *He Ara Oranga, Report of the Government Inquiry into Mental Health and Addiction* was released in December 2019. Among its recommendations was to repeal and replace current compulsory assessment and treatment legislation with new legislation that takes a human rights-based approach, promotes supported decision-making, aligns with the recovery and wellbeing model of

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<sup>85</sup> CRPD/C/NZL/CO/1, 31 October 2014, para 10

<sup>86</sup> Defined by the British Psychological Society to include “a wide range of specific neurodevelopmental disorders or conditions, with common symptoms including: muscle weakness, communication difficulties, cognitive delays, specific learning difficulties, emotional and behavioural problems and a lack of inhibition regarding inappropriate behaviour”. Neuro-disabilities includes intellectual disabilities; specific learning difficulties; communication disorder; Attention deficit hyperactivity disorder (ADHD); Autism spectrum disorders (ASD); Traumatic brain injury (TBI); Epilepsy; Foetal alcohol syndrome disorder (FASD).” See Lynch N, *Neurodisability in the Youth Justice System in New Zealand: How Vulnerability Intersects with Justice*, 2016, p 5 n 7, <http://neurodisabilitiesforum.org.nz/wp-content/uploads/2016/05/Neurodisabilities-Forum-2016-Report-1.pdf>

<sup>87</sup> Dyslexia Foundation of New Zealand, <http://www.dyslexiafoundation.org.nz/info.html> accessed September 2015

<sup>88</sup> Lynch N, *Neurodisability in the Youth Justice System in New Zealand: How Vulnerability Intersects with Justice*, 2016, p 7

<sup>89</sup> Paragraphs 91-94 and 112

<sup>90</sup> <https://www.health.govt.nz/our-work/diseases-and-conditions/fetal-alcohol-spectrum-disorder>

<sup>91</sup> *FASD Action Plan Hui: “What’s in the forecast?”* Jet Park Conference Centre, Mangere, 18th April 2019, p 6, [http://www.ahw.org.nz/Portals/5/Resources/Fannz%20documents/2019/FASD%20Action%20Plan%20Hui%2018\\_04%20Feedback%20Summary.pdf](http://www.ahw.org.nz/Portals/5/Resources/Fannz%20documents/2019/FASD%20Action%20Plan%20Hui%2018_04%20Feedback%20Summary.pdf)

<sup>92</sup> <http://nzchildren.co.nz/>

<sup>93</sup> <http://nzchildren.co.nz/>

mental health, and provides measures to minimise compulsory or coercive treatment.<sup>94</sup> New legislation is yet to be introduced.

75. The Inquiry also recommended establishment of a Mental Health and Wellbeing Commission to provide independent oversight of the sector.<sup>95</sup> The Mental Health and Commission Wellbeing Bill has subsequently been introduced to Parliament and an interim Commission has been established. The new Commission will have wide-ranging powers to review and report on practices, policies and outcomes. It will be required to consult with community stakeholders, including children and young people.<sup>96</sup>

### Intersex children

76. An Intersex Clinical Reference Group was formed to address the Committee's 2016 recommendations regarding intersex children.<sup>97</sup> The Group is funded by the Ministry of Health, through the Paediatric Society, and has 12 members, two of whom are intersex. The Group's tenure was set for two years, and its final meeting is scheduled to take place on 24 February 2020.
77. The Group has achieved a number of new initiatives. These include updating the Starship Hospital neonatal guideline about babies born with variations of sex characteristics; undertaking a stocktake of educational resources for the health workforce, intersex children and young people, and their whānau; recommending tools to establish a national data set of clinical outcomes for intersex children and youth; and developing a referral pathway.
78. However, the issue of children's consent for surgery remains an unaddressed matter of ongoing human rights concern.

