20 September 2016

New Zealand Government response to questions from the United Nations Committee on the Rights of the Child

1. **Has the High Cost Treatment Pool in the Ministry of Health previously funded genital surgery for intersex infants, provided at the Royal Children's Hospital in Melbourne?**

We have previously stated that there has been no surgery related to gender assignment in New Zealand since 2006. This statement was based on what now appears to be an incomplete review of hospital coding records. The Ministry of Health has undertaken a more detailed search and we would like to draw the committee's attention to the following updated information on this issue.

Until 2007, the High Cost Treatment Pool in the Ministry of Health funded genital surgery for intersex infants, provided at the Royal Children's Hospital in Melbourne.. Between 1999 and 2007, the High Cost Treatment Pool funded treatment for 15 girls with congenital adrenal hyperplasia, for genital feminisation. The Royal Children's Hospital then stopped providing this treatment.

More recently, two paediatric surgeons have begun to undertake these operations in New Zealand. These operations continue at about the same rate as before. The incidence of these cases in New Zealand is estimated to be around one or two a year.

2. **Disaggregated data on child exploitation**

The New Zealand Police is unable to provide data for child victims of trafficking and abduction because the numbers are low, and therefore the data reported is biased by data reporting methods that include historic offences.

Reports of self-generated child exploitation material (i.e. images posted by subjects themselves) continues to be high with Police's specialist team, Online Child Exploitation Across New Zealand (OCEANZ), receiving 2 – 3 reports a week involving New Zealand children. The live streaming of the sexual abuse of children online is now an established form of offending. While the victims of this type of offending are still largely in the Philippines, New Zealand nationals have been identified as possibly being involved in purchasing this type of online material. Due to the anonymity that surrounds this type of offending it is difficult to quantify the number of New Zealand offenders who may be involved.

New Zealand Police has changed recording practices in recent years to provide greater information about child exploitation offending and allow this to be distinguished from similar offending involving adults (for example, the supply of objectionable publications). As such, data is only available for a limited time period, with 2015 being the only full year of data.

In 2015, Police recorded 58 proceedings against identified offenders for offences involving child exploitation material, 50 of which involved New Zealand Police taking court action. All except one offender was male, and offenders ranged in age between 8 and 67, with 17 offenders aged between 20 and 29..

The numbers of recorded proceedings for the other types of offending mentioned are too small to be able to be counted or analysed.

New Zealand Police, as part of the Virtual Global Taskforce, is working on a South East Asian law enforcement capability building project focused on child exploitation. It is anticipated that in the

long term this will have a positive impact on reducing the incidence and impact of transnational sex offenders offending in Asia.

There has been one case of child sex tourism prosecuted, that being a prosecution for organising a sex tour to Thailand in 2010.

Offenders of child abuse for parent and step-parent relationships

The information below reflects the number of instances in which New Zealand Police have proceeded against an offender for child abuse offending for parent and step-parent relationships. This data only includes offences for which a child-specific offence code exists, which encompasses most physical and sexual child abuse. However, a small number of proceedings for other non child-specific offences (such as murder) will be excluded. Police data does not identify guardians or staff of care institutions specifically, so data is provided for parent and step-parent relationships only. This is a new data set, and as such is only provided for the 2015 calendar year.

Total number of proceedings: **1, 302**

Method of Proceeding Division	**Proceedings**	**%**
Court Action	659	50.6
Non Court Action	639	49.1
Not Proceeded With	4	0.3

Ethnicity of offender	**Proceedings**	**%**
Maori	472	36.3%
European	436	33.5%
Pacific Island	219	16.8%
Unknown	63	4.8%
Asian	54	4.1%
Indian	36	2.8%
African	7	0.5%
Latin/Hispanic	6	0.5%
Middle Eastern	5	0.4%
N.E.C.	4	0.3%

Sex of offender	**Proceedings**	**%**
Male	755	58%
Female	547	42%

Victims of sexual assault

The information below reflects the number of victims for sexual assault broken down by ethnicity and sex. This data only includes offences for which a child-specific offence code exists, which encompasses most physical and sexual child abuse. This is a new data set, and as such is only provided for the 2015 calendar year.

Victimisations by Ethnicity*

	Age Group	
	Under 12	**12 to 16**
African	2	3
Asian	6	15
European	196	447
Indian	4	14
Latin/Hispanic	2	5
Maori	147	426
Middle Eastern	5	3
Pacific Island	28	103
N.E.C.	10	13
Unknown	247	311
Total	647	1340

Victimisations by Sex*

	Age Group	
	Under 12	**12 to 16**
Male	173	143
Female	472	1196
Unknown	2	1
Total	647	1340

** Based on Outcome of Investigation as at 30 days after reporting to Police*

These data sets are provisional and drawn from a dynamic operational database. They are subject to change as new information is continually recorded.

