



Human Rights Commission  
Te Kāhui Tika Tangata

# New Zealand's 5th periodic review under the United Nations Convention on the Rights of the Child

Supplementary submission of the New Zealand  
Human Rights Commission to the Committee on  
the Rights of the Child's 73rd Session

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He aha te mea nui o te ao  
He tangata, he tangata, he tangata

*What is the most important thing in the world?  
It is the people, it is the people, it is the people*

The New Zealand Human Rights Commission is New Zealand's National Human Rights Institution (NHRI). It is accredited as an "A" status NHRI. One of the Commission's functions pursuant to section 5 (2) (kc) of the Human Rights Act 1993 is to "to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand".

## **Background**

1. The New Zealand Human Rights Commission is New Zealand's National Human Rights Institution (NHRI). It is accredited as an "A" status NHRI. One of the Commission's functions pursuant to section 5 (2) (kc) of the Human Rights Act 1993 is "to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand." The Commission welcomes the opportunity to provide this supplementary submission for the consideration of the United Nations Committee on the Rights of the Child ("the Committee") for the purposes of the fifth periodic review of New Zealand under the United Nations Convention on the Rights of the Child ("CRC"), scheduled to take place on 15 and 16 September 2016 during the Committee's 73<sup>rd</sup> session.
2. This supplementary submission follows the Commission's report of 1 November 2015 submitted for the consideration of the Committee's pre-session working group. It is structured against the items identified by the Committee in its List of Issues in relation to the Fifth Periodic Report of New Zealand that followed the Committee's 73<sup>rd</sup> pre-session.<sup>1</sup> It is accompanied by a Snapshot Report that focuses on housing issues for New Zealand children.
3. The Children's Commissioner, his Honour Judge Andrew Becroft and the Commission's Senior Legal Adviser John Hancock will be representing the Commission at the 73<sup>rd</sup> session.
4. The Children's Commissioner has lodged a separate report for the Committee, which the Commission fully endorses.

### Reservations to the Convention (List of Issues Item 2)

5. As the Commission noted in its pre-session submission, some substantive progress has been made in removing some of the legal and policy barriers that have underpinned the Government's general reservation and reservation under Article 37(c). However, there has been no substantive progress made in addressing the Government's reservation under

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<sup>1</sup> CRC/C/NZL/Q/5, 9 March 2016

Article 32(2), nor has there been any substantive change in the Government's policy position.

6. The New Zealand Government's reservations remain in place and, to date, no formal steps have been taken to remove them, nor has any definite timeframe been established for this purpose.
7. **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.**

The UNCROC Monitoring Group (Item 2, LOI)

8. While it regularly meets with Government Social Sector Deputy Chief Executives as part of its monitoring of the CRC, it should be noted that the UNCROC Monitoring Group (UMG) is a civil society entity independent from Government. The UMG is not established under statute or regulation. The UMG differs in this respect from New Zealand's Independent Monitoring Mechanism on the Rights of Persons with Disabilities (IMM), which is established under a regulatory instrument for the specific purpose of monitoring the Convention on the Rights of Persons with Disabilities (CRPD).<sup>2</sup>
9. By contrast, the co-ordination of the UMGs activities by the Office of the Children's Commissioner (OCC) falls under the Children's Commissioner's general function under section 12(1)(f) of the Children's Commissioner Act 2003. This provision enables the Children's Commissioner to advance, promote and monitor the CRC amongst departments of State and Crown Entities.
10. Some recent progress has been made towards formalising the UMG's engagement with the Social Sector Deputy Chief Executives, through the development and agreement of written terms of engagement that establish the basis for ongoing CRC monitoring meetings. This engagement process is constructive and has evolved considerably since the UMGs establishment in 2011. However, the lack of any regulatory measure or instrument that formalises the UMGs monitoring and engagement leaves it inherently vulnerable to future shifts in Government priorities or policy.

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<sup>2</sup> Notice of Designation of Independent Mechanism, Minister for Disability Issues, published in the New Zealand Gazette, 13 October 2011. NOTE: The independent mechanism is designed to implement Article 33 of the CRPD and thus goes well beyond that of monitoring. It includes a Ministerial-level Disability Issues group, a Chief Executives disability group, an Office of Disability Issues within the Ministry of Social Development, the IMM which includes Disabled Peoples Organisations (DPOs), the Ombudsman and the Commission, and a separate DPOs monitoring group. The DPOs are involved directly in the design and governance of the Disability Action Plan. The most recent development is that the Disability Action plan will be reviewed periodically with the review of the concluding observations of the UN Committee on the Rights of Disabled Persons being the starting point of the development of a refreshed Disability Action Plan.