### Climate change

79. In 2019 the Carbon Change (Zero Carbon) Amendment Act was passed into law. The Act is designed to enable New Zealand to develop climate change policies and targets in support of the Paris Agreement, and to meet Kyoto Protocol commitments. The Act establishes an independent Climate Change Commission to oversee progress and requires the setting of an emissions budget and national adaptation plans by the Minister for Climate Change.
80. The Act does not provide for any specific responsibilities in respect of outcomes for children. However, it requires the Minister to take into account the distribution of the effects of climate change across society, particularly the effect on vulnerable groups; the economic, social, health, environmental, ecological, and cultural effects of climate change, including effects on iwi and Māori; and New Zealand's relevant obligations under international agreements.<sup>98</sup>

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<sup>94</sup> *He Ara Oranga, Report of the Government Inquiry into Mental Health and Addiction*, Recommendation 35, <https://mentalhealth.inquiry.govt.nz/inquiry-report/he-ara-oranga/>

<sup>95</sup> *He Ara Oranga*, Recommendation 36

<sup>96</sup> Mental Health and Wellbeing Commission Bill, clause 13(1)(g)

<sup>97</sup> We note that the Group's terms of reference were limited to intersex children and young people aged 0-18 and did not enable consideration of issues for older intersex people, including medical procedures they were subject to as a child.

<sup>98</sup> Climate Change Response Act 2002, Section 5ZS(4)(a)-(c)

## Standard of living – housing

81. The number of applicants on the government’s Housing Register (the social housing waiting list) has more than doubled since 2017, from 5,844 in September 2017 to 13,996 in September 2019.<sup>99</sup> There has been modest growth of 5% between 2017 and 2019 in the number of social housing units available (up 3,400 units to a total of 69,600 units by September 2019).<sup>100</sup>
82. Against this context, the prevalence of insecure housing and residential mobility among children is very high. A 2019 research report found that more than two-thirds of New Zealand children have moved home at least once by age 4.<sup>101</sup> The report also found a linear association between residential mobility and the existence of socio-emotional and behavioural difficulties in young children, which were in turn exacerbated by both the frequency of moves and moves into areas of higher deprivation.<sup>102</sup>
83. Furthermore, in addition to the socio-economic gradient associated with respiratory illness among children (which has been found to be associated with poor housing conditions) the Child Poverty Technical Report 2019 also noted a possible association between injury rates for children living in areas of high deprivation and unsafe housing and “poorly enforced” tenant protection laws.<sup>103</sup> We note that the government has introduced amendments to the Residential Tenancies Act aimed at increasing security of tenure for tenants.<sup>104</sup>
84. In February 2020, the UN Special Rapporteur on the Right to Housing visited New Zealand at the the government’s invitation. In her end of mission statement she described New Zealand’s housing crisis as a human rights crisis.<sup>105</sup> She referred to the staggering level of homelessness and severe housing deprivation among young people and among Māori and Pacific people. She noted 2013 census data showing that 50% of those experiencing homelessness or severe housing deprivation are aged under 25. Of these people, 32% were Māori, 29% were Pacific, and 43% were single parents.<sup>106</sup>
85. She also referred to data from the 2018 homelessness count in Auckland which indicated 45% of the homeless population was under 18 years old. Further, 43% of those surveyed were Māori though Māori represent only 11% of the city’s total population. Similarly, single parents, particularly single mothers, Pacific peoples, SOGIESC, sex workers, and disabled people were all disproportionately represented.<sup>107</sup>

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<sup>99</sup> <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/housing/index.html>

<sup>100</sup> Salvation Army Social Policy and Parliamentary Unit, *Tangata Whenua, Tangata Tiriti, Huia Tangata Kotahi – State of the Nation Report 2020*, p 65

[https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile\\_field%3Atype%5D/tsa\\_sotn\\_2020\\_0.pdf](https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/tsa_sotn_2020_0.pdf)

<sup>101</sup>, Nathan K, et al. *Residential mobility and socioemotional and behavioural difficulties in a preschool population cohort of New Zealand children*; J Epidemiol Community Health 2019; 0:1–7. doi:10.1136/jech-2019-212436, <http://www.healthyhousing.org.nz/wp-content/uploads/2019/08/Moving-house-related-to-behavioural-difficulties-in-four-year-olds.pdf>

<sup>102</sup> *ibid*

<sup>103</sup> <http://nzchildren.co.nz/>

<sup>104</sup> Residential Tenancies Amendment Bill 2020, Explanatory Note

<sup>105</sup> [https://www.hrc.co.nz/files/6015/8207/2654/End\\_of\\_Mission\\_Statement\\_Visit\\_of\\_the\\_Special\\_Rapporteur\\_on\\_the\\_right\\_to\\_adequate\\_housing\\_to\\_New\\_Zealand\\_Leilani\\_Farha\\_Wellington\\_19\\_February\\_2020\\_.pdf](https://www.hrc.co.nz/files/6015/8207/2654/End_of_Mission_Statement_Visit_of_the_Special_Rapporteur_on_the_right_to_adequate_housing_to_New_Zealand_Leilani_Farha_Wellington_19_February_2020_.pdf), released 19 February 2020.

