



Human Rights Commission  
Te Kāhui Tika Tangata

# Recommendations of the Human Rights Commission for the UN Committee on the Rights of The Child.

5th Periodic Review of New Zealand – 73rd Session  
of the Committee, 15 and 16 September 2016.

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2016

## **RECOMMENDATIONS OF THE HUMAN RIGHTS COMMISSION**

### **FOR THE UN COMMITTEE ON THE RIGHTS OF THE CHILD**

#### **5<sup>th</sup> PERIODIC REVIEW OF NEW ZEALAND – 73<sup>RD</sup> SESSION OF THE COMMITTEE, 15 AND 16 SEPTEMBER 2016**

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Set out below are the recommendations of the Human Rights Commission contained in its report of 15 August 2016 to the UN Committee on the Rights of the Child, for the purposes of the UN Committee's 5<sup>th</sup> period review of New Zealand under the UN Convention on the Rights of the Child, to take place on 15 and 16 September 2016.

The recommendations are primarily focused at the issues identified by the UN Committee in the List of Issues it provided to the New Zealand Government in March 2016 for the purposes of the review. For ease of reference, they are grouped under the thematic parts of the Convention and identified by issue.

#### **THEME: IMPLEMENTATION MEASURES**

##### **Issue: Removing New Zealand's reservations to the Convention**

The Committee may wish to recommend that the New Zealand Government:

- (a) Implement a specific, definite timeframe to remove its reservations to the CRC prior to its sixth periodic report. This should include milestones for implementation of any policy and legislative changes required to do so.

##### **Issue: Developing a plan to implement the Convention**

The Committee may wish to recommend that the New Zealand Government:

- (a) Develop its current UNCROC Work Programme into a clear children's rights and SDG implementation plan that identifies actions and measures results. This plan should be both a SDG/CRC implementation plan that includes relevant SDG goals, targets and indicators and should be incorporated into New Zealand's National Plan of Action for Human Rights; and
- (b) As part of the development of a comprehensive SDG/CRC implementation plan, further strengthen the monitoring and engagement processes currently undertaken by the UNCROC Monitoring Group and the Social Sector Deputy Chief Executives by establishing a legislative and/or policy basis for SDG/CRC monitoring and planning that includes engagement with Government Ministers.

##### **Issue: Implementing a strategy to reduce child poverty**

The Committee may wish to recommend that the New Zealand Government:

- (a) Take urgent steps to develop a child poverty strategy to meet the SDG target of reducing child poverty by 50% by 2030. The child poverty strategy should be underpinned by statute, as recommended by the Expert Advisory Group on Solutions to Child Poverty.
- (b) Include relevant SDG goals, targets and indicators and related actions to improve the social and economic well-being of children in the Vulnerable Children's Plan.

##### **Issue: Public budgeting for the realisation of children's rights**

The Committee may wish to recommend that the New Zealand Government:

- (a) Develop and implement a Children's Rights Impact Assessment mechanism within the Investment Approach funding framework;
- (b) Develop and implement a high level child budgetary mechanism, within the annual budgetary process.

**Issue: Children's rights and outsourcing of state services**

The Committee may therefore wish to recommend that the New Zealand Government:

- (a) Develop and incorporate children's rights due diligence processes within the delegation and procurement processes to be used for outsourcing state functions under the Children, Young Persons and their Families Act 1989.
- (b) Incorporates the UNGP principles within its procurement, commissioning and delegation policies.

**THEME: GENERAL PRINCIPLES OF THE CONVENTION**

**Issue: The rights of the child to participate in decision-making processes**

The Committee may wish to recommend that the New Zealand Government:

- (a) Amend the Family Dispute Resolution Regulations 2013 in order to establish a duty upon FDR providers to consult with and incorporate the views of children subject to FDR processes.
- (b) Introduce practice guidelines and training programmes for professionals concerning the participation of children and young people in the child protection, youth justice and other judicial and administrative decision-making systems.