11. Therefore, the Commission considers an enduring formal CRC monitoring and planning framework, similar to that used for the CRPD, should be established. Consideration ought to be given to vesting the UMG under regulation and establishing an engagement process with a group at the level of Government Ministers, in addition to enhanced engagement with departmental chief executives and officials.

#### National Policy and Strategy for the Implementation of the Convention (Item 3 LOI)

12. As noted in the Commission's pre-session submission, the Government is yet to develop a comprehensive national plan of action or policy strategy for the implementation of the CRC.
13. As the Government's response to the Committee's List of Issues indicates, its current policy focus is directed at vulnerable children, a relatively narrow cohort of children who are defined as at significant risk of harm under current policy criteria. The current reforms to the child protection system can also be seen as part of the same policy continuum. These reforms do not appear, at this stage, to include a CRC implementation strategy aimed at all children in New Zealand.
14. Of the current suite of Government policies, the Commission considers that the UNCROC Work Programme is perhaps best placed, both purposively and operationally, to be developed into a comprehensive CRC implementation strategy that is supported by a strengthened monitoring framework, as set out above at paragraph 15.
15. Such a strategy should also include the goals, targets and indicators of the 2030 Agenda for Sustainable Development (the SDG Agenda) that are directly relevant to the realisation of children's human rights in New Zealand. The SDG goals, targets and indicators in areas such as poverty, education, health, housing and violence and abuse<sup>3</sup> are areas where some New Zealand children are being left behind in both development and realisation of their human rights.
16. The SDG Agenda has been endorsed by the New Zealand Government and the Minister for State Services has recently identified the need to develop a clear implementation plan that "identifies actions, builds ownership and measures results".<sup>4</sup> The Minister rightly pointed to the danger of confusing activity with achievement. The Commission notes that an inter-agency group has been established to review how New Zealand will meet its SDG targets, many of which related to children. The SDG Agenda is the benchmark by which achievements in human development and human rights will be measured until 2030.

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<sup>3</sup> Such as, for example, agreeing a national definition of poverty and to reducing poverty as so defined by at least 50% by 2030 (SDG 1.2), ensuring access for all to adequate, safe and affordable housing (SDG 11.1); reducing under five mortality rate (SDG 13.2.1); reducing the percentage of children that have experienced any physical punishment and/or physiological aggression from caregivers (SDG 16.1.3); meeting education related targets in SDG Goal 4

<sup>4</sup> Speech of Minister Bennett - <https://www.mfat.govt.nz/en/media-and-resources/ministry-statements-and-speeches/statement-on-achieving-sustainable-development-goals/>

17. The Commission considers that implementation of the SDG Agenda in New Zealand's policy and legislative framework has considerable potential to drive enhanced outcomes for children. The Commission accepts the analysis of the Danish Institute of Human Rights that shows how human rights can be used as a driver for realising the SDGs and the SDGs used to realise human rights<sup>5</sup>.
18. **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.**

Child poverty strategy and Vulnerable Children's Plan (Item 3 LOI)

19. The Government has showed no public intention to introduce a systemic approach to addressing child poverty, as recommended by the Expert Advisory Group on Solutions to Child Poverty in 2012<sup>6</sup> and supported by the Children's Commissioner<sup>7</sup> and Parliament's Health Select Committee<sup>8</sup>. However, the New Zealand delegation to the review may be able to update the Committee on how the government intends to meet the SDG Goal 1 on Poverty, in particular, as regards the establishment of a national definition of poverty and measures to reduce poverty, as so defined, by 50% by 2030. While the measures listed in the Government's response to the Committee's List of Issues are intended to mitigate the effects of child poverty, they operate in relative isolation from one another and are not connected via any overarching child poverty strategy. Nor does there exist any statutory mechanism that mandates the development of such a strategy.
20. It is notable that the number of New Zealand children living in households with income below the poverty line appears to be increasing. The 2015 Child Poverty Monitor reported

<sup>5</sup> <http://www.humanrights.dk/our-work/sustainable-development/human-rights-sdgs>