<sup>106</sup> *ibid*, para 37, p 8

<sup>107</sup> *ibid* para 38, p 8

86. The Special Rapporteur has accordingly recommended, as her primary preliminary recommendation, that New Zealand develop a comprehensive, human rights based national housing strategy.<sup>108</sup>

#### Standard of living – child poverty legislation and welfare reform

87. In December 2018, the Child Poverty Reduction Act passed into law. The Act is the first of its kind in New Zealand. It establishes a framework which requires the government to set both income and non-income related child poverty reduction targets over both short-term (three year) and long-term (ten year) periods. The long-term target set under the legislation seeks to reduce income poverty rates by over 50% by 2028, in line with the 2030 SDG target requirement.<sup>109</sup> As noted in paragraph 20, the Act also implements a budgetary mechanism which enables prospective and retrospective evaluations of the impact of appropriations targeted at child poverty reduction.
88. It is too early to evaluate the impact of the legislation in reducing child poverty rates, which have remained static in recent years. The 2019 Child Poverty Monitor reported that around 23% of New Zealand children (approximately 250,000) lived in households with less than 50% of the median disposable equivalised income after housing costs for the 2018 financial year. It also reported that in 2018 around 13% of children lived in households that were unable to afford six or more essentials for a decent standard of living, while 6% lived in households experiencing severe material hardship, defined as a lack of nine or more essentials for a decent standard of living.
89. In 2018 the government established a Welfare Expert Advisory Group (WEAG) to comprehensively review New Zealand's social security system. In its concluding report, *Whakamana Tāngata - Restoring dignity to social security in New Zealand*, the WEAG recommended extensive, fundamental amendments to the current system. This included a comprehensive set of measures to improve levels of income support to meet an adequate standard of living and to maintain this support over time in line with wages. The WEAG considered that implementing their recommendations would likely reduce child poverty rates by 50%, in line with the Child Poverty Reduction Act's 2028 targets.<sup>110</sup> The WEAG also included among its key recommendations that the interests of children be paramount in the design and operation of a new social security system.<sup>111</sup>
90. In May 2019 the government announced some measures that respond to the WEAGs findings, including removing the current sanction that cuts income to women and their children if the name of the child's father is not declared.<sup>112</sup> However, to date, the fundamental legislative changes recommended by the WEAG are yet to be introduced.

#### **Disability, health and welfare: Recommendations**

**The Commission recommends that the Committee seek the following information from the New Zealand government:**

- (a) Any additional measures intended to support young people aged 16 and 17 years old who are eligible to receive care or provide care as a caregiver under the new Funded Family Care policy.**
- (b) Information regarding the Ministry of Health's position on inclusion of FASD within its disability support services funding framework.**

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<sup>108</sup> At para 63, p 13

<sup>109</sup> <https://www.childpoverty.org.nz/measures/income>

<sup>110</sup> <http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>, p 9

<sup>111</sup> <http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>, p 18

<sup>112</sup> <https://www.beehive.govt.nz/release/supporting-people-work-and-income-security-%E2%80%93-priorities-welfare-reforms>

- (c) Specific measures taken to address the disproportionate numbers of Pacific children hospitalised for medical conditions and, more generally, to address health inequities among children along socio-economic and ethnic lines.
- (d) Information regarding policy and legislative measures initiated in response to the recommendations of the *He Ara Oranga* report that regard children, young people and their parents/caregivers, including the development of legislation that provides for a human rights approach to mental health services.
- (e) In light of the work of the Intersex Clinical Reference Group, any measures to amend current practices regarding consent for surgery on intersex infants and children.
- (f) Any information regarding climate change planning that specifically regards or takes into account the rights, views, welfare and interests of children and young people.
- (g) Measures taken to address and implement recommendations of the UN Special Rapporteur on the Right to Housing arising from her mission to New Zealand in February 2020, including the development of a human rights-based housing strategy.
- (h) Measures taken to specifically address the impact of severe housing deprivation, homelessness, insecure housing and high levels of residential mobility on the health and wellbeing of children and young people.
- (i) Details of specific budgetary and policy measures taken towards meeting the Child Poverty Reduction Act targets.
- (j) Measures taken to implement the recommendations of the Welfare Expert Advisory Group, including recommendations of legislative change.