Child sex abuse images

Most of the data collected in relation to online child exploitation relates to offenders. The only observation we can make about victims is that images seized in New Zealand conform to the disturbing international trend identified by Interpol for younger victims (under 5 years of age) and more violent physical abuse.

In New Zealand, a successful prosecution for offences related to child sexual abuse images does not require that agencies identify the ages of the children depicted. A publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both for sexual purposes.

The following table shows New Zealand's (all agencies) contributions to the Interpol Child Sexual Exploitation database.

Category	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**Total**

Number of Identified Offenders	4	0	5	5	10	6	1	4	35
Number of Identified Victims	4	0	9	15	12	18	1	10	69
Number of Loaded Images	259	32	2973	1286	5289	5253	8029	5863	28984

From the analysis we have done on the profiling of our offenders, the typical offender is single, aged between 36-42, European, socially isolated, and employed in the IT or education sectors.

3. **Have there been any cases of unaccompanied minors and refugees?**

Records show that five unaccompanied minors have claimed asylum in New Zealand in the last ten years.

4. **What work is being done to progress the Hague convention on cross border parental disputes?**

Work towards New Zealand's accession to the Child Protection Convention is underway. The Foreign Affairs, Defence and Trade Committee, a Committee of Parliament, has considered the Convention and a National Interest Analysis prepared by the Ministry of Justice. The Committee reported back to Parliament supporting New Zealand's accession to the Convention. The Government has a significant justice legislative programme, including reviewing family violence legislation and modernising Child, Youth and Family. However, drafting of a Bill that will enable New Zealand to accede to the Convention is underway and progress is being made as other legislative priorities allow.

5. **As a result of recent changes to the Child, Young Persons and Their Families Act 1989[1] did the amendments:**
   - **take away payments to caregivers or make any payments discretionary?**
   - **raise the level at which caregivers are eligible for payments or make any changes that took away money or services?**

The amendments to the Children, Young Persons, and Their Families Act 1989 (CYPF Act) removed the ability for the court to make services orders or support orders for financial and other assistance to permanent caregivers and for children and young persons in the care of permanent caregivers. In addition, the changes expired existing services and support orders for them on the date on which they were next due for review.

To replace the ability to make services and support orders, the amendments inserted a new section 388A, which requires the chief executive to provide financial and other assistance to permanent caregivers. in particular cases where, prior to the changes, the assistance was provided at the Chief

[1] Changes to the CYPF Act and the creation of the Vulnerable Children Act 2014 were a result of the Government agreeing to care and protection legislation as part of the Vulnerable Children's Bill.

Executive's discretion (unless a services order or support order made by the court directed the Chief Executive to provide it).

The amendments did not raise the level at which caregivers are eligible for payments. Section 388A introduced criteria for financial and other assistance for permanent caregivers to give better clarity and consistency.

Changes were made to the CYPF Act because support provided to permanent caregivers was inconsistent and difficult to access.

Prior to changes in July 2016 to the CYPF Act, financial support over and above payments made under the Social Security Act 1964 to permanent caregivers was provided through two different mechanisms:

- discretion vested in the Chief Executive of the Ministry of Social Development (MSD) to make grants and provide financial and other assistance
- part of the Home for Life package, which offers three-year support to permanent caregivers. This package includes contributions to the child's individual needs, such as respite care, counselling, mediation, and ongoing support from Child, Youth and Family (CYF).

However, issues with this approach meant that additional financial support for permanent caregivers was difficult to get. They often had to apply for a services order or a support order under the CYPF Act to receive additional assistance. There was also a lack of consistency in the type of support that service or support orders were used for and in the way the Chief Executive's discretion was exercised.

Amendments to the CYPF Act in July 2016 were made to ensure that our most vulnerable children receive the right support

To improve the issues permanent caregivers were experiencing in accessing support for children in their care, amendments were made to the CYPF Act that set out how support was provided.

New section 388A(2) now requires the Chief Executive of the Ministry of Social Development to provide financial and other assistance to permanent caregivers that:

- arises as a result of the child's care and protection needs or extraordinary health, education, or developmental needs
- is over and above what is reasonable to expect the caregiver to meet
- cannot be met by existing sources of government support and is unlikely to be provided otherwise
- is reasonable in the circumstances for the Chief Executive to provide
- is consistent with any general or special direction given by the Minister for Social Development2.

A new review and appeal process has also been incorporated into the CYPF Act for decisions under section 388A(2). This gives permanent caregivers the ability to review and appeal a decline of support by the Chief Executive.

The amendments came into force in July 2016 to address the issues that permanent caregivers were experiencing. The amendments:

[2] The Minister for Social Development gave a direction for this purpose on 4 July 2016. The direction is published in the New Zealand Gazette of 14 July 2016, notice number 2016-go4090.