**Issue: Protecting the rights of refugee children**

The Committee may wish to recommend that the New Zealand Government:

- (a) Ensure that children will only participate in the refugee determination process where it is necessary, demonstrably in their best interests, and they have expressed a desire to do so – either directly or through their responsible adult;
- (b) Ensure that where an interview is to be undertaken this is to be solely for the purpose of determining a child's protection needs. In no circumstances should an interview be used to verify parents' evidence.
- (c) Ensure that refugee children have the right to have an independent adult present during an interview and are provided access to legal assistance and representation.
- (d) Ensure that RSB officers undertaking interviews of refugee children receive a robust level of training in children's rights and interviewing vulnerable children.

**Issue: Protecting the rights of intersex infants and children**

The Committee may wish to recommend that the New Zealand Government:

- (a) Develop and enact legislation and practice guidelines that ensure that no one is subjected to medical or surgical treatment during infancy or childhood without informed

and supported decision-making that guarantees bodily integrity, autonomy and self-determination to children concerned, and provides families with intersex children with adequate counselling and support;

- (b) For this purpose, direct the Ministry of Health to support the establishment and functions of a National Multi-Sectoral Expert Advisory Group, to advise on:
- (i) Legislative and procedural safeguards for intersex children, an ethical framework, funding and research requirements;
  - (ii) Specific support services for intersex children and adults and their families, including consideration of a single, family-centred national service that ensures whole of life multi-disciplinary care and support care; and
  - (iii) Development of agreed definitions of intersex and DSD conditions to enable enhanced data collection, and consideration of the establishment of a national register.

#### **THEME: CIVIL RIGHTS AND FREEDOMS**

##### **Issue: Protecting children's rights to privacy**

The Committee may wish to recommend that the New Zealand Government:

- (a) Ensures that its Privacy, Human Rights and Ethics Framework is publicly available, and incorporated into any AISA or legislative instrument that allows for personal information to be shared for the purpose of predictive risk modelling.
- (b) Ensures that any AISA or legislative provision enabling sharing of children's personal information explicitly affirms a proportionate, minimal breach approach, consistent with the child's rights, welfare and best interests.
- (c) As part of legislative reform arising from the Independent Review of Security and Intelligence services, introduces a Code of Practice for intelligence, security and law enforcement officials that includes policy and practice guidelines aimed at protecting the rights, interests and welfare of children directly or indirectly affected by those activities.

#### **THEME: FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

##### **Issue: Measures to address violence against children**

The Committee may wish to recommend that the New Zealand Government:

- (a) Maintain its policy commitment to reducing all forms of violence against children and addressing family violence.
- (b) Ensure that all front-line services, including Children's Teams, are provided with ongoing, sustainable resource allocations sufficient to meet the anticipated increases in demand.

##### **Issue: Reforms to the child protection system**

The Committee may wish to recommend that the New Zealand Government:

- (a) Ensures that the legislative reforms to the Children, Young Persons and their Families Act supports an integrated, child-centred continuum of services and interventions for

children and their families that enables effective transitions and referrals between statutory and non-statutory services.

**Issue: Updating adoption law**

The Committee may wish to recommend that the New Zealand Government:

- (a) In light of the judgment of the Human Rights Review Tribunal in *Adoption Action Inc v Attorney General* [2016] NZHRRT 9, prioritise efforts to bring New Zealand's adoption legislation and policy into conformity with domestic human rights law and international human rights treaty obligations.

**THEME: EDUCATION**

**Issue: Reducing school bullying**

The Committee may wish to recommend that the New Zealand Government:

- (a) Introduce, as part of the update of the Education Act 1989, legislative provisions that require:
  - (i) The Ministry of Education to establish and fully fund a comprehensive anti-bullying program to reduce bullying in schools,
  - (ii) School boards of trustees to implement policies and programmes to address and reduce bullying and violence in schools – including cyber-bullying;
  - (iii) Schools to collect and report data on school bullying and violence.