## H. Education, leisure and culture

### Education reform and inclusive education

91. The Education and Training Bill, which introduces a range of fundamental reforms to New Zealand's education legislation, is presently before Parliament. The reforms include a number of progressive measures, such as a new independent appeal process for reviewing decisions that impact on the rights of school students to education generally, including disciplinary decisions such as suspensions and exclusions, enrolment decisions, and learning support decisions.<sup>113</sup>
92. Further, as noted in paragraph 45, the Bill also substantially elevates the duties of schools and the Crown to give effect to the Treaty of Waitangi through the education system, including by instilling in each child and young person an appreciation of the importance of the Treaty, taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and achieving equitable outcomes for Māori students.<sup>114</sup>
93. In addition, the Bill's Ministerial statement of National Education and Learning Priorities provides for the instilment of "diversity, cultural knowledge, identity, and the different official languages."<sup>115</sup>

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<sup>113</sup> Education and Learning Bill, sections 202-211

<sup>114</sup> Education and Learning Bill, section 9

<sup>115</sup> Education and Learning Bill, section 5(4)(c)(ii)

The implementation of related policy measures will be particularly important for Pacific youth who, alongside Māori, are over-represented in current NEET statistics.<sup>116 117</sup>

94. There is, however, concern that the Bill constitutes a missed opportunity to embed the right to inclusive education into legislation, as recommended by the Committee on the Rights of Persons with Disabilities. The provisions concerning the right of students with “special educational needs” are carried over from the incumbent Act. It is notable that a 2017 Parliamentary Inquiry into support for students with dyslexia, dyspraxia and autism spectrum disorder recommended legislative amendments to introduce a statement “in line with international law” on the purpose of support in education for disabled students and to clarify the definition of “inclusive education.”<sup>118</sup> These recommended amendments are absent from the present Bill.
95. Bullying in schools remains a serious problem, despite initiatives such as the establishment of the Bullying Prevention Advisory Group (BPAG). Disabled students and SOGIESC students are more likely to experience bullying.<sup>119</sup>
96. The government’s Education Review Office (ERO) reported in 2019 that levels of bullying are “intolerably high” and have a significant impact on student wellbeing and achievement.<sup>120</sup> In preparing the report ERO surveyed over 11,000 school students. Overall, 39% of students reported having been bullied, 41% of male students, 33% of female students and 58% of gender-diverse students. ERO found that while most schools had implemented or responded to the BPAG guidelines for schools, they generally did not adequately monitor and evaluate their policies, practices and outcomes.<sup>121</sup> It is notable that, against this context, the Education and Training Bill does not address bullying explicitly.

#### Indigenous rights and culture – the UNDRIP action plan

97. In March 2019, the Ministry for Māori Development, Te Puni Kōkiri, gained cabinet approval to develop an action plan on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>122</sup> The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has also provided advice on the development of the plan, arising from the EMRIP’s visit to New Zealand in April 2019.<sup>123</sup>
98. The Ministry has identified that the plan will include actions that focus on the intersection between government priorities, Māori aspirations and international indigenous rights discourse; contribute

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<sup>116</sup> MBIE, *The drivers behind the higher NEET rate for Māori and Pacific youth - insights from administrative data*. This reports that in 2018 the NEET rates for Māori and Pacific youth were nearly twice the rate recorded for European and Asian youth, and significantly greater than the national rate. Higher NEET rates for Māori and Pacific youth are a persistent feature of New Zealand’s labour market. <https://www.mbie.govt.nz/dmsdocument/10355-the-drivers-behind-the-higher-neet-rate-for-maori-and-pacific-youth-main-report>

<sup>117</sup> The Ministry of Education implemented the Pacific Education Plan 2013-17, which was extended to 2019. A refreshed plan is yet to be developed. [https://www.educationcounts.govt.nz/topics/pasifika\\_education](https://www.educationcounts.govt.nz/topics/pasifika_education)

<sup>118</sup> Education and Science Committee, *Inquiry into the identification and support for students with the significant challenges of dyslexia, dyspraxia, and autism spectrum disorders in primary and secondary schools*, Recommendation 12, p 59 (note, these were among the minority recommendations of the Labour Party, NZ First and Green Party MPs, the political parties that constitute the current New Zealand government).