<sup>6</sup> Expert Advisory Group on Solutions to Child Poverty, *Solutions to Child Poverty in New Zealand: Evidence for Action*, 2012, <http://www.occ.org.nz/assets/Uploads/EAG/Final-report/Final-report-Solutions-to-child-poverty-evidence-for-action.pdf>

<sup>7</sup> Office of the Children's Commissioner, *Are we there yet? Five years on the road to addressing child poverty*, May 2016, <http://www.occ.org.nz/assets/Publications/AreWeThereYet.pdf>

<sup>8</sup> Health Select Committee, *Inquiry into improving child health outcomes and preventing child abuse with a focus on preconception until 3 years of age*, 18 November 2013, [https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH\\_SCR6007\\_1/inquiry-into-improving-child-health-outcomes-and-preventing-p-11](https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR6007_1/inquiry-into-improving-child-health-outcomes-and-preventing-p-11)

that in 2014, 305,000 (29%) of dependent 0–17 year olds were living in income poverty defined using a relative threshold measure of below 60% of the median income after housing costs were taken into consideration<sup>9</sup>. In 2013, the percentage was 24%, indicating a substantial increase over the course of one year.

21. At the time of writing, the Vulnerable Children’s Plan (VCP) is yet to be released. Section 6(f) of the Vulnerable Children’s Act 2014 enables the inclusion in the VCP of measures aimed at improving the social and economic well-being of vulnerable children. However, it is unclear as to whether the VCP will include any such measures.
22. **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.**

Budgetary allocations and the Investment Approach (LOI Item 5)

23. As the Commission noted in its pre-session submission, the Government’s implementation of the “Investment Approach” actuarial valuation model as the funding model for the child protection and welfare sector, directly engages its resource allocation obligations under Article 4 of the CRC.
24. As the Government’s response to the Committee’s List of Issues indicates, the Investment Approach model is at a developmental stage, with its impact due to be assessed via key performance and outcomes indicators<sup>10</sup>. The model does not appear to include a Child Rights Impact Assessment (CRIA) mechanism as part of its assessment framework at this stage. The Commission refers to the Committee’s General Comment No 19 on Public Budgeting for the Realisation of Children’s Rights, which provides that CRIsAs should be incorporated within budgetary and funding frameworks, particularly those that fund services and programmes to support children in vulnerable circumstances:

States parties should conduct child rights impact assessments in order to ascertain the effect of legislation, policies and programmes on all children at the national and subnational levels, especially children in vulnerable situations who may have special needs and therefore require a disproportionate share of spending in order to have their rights realized. Child rights impact

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<sup>9</sup> However, this figure does not factor in the increase in core benefit rates for parents with dependent children brought about by the 2015 enactment of the Support for Children in Hardship Bill

<sup>10</sup> New Zealand Government response to the list of issues in relation to the Fifth Periodic Report under the United Nations Convention on the Rights of the Child, June 2016, paragraph 32

assessments should be part of each stage of the budget process and should complement other monitoring and evaluation efforts.<sup>11</sup>

25. Furthermore, the Government is yet to design and implement a child budgetary mechanism that enables the specification, tracking, monitoring and assessment of allocations targeted at children, as the Committee recommended in 2011<sup>12</sup>. The Commission considers that the shift in the funding modalities that the Investment Approach will introduce presents an opportunity to develop and incorporate a CRIA mechanism within the annual budgetary process.
26. **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.**

Outsourcing/Delegation of state services (LOI Item 6)

27. As the Commission noted in its pre-session submission, the June 2015 report of the Productivity Commission, *More Effective Social Services*, recommended a move towards devolved social service provision.<sup>13</sup> This was later reflected in the Terms of Reference for the Modernising Child, Youth and Family Expert Panel, which included consideration of outsourcing some service delivery functions that are currently delivered by Child Youth and Family.<sup>14</sup>
28. The first tranche of legislation arising from the Expert Panel’s reports, the Children Young Persons and their Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016 includes provisions that would enable the Chief Executive of the Ministry of Social Development to delegate the functions of CYF social workers to external government and non-government professionals<sup>15</sup>. The Bill provides that if the delegate is outside the state services, they “will be bound by contractual obligations that are sufficient to support the appropriate exercise of the delegation.”<sup>16</sup>
29. It follows that the use of delegations will be primarily guided by non-legislative policies that establish the fiscal and operational criteria to be reflected in contracting arrangements.