**Issue: Providing an inclusive education system**

The Committee may wish to recommend that the New Zealand Government:

- (a) Include as part of its update of the Education Act 1989:
  - (i) A purpose statement incorporating the right to inclusive education within the purposes/principles provisions of the Act
  - (ii) Include inclusive education responsibilities amongst the suite of statutory responsibilities of school boards of trustees and principles
- (b) Consider establishing an Inclusive Education Advisory Group to advise and monitor inclusive education policy development and evaluation.
- (c) Implement a data strategy to accurately assess and monitor the implementation of inclusive education policies and practices
- (d) Include inclusive education targets and goals within the Government's New Zealand Disability Strategy and Disability Action Plan, administered by the Office of Disability Issues.
- (e) Strengthen current measures to identify, assess and provide supports to school students with neuro-disabilities and learning disorders.

**THEME: HEALTH AND WELFARE**

**Issue; Addressing inequitable health outcomes**

The Committee may wish to recommend that the New Zealand Government:

- (a) Expand the current set of child health targets to include targets aimed at:
  - (i) Reducing overall hospitalisations for medical conditions with a social gradient.
  - (ii) Reducing ethnic disparities in both hospitalisation and mortality rates, particularly amongst Maori and Pacific children.
- (b) Increase the provision and accessibility of primary health care services to socio-economically deprived communities, including primary health care delivered by Whanau Ora providers.
- (c) Develop a specific health impact assessment mechanism to inform climate change policies and corresponding health sector planning.

**Issue: Addressing inadequate housing**

The Committee may wish to recommend that the New Zealand Government<sup>1</sup>:

- (a) Implement a comprehensive clear implementation plan that identifies actions, builds ownership and measures results to meet the target of the SDG Agenda target that all people in New Zealand live in adequate, affordable and safe housing by 2030. The implementation plan should have a particular focus on addressing housing affordability, habitability and security of tenure.

**Issue: Social security policy and legislation**

The Committee may wish to recommend that the New Zealand Government:

- (a) amend the Social Security Act 1964 to require that any decision made under that Act that directly or indirectly affects a child, takes into account the best interests of the child as a primary consideration.

**Issue: Impact of the Canterbury Earthquake on children**

The Committee may wish to recommend that the New Zealand Government:

- (a) Recognise the increased costs arising from the Canterbury earthquakes for the ongoing provision of mental health support services for children and their families in the Canterbury region.
- (b) Provide revenue certainty to the Canterbury District Health Board sufficient to meet ongoing costs and demands in respect of these services due to the exceptional circumstances.
- (c) Monitor and track mental health outcomes for children who have been affected by the Canterbury earthquakes to enable an accurate assessment of current and future funding and service delivery needs

**THEME: SPECIAL PROTECTION MEASURES**

**Theme: Harmonising Youth Justice legislation and policy with the Convention**

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<sup>1</sup> Please refer to the accompanying thematic report for further detail.

The Committee may wish to recommend that the New Zealand Government:

- (a) As part of the current reforms to the Children, Young Persons and their Families Act 1989, take urgent steps to bring the upper age of New Zealand's youth justice system into conformity with the CRC.
- (b) Undertake an urgent review of the age of criminal culpability under section 22 of the Crimes Act 1961 in order to identify and recommend amendments necessary to bring the provision into conformity with the principles of the CRC and related international youth justice standards. The review should include consideration of expert evidence regarding child and adolescent brain development.
- (c) Introduce into the youth justice principles under s 208 of the Children, Young Persons and their Families Act 1989, a principle that detention while in remand is a last resort measure and must be for the shortest possible time.
- (d) Establish a timeframe for the phasing out of remands in police custody and the repeal of s 238(1)(e) of the Children, Young Persons and their Families Act 1989.
- (e) Include targets in relevant youth justice policy/governance instruments such as the Youth Crime Action Plan for the reduction of the numbers of people with neuro-disability in the youth justice system