<sup>119</sup> <https://www.bullyingfree.nz/about-bullying/>

<sup>120</sup> <https://www.ero.govt.nz/assets/Uploads/Bullying-Prevention-and-Response-in-New-Zealand-Schools-May-2019.pdf>, p 23

<sup>121</sup> <https://www.ero.govt.nz/assets/Uploads/Bullying-Prevention-and-Response-in-New-Zealand-Schools-May-2019.pdf>, p 22

<sup>122</sup> <https://www.tpk.govt.nz/en/whakamahia/un-declaration-on-the-rights-of-indigenous-peoples#head0>

<sup>123</sup> *End of mission statement by the United Nations Expert Mechanism of the Rights of Indigenous Peoples to its visit in New Zealand*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24523&LangID=E>

to enhancing the self-determination of Māori; contribute to improving intergenerational Māori wellbeing; and “demonstrate ambitious actions as opposed to business as usual.”<sup>124</sup> New Zealand’s Independent Monitoring Mechanism on the Rights of Indigenous People considers that constitutional reform that provides recognition of the Treaty of Waitangi and human rights is critical to implementing the UNDRIP in New Zealand.<sup>125</sup>

99. A Declaration Working Group (DWG) has been established to advise the Ministry on the plan and an engagement and consultation process. The Commission understands that the DWG’s November 2019 report to the Ministry is under consideration.

### ***Education, leisure and culture: Recommendations***

**The Commission recommends that the Committee seek the following information from the New Zealand government:**

- (a) In light of the Education and Training Bill, details of any further measures to explicitly incorporate the right to inclusive education into education legislation and policy.**
- (b) Measures taken to implement clause 9 of the Education and Training Bill as regards the duties of schools and the Crown to implement the Treaty of Waitangi in the school system, including data regarding the delivery and frequency of te reo Māori and tikangi Māori education in New Zealand schools.**
- (c) Measures to develop a new or refreshed Pacific Education Plan to follow the Pacific Education Plan 2013-17.**
- (d) Information regarding the implementation of the independent school appeal process, including any measures taken to ensure that the process conforms with the requirements of the Convention and other domestic and international human rights instruments.**
- (e) Information regarding the development of the Declaration of the Rights of Indigenous Peoples action plan, including specific information regarding the involvement of tamariki and rangatahi Māori (children and young people) in the development of the plan.**
- (f) Any new measures taken to reduce bullying in schools since ERO’s 2019 report *Bullying Prevention and Response in New Zealand Schools*, including specific measures to reduce bullying of disabled students and of SOGIESC students.**

## **I. Special protection measures**

### **Children with parents in prison**

100. The 23,000 New Zealand children with a parent in prison are among New Zealand’s most disadvantaged.<sup>126</sup> A recent independent review of the criminal justice system found that, “The

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<sup>124</sup> <https://www.tpk.govt.nz/en/whakamahia/un-declaration-on-the-rights-of-indigenous-peoples>

<sup>125</sup> Report of the Independent Monitoring Mechanism on implementation of the UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand: 2019, paragraph 12. The IMM has called on the government to start a constitutional conversation through the implementation of the recommendations of the 2016 report of *Matike Mai*: the independent working group on constitutional transformation.

<http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf>

<sup>126</sup> <https://www.pillars.org.nz/>



needs of tamariki [children] and mokopuna [grandchildren] are neglected and they have no voice.”<sup>127</sup>

101. Corrections Act provisions consider the best interests of the child in decisions to approve placement of a baby up to 24 months old with a mother in prison.<sup>128</sup> There is otherwise limited consideration of a child’s views and interests and their ongoing relationship with a parent who is subject to the criminal justice system.