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<sup>11</sup> Committee on the Rights of the Child, General Comment No 19 (2016): *On Public Budgeting for the Realisation of Children’s Rights*, CRC/C/GC/19 paragraph 47

<sup>12</sup> Committee on the Rights of the Child, *Concluding Observations: New Zealand*, 4 February 2011, CRC/C/NZL/3-4 paragraphs 16 and 17

<sup>13</sup> Productivity Commission, *More Effective Social Services*, June 2015, <http://www.productivity.govt.nz/sites/default/files/social-services-final-report-summary-version.pdf>

<sup>14</sup> Terms of Reference for the Modernising Child, Youth and Family Expert Panel, page 2 and 4

<sup>15</sup> Children, Young Person and their Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016, Clause 7

<sup>16</sup> Children, Young Person and their Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016, Explanatory Note



The Commission considers that, in the event that this leads to outsourcing of CYF facilities and service provision to private providers, that human rights due diligence processes, in line with the UN Guiding Principles on Business and Human Rights (UNGPs), are included within those policies. The Commission also supports the recommendation of the Children's Commissioner that a "publicly transparent mechanism" is established to facilitate the delegation and procurement process.

30. The New Zealand Government is yet to take any concrete steps towards enabling the incorporation of the UNGPs within its policy and regulatory frameworks regarding procurement. These reforms, insofar as they may result in outsourcing of services, provide a basis for doing so.
31. **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.**

The right of the child to be heard/informed consent (LOI Item 7)

*The right to be heard in Family Court proceedings*

32. As the New Zealand Law Society has noted, the 2013/14 reforms to the Family Court have had the effect of narrowing the set of circumstances in which a child can expect to be appointed a lawyer for child in Family Court proceedings. This is primarily due to the introduction of the mediation-based Family Dispute Resolution (FDR) process for resolving parental care and access disputes under the Care of Children Act 2004.
33. There is no express legislative requirement upon FDR providers to seek the views of children subject to FDR processes, nor enable their participation in those processes. However, FDR providers are required, among other things, to have knowledge of section 6 of the Care of Children Act<sup>17</sup>, which provides that children must be given the opportunity to express their views and have those views taken into account in Family Court proceedings.
34. Conversely, the Children Young Persons and the Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016 seeks to introduce a duty to encourage and assist the participation of children and young people in child protection or youth justice processes that directly regard them, such as Family Court or Youth Court proceedings, family group conferences (FGCs), meetings and hearings to prepare and review care or youth justice

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<sup>17</sup> Family Dispute Resolution Regulations 2013, clause 7(f)(i)

plans and other statutory interventions that “significantly affect” them<sup>18</sup>. This duty will rest with the presiding Family Court or Youth Court Judge or the child/young persons’ lawyer (in court proceedings), with the FGC Co-ordinator (in FGCs), with the social worker (in respect of plans) and, in respect of other matters, the responsible statutory officer.

35. **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.**

*Interviewing of refugee children*

36. The Refugee Status Board (RSB) has recently developed *Guidelines: Minors and children in the refugee status process* (“Guidelines”). The stated purpose of the Guidelines is to “provide guidance as to how relevant parts of the Immigration Act 2009 are to be interpreted and applied consistent with the Act, the Refugee Convention and the United Nations Convention on the Rights of the Child.”
37. While the Commission welcomes the above purpose, there is concern that the Guidelines do not contain sufficient safeguards designed to protect the best interests of refugee children in respect of their participation in the interview process, nor sufficiently emphasise the right of refugee children to decline to participate.
38. In addition, the Commission notes that the Guidelines and the proposal to interview children has been met with concern and criticism from former asylum claimants and civil society. At a consultation meeting in February organised by the Refugee Council of New Zealand there was consensus amongst participating former asylum claimants that children should not be made a part of the interview process as this would put too much pressure on the child and would therefore not be in their best interests.
39. **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;**

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<sup>18</sup> Children Young Persons and the Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016, clause 8