- provide a clear process for obtaining support, even after a child has left care , and extending this until they are 17 years old
- clarify what is reasonable to expect the Chief Executive to fund
- are fair and promote transparent and consistent decision-making
- provide review and appeal processes if the new caregivers are dissatisfied with the Chief Executive's decision.

6. What is New Zealand's stance on children involved in active service in armed conflict and the recruitment of children into conflict?

The Defence Act 1990 provides that no person under 17 years may be appointed to, or enlisted, or engaged in the Navy, Army or Air Force. There are also statutory restrictions and protections under the Defence Act 1990 and Armed Forces Discipline Act 1971 for individuals aged between 17 and 18 years. This includes:

- that no person under 18 years is eligible to enlist or be accepted for service where a parent or guardian objects, unless the applicant is or has been married or in a civil union;
- applications by individuals under 18 years, who are not or have not been married or in a civil union, are to be accompanied by parental/guardian consent (or a statement as to why consent has not or cannot be obtained);
- no person serving in the armed forces who is under 18 years is liable for active service; and
- a disciplinary officer must not, except with prior approval of a superior commander, impose a punishment of detention on a member of the armed forces who, at the time the offence was committed, was under 18 years.

These provisions are reflected in and supported by Defence Force Orders.

The decision to maintain the minimum age of 17 years for voluntary recruitment was based on a number of factors including analysis of personnel retention versus age at recruitment, competing employment markets, and the age of high school leavers.

In the 2015/16 reporting year a total of 845 Regular Force personnel were recruited, of which 59 (7.0 %) were under 18 years. In the same reporting year, 356 Reserve Force personnel were recruited, of which 4 (1.1 %) were under 18 years.

7. Considering Children's Views under the Care of Children Act and the Family Dispute Resolution Act 2014

The following is background/additional information for the Committee in relation to children's participation in Family Court proceedings and at Family Dispute Resolution.

<u>Care of Children Act 2004</u>

The Care of Children Act deals mainly with resolving care and contact arrangements for children when parents separate and disputes between a child's guardians about important matters affecting a child.

Under the Care of Children Act children must be given a reasonable opportunity to express their views about matters which affect them and any view must be taken into account.

How are children's views obtained?

Children's views in proceedings are generally obtained by their court appointed lawyer (lawyer for child). A lawyer for child is appointed in the majority of cases. The lawyer for child has obligations to meet with the child (unless a judge considers this inappropriate because of exceptional circumstances) and ensure any views expressed by a child are communicated to the Court (s9B Family Courts Act 1980). Children are not required to express a view if they do not wish to.

Children's views may also be obtained:

- By judicial interview – this may be initiated by the judge or by the child. Sometimes children write directly to the judge, or ask to meet with the judge, hearing their parents' case. A judge does not need to agree to a request if he or she does not consider an interview consistent with the child's welfare and best interests. Lawyer for child is usually present at the interview.
- As part of a psychologist's report – children's views may form part of a report about issues impacting on the welfare and best interests of the child. These reports are obtained to assist a judge in his or her decision-making.
- Through information contained in the affidavits of parents filed during the proceedings.

Family Dispute Resolution Act 2014

The introduction of family dispute resolution (FDR) in 2014 was part of reforms to the family justice system. The reforms changed the way in which the family justice system assists separating couples to reach agreement about care and contact arrangements for their children. The reforms shifted the focus from in court resolution of these disputes to encouraging parents to reach agreement themselves, where this is appropriate.

The FDR mediator's role is to assist parents reach agreement that is in the best interests of children. Ensuring that children are the focus of mediation has been shown to reduce levels of conflict and improve management of disputes. It also focuses parents on the decisions that need to be made for their children.

How are children's views obtained?

Children's views about their care arrangements can be obtained in a number of ways, for example:

- through their parents
- children speaking with the FDR mediator
- children attending part of the FDR session
- child-inclusive FDR models

The current FDR model allows FDR mediators to work with children, where this is appropriate and is agreed to by both parents. It also allows for child-inclusive models of mediation to be used although the numbers of specially trained mediators for this is small.

In a child-inclusive approach, children are actively included in the dispute resolution process. The child is seen privately by a specially trained mediator, who talks to the parents (with the child's agreement) about what is important to the child.

Studies on child-inclusive mediation are limited, but some show it is associated with more enduring and developmentally sensitive agreements and higher levels of parental and child satisfaction with arrangements. However, some people believe that if not handled well, it can expose the child to undue pressure by shifting the burden of decision-making, particularly if the child feels their views will be decisive in the dispute. Some parents would prefer to shield their children from the separation process while others may not think it appropriate to consider their children's views.

FDR mediators are accredited to practice by three professional bodies approved by the Secretary for Justice for this purpose. The Ministry of Justice is working with these bodies to ensure that there is a greater focus on mediators working with children having the appropriate training and skills to do so. The Ministry is also working with two of its major providers of FDR services to improve current child-focussed practice. These providers are leading projects looking at ways in which children's views can be better heard at FDR.