### Refugee and migrant children

102. The government has increased its refugee quota commitments and funding of refugee services since 2016.<sup>129</sup> However, there has been no substantive reform to the Immigration Act 2009 to expressly require consideration of children’s views and best interests in refugee status determination processes, as recommended by the Committee in 2016.<sup>130</sup>
103. Recent migrants and people from refugee backgrounds, including children, were heavily represented among those killed, injured and bereaved in the Christchurch mosque attacks. Following the attacks, a number of protective measures were introduced. These included a special visa category enabling persons present during the attacks (including children), or their immediate family members, to apply for permanent residency.<sup>131</sup>
104. The Commission understands that those affected by the attacks face ongoing difficulties accessing coordinated support services. While funded support was available to victims via New Zealand’s ACC scheme, in July 2019, on the advice of the Treasury, the government declined to extend funded support under the scheme to cover trauma associated with mental injuries suffered by family members of those who were killed.<sup>132</sup>
105. A Royal Commission of Inquiry is due to report later in 2020 with recommendations to prevent future attacks.<sup>133</sup>

### Employment

106. New Zealand employment law remains out of step with international standards regarding children. There has been no move to consider a minimum age of entry into employment. Further, health and safety at work regulations do not conform with the Convention standards, offering no special protections to workers aged 16 and 17 in respect of hazardous work.<sup>134</sup>

### Youth justice

107. Reforms to youth justice legislation introduced by the Oranga Tamariki Act 1989 have brought the upper age of the youth justice system into general conformity with the Convention. The Commission

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<sup>127</sup> “Turuki! Turuki! Moving Together”, report of Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group, published in December 2019 <https://www.safeandeffectivejustice.govt.nz/about-this-work/te-uepu-report/>, page 12.

<sup>128</sup> Corrections Act 2004, sections 81A – 81C.

<sup>129</sup> From July 2018 New Zealand’s refugee quota increased from 750 to 1,000 people per year. The quota will increase to 1500 from July 2020. An additional 500 refugees from Syria were resettled in each of the 2016/17 and 2017/18 calendar years, above the quota.

<sup>130</sup> CRC/C/NZL/CO/5, paragraph 40

<sup>131</sup> *New Zealand Immigration, Operational Manual: Residence, S4.30*

<sup>132</sup> [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12249392](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12249392)

<sup>133</sup> <https://christchurchattack.royalcommission.nz/>

<sup>134</sup> Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, Part 4, section 43-48

commends the government for addressing the long-standing inconsistency. However, the minimum age of criminal responsibility (as regards culpability for a criminal offence) under the Crimes Act 1961 remains well below the minimum age of 14 set by the Committee's General Comment No 24.<sup>135</sup>

108. The Crimes Act sets the age of criminal responsibility at 10 years, although there is an additional onus on the prosecution to prove the capacity of any child aged between 10-13 and accused of a criminal offence.<sup>136</sup>
109. Criminal proceedings generally cannot be commenced against a child under 14.<sup>137</sup> However, children aged 10-13 can face murder or manslaughter charges (which are dealt with in the High Court). And criminal proceedings can be initiated in the Youth Court regarding other very serious offending by a child aged 12 or 13.<sup>138</sup> Additionally, the Youth Court has authority to transfer a child who is found guilty of committing a serious offence to the District Court for sentencing, although instances of this occurring are relatively rare.<sup>139</sup>
110. In the Commission's view, New Zealand's low age of criminal responsibility under the Crimes Act sits uneasily against the principles of the youth justice system, which under the Oranga Tamariki Act is required to be administered in a manner that upholds the Convention. The Commission understands that the government is considering the issue. However, we are unaware of any proposed measures to address it.
111. While youth offending rates have declined significantly since 2010, and continue to decline, structural discrimination remains evident. Māori constitute nearly two-thirds of all children under the age of 16 who are charged with an offence. The Youth Court appearance rate for Māori is over nine times that for non-Māori.<sup>140</sup> In response, the marae-based Rangatahi Court, which constitutes part of the Youth Court system, provides an alternative pathway for Māori and has had some success in reducing reoffending rates. However, there is an urgent need for other diversionary responses that recognise and address the current inequalities experienced by Māori children.
112. Young people with neuro-disabilities are also over-represented in the youth justice system. While specific prevalence data is not collected in New Zealand, it is estimated that, based on overseas data, over 60% of young people in the justice system likely have a neuro-disability. However, judiciary and academics have observed that the implications for the youth justice system are only recently beginning to be understood. FASD has been a factor in high-profile youth offending cases, but it has been noted that only about one in 300 youth offenders each year that were likely to have FASD would have been diagnosed with it.<sup>141</sup>

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<sup>135</sup> CRC/C/GC/24, para 33. We note the Committee has also commended States parties with minimum ages of 15 or 16.