- (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.**

*Gender-normalising surgery and other medical interventions on intersex infants*

40. Infants born in New Zealand with an intersex or Disorder of Sex Development (DSD) may undergo surgery and other medical interventions intended to make their genitalia appear more typically “male” or “female”. As such interventions take place when the child is still an infant, consent is procured from the parents or legal guardian of the child. The practice has given rise to concern in New Zealand regarding its impact on the child’s right to bodily autonomy, as it effectively prevents intersex children from participating in the consent and decision making process. Also of concern are the resulting risks to the sexual and reproductive health, psychological and emotional trauma and imposition of an assigned gender identity that sometimes doesn’t match the child’s identity as they grow up.<sup>19</sup>
41. Issues for an intersex child are complex. Whilst medical professionals highlight health risks associated with the variety of conditions, intersex people, families and advocates are primarily concerned about bodily diversity and physical autonomy. The right to live free of discrimination and harassment because of sex characteristics is protected in New Zealand under the Human Rights Act 1993.
42. New Zealand’s legal framework does not contain any specific statutory provision that would require the consideration of such interventions to be deferred until the child is of an age where they have capacity to provide informed consent or express their views. The Commission notes that there is international concern regarding such surgical intervention and related medical practices, as evidenced by recent statements from UN bodies.<sup>20 21 22</sup>

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<sup>19</sup> NZ SOGII UPR Coalition, Submission to Human Rights Council Universal Periodic Review 2013

<sup>20</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, para 88, page 23 recommended that States repeal any law enabling “intrusive and irreversible” treatments, including forced genital normalising surgery, when administered without the informed consent of the person concerned

<sup>21</sup> UNHCR Factsheet (2015) available at [https://unfe.org/system/unfe-65-Intersex\\_Factsheet\\_ENGLISH.pdf](https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf) acknowledges that the rights infringed by the genital-“normalizing” surgeries and other treatments carried out on intersex children include “their rights to physical integrity, to be free from torture and ill treatment, and to live free from harmful practices.”<sup>21</sup>

<sup>22</sup> World Health Organisation, (2014) Eliminating forced, coercive or otherwise involuntary sterilization: An interagency statement (OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO) available at: [http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf?ua=1) In 2015, the World Health Organization, UNICEF, OHCHR, UN Women, UNAIDS, UNDP and UNFPA explained, intersex

Furthermore, the Commission notes that the Committee has expressed its concern at these interventions and has recommended, among other things, that “States Parties ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood.”<sup>23</sup>

43. On 20 April 2016, the Commission and the Intersex Trust Aotearoa New Zealand (ITANZ) hosted a multi-sector Roundtable to consider current practice in New Zealand, consider international developments<sup>24</sup> and make recommendations aimed at ensuring that practices comply with human rights standards. The forum was attended by intersex people and families, non-government advocacy organisations, members of parliaments, paediatric surgeons and other medical practitioners, legal practitioners, government officials and academics.
44. The Roundtable issued a series of recommendations relating to i) legislative change, ii) establishing multi-disciplinary support services, iii) building a national evidence base on current practice and experience, and iv) raising awareness through a comprehensive multi-sectoral and interdisciplinary education programme. The Roundtable also confirmed participation by intersex people and their organisations in each of these recommendations and in all decision-making processes. It was agreed by the Roundtable that the next step would be to establish an Intersex National Multi Sectoral Expert Advisory Group to advise the Ministry of Health on policy and legislative options. Roundtable representatives are currently seeking a meeting with the Director General of Health to discuss this objective.
45. **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;**

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children “are often subjected to cosmetic and other non-medically indicated surgeries performed on their reproductive organs, without their informed consent or that of their parents, and without taking into consideration the views of the children involved [...] As a result, such children are being subjected to irreversible interventions that have lifelong consequence for their physical and mental health

<sup>23</sup> Committee on the Rights of the Child, Concluding Observations: Ireland, paragraphs 39 and 40, 71<sup>st</sup> Session (11 – 29 January 2016)

<sup>24</sup> Such as the Gender Identity, Gender Expression and Sex Characteristics Act (Malta)

- (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.**

The right of the child to privacy (LOI Item 8)