<sup>136</sup> Crimes Act 1961, section 22(1)

<sup>137</sup> In youth justice and child protection proceedings, a person aged under 14 is defined as a "child" and a person aged 14-17 is defined as a "young person", section 2, Oranga Tamariki Act 1989

<sup>138</sup> Oranga Tamariki Act 1989, section 272(1)

<sup>139</sup> Oranga Tamariki Act 1989, section 283(o)

<sup>140</sup> Salvation Army Social Policy and Parliamentary Unit, *Tangata Whenua, Tangata Tiriti, Huia Tangata Kotahi – State of the Nation Report 2020*, p 11

[https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile\\_field%3Atype%5D/tsa\\_sotn\\_2020\\_0.pdf](https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/tsa_sotn_2020_0.pdf)

<sup>141</sup> *Neurodisability in the Youth Justice System in New Zealand: How Vulnerability Intersects with Justice*, Report prepared by Dr Nessa Lynch, Faculty of Law, Victoria University of Wellington, in conjunction with Dyslexia Foundation of New Zealand (DFNZ), summarising the contributions of participants at the 2016 Neurodisabilities Forum, hosted by DFNZ in Wellington, 12 May 2016.30 May 2016, p 7-8, <http://neurodisabilitiesforum.org.nz/wp-content/uploads/2016/05/Neurodisabilities-Forum-2016-Report-1.pdf>

## Custody

113. Courts retain the power to remand a child into police custody,<sup>142</sup> an order that practically results in children and young people being held in police cells until alternative arrangements can be found. These orders are used as a last resort measure in cases where Oranga Tamariki does not have appropriate residential accommodation available for a child or young person subject to a custody order. The Youth Court has criticised the practice as in breach of the Convention.<sup>143</sup>
114. The Children's Commissioner has called for removal of the power, noting that this would incentivise development of community-based custodial alternatives.<sup>144</sup> The Children's Commissioner noted that the number of children remanded into police custody increased considerably between 2015/16 and 2016/17.<sup>145</sup>

### *Special protection measures: Recommendations*

The Commission recommends that the Committee seek the following information from the New Zealand government:

- (a) Details of all measures to uphold the rights of children whose parents are in prison, including babies who reside with their mother in prison under the Corrections Act.
- (b) Details regarding all protective measures to support the health and wellbeing of children and young people directly affected by the Christchurch mosque attacks, including any further consideration given to expanding ACC coverage for those who have suffered a mental injury, and all measures taken in response to the report of the Royal Commission of Inquiry into the attacks.
- (c) Details of any updates to immigration and refugee policy and practice guidelines regarding migrant, asylum-seeking and refugee children, including any express provision for their views and best interests to be taken into account in processes and decision-making.
- (d) Details of any measures to provide special health and safety protections to all workers aged under 18.
- (e) Any measures to bring the minimum age of criminal responsibility into conformity with the Convention and General Comment No 24.
- (f) Details of any specific measures to respond to the prevalence of neuro-disability in the youth justice system, including data gathering, specialist support services (including in residential care), primary prevention strategies and legislative and policy changes.
- (g) Details of all specific measures, including additional funding, support services and primary prevention strategies, designed to address the inequality experienced by tamariki and rangatahi Māori in the criminal justice system.

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<sup>142</sup> Under section 238(1)(e) of the Oranga Tamariki Act. This power was not removed in the review of the Act.

<sup>143</sup> *Police v BM*, Youth Court, Christchurch, 28 November 2016, Minute of Judge Murfitt at [6]

<sup>144</sup> <https://www.occ.org.nz/assets/Uploads/Youth-Justice-Police-cells-June-2018.pdf>

<sup>145</sup> We also note that the numbers of children and young people remanded in youth justice residences under Youth Court custody orders has also increased markedly from 2014-16 and have remained at similar levels since. See <https://www.orangatamariki.govt.nz/assets/Uploads/20181018-Youths-remanded-in-youth-justice-facilities-and-remand-homes.pdf>

- (h) Any steps towards the repeal of remands into police custody under s238(1)(e) of the Oranga Tamariki Act, including the development of new community-based residences under s364 of the Act and measures to reduce the proportion of young people in secure youth justice residences who are on remand.**