*Information sharing between government agencies and predictive risk modelling*

46. The increasing prevalence of multi-agency policy initiatives and service delivery models requires mechanisms that enable personal information to be shared between participating government agencies. Where such information sharing would ordinarily breach the principles pertaining to use and storage of personal information under the Privacy Act 1993, those agencies are required to enter into an Approved Information Sharing Agreement (AISA) under the Privacy Act. An AISA is a regulatory instrument that is passed into law through Order-in-Council, following a process of development that includes the oversight of the Privacy Commissioner.
47. AISAs have been used to underpin two significant recent policies concerning children and young people. The Vulnerable Children's AISA was developed to enable the personal information of children and their family members to be shared in order to populate an information database and enable the functions of multi-agency Children's Teams, both initiatives under the Children's Action Plan.
48. More recently, a draft Youth Services AISA has been developed to enable personal information to be shared for the purposes of enabling a predictive risk modelling technique to assess the extent to which certain young people who currently receive an income benefit are likely to be at risk of long term benefit dependency<sup>25</sup>. Those young people who are assessed as being at risk will then be enrolled in the Youth Services programme, which provides a number of additional service supports and conditions.
49. In addition, as noted in the Government's response to the Committee's List of Issues,<sup>26</sup> predictive risk modelling has also been considered for trial for the purpose of assessing whether a child's meets the vulnerability criteria for service intervention under the Children's Action Plan.

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<sup>25</sup> Ministry of Social Development, Draft Approved Information Sharing Agreement, April 2016, <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/policy-development/youth-service-information-sharing-agreement-consultation/public-consultation-on-new-youth-service-information-sharing-agreement.html>

<sup>26</sup> New Zealand Government response to the list of issues in relation to the Fifth Periodic Report under the United Nations Convention on the Rights of the Child, para 62

50. Predictive risk modelling raises inherent ethical and privacy considerations, not least the prospect of discrimination occurring through the use of certain indicators, such as whether the child comes from a beneficiary household, or whether their parents have mental health problems. Furthermore, while predictive risk modelling is yet to be formally implemented, it is inevitable that it will be in the future. The Commission accordingly welcomes the Government's development of a Privacy, Human Rights and Ethics framework to govern the operation of predictive risk modelling. The Commission considers this framework should be publicly available and transparent and incorporated by reference into any AISA or legislative instrument that allows for personal information to be shared for the purpose of predictive risk modelling.
51. The Commission further understands that legislation may be developed that enables specified agencies to share personal information about a child and their family for the purposes of a statutory child protection intervention under the CYPF Act without needing to enter into an AISA, along the lines of the model currently used in New South Wales. There has been general support for this approach by the previous Children's Commissioner<sup>27</sup> and the former Ombudsman<sup>28</sup> as a means for enhancing responsiveness and co-operation between agencies. While the Commission acknowledges the prospective utility of this approach, it is vital that children's privacy rights are not "traded off" as a result. Instead, a balanced, proportionate approach ought to be taken that minimises privacy breaches, is demonstrably in the best interests of the child concerned and enables the child to be informed, and have their views ascertained and taken into account, unless it is not in their best interests to do so.

#### *Surveillance operations*

52. The 2016 report of the Independent Reviewers of Security and Intelligence Services has, among other things, recommended the establishment of a Code of Conduct for intelligence officials in respect of the discharge of their powers<sup>29</sup>. However new legislation to implement the Independent Reviewers recommendations is yet to be introduced.
53. The Commission supports the development of a Code of Conduct and considers that it should include clear guidance to officials on children's rights. In its 2013 report on the Operation 8 surveillance and police raids that took place in the Urewera District in 2007, the Independent Police Conduct Authority notably expressed concern at the impact of those operations on children present during the execution of search warrants<sup>30</sup>. The IPCA found that a lack of policy and planning as to how to respond to vulnerable occupants, such as

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<sup>27</sup> Office of the Children's Commissioner, *Submission on the Vulnerable Children's Bill*, November 2013, <http://www.occ.org.nz/assets/Publications/VCB-sub-OCC-FINAL.pdf> p 13

<sup>28</sup> Mel Smith CNZM, *Report to Minister of Social Development and Employment, Following an inquiry into the serious abuse of a nine year old girl and other matters relating to the welfare, safety and protection of children in New Zealand*, 31 March 2011, paras 8.36-8.39 [https://www.beehive.govt.nz/sites/all/files/Smith\\_report.pdf](https://www.beehive.govt.nz/sites/all/files/Smith_report.pdf)

<sup>29</sup> Sir Michael Cullen, Dame Patsy Reddy, *Intelligence and Security in a Free Society: Report of the First Independent Review of Intelligence and Security in New Zealand*, 29 February 2016, p 58

<sup>30</sup> Independent Police Conduct Authority, *Investigation into Operation 8*, May 2013, accessed <http://www.ipca.govt.nz/Site/media/2013/2013-May-22-Operation-Eight.aspx>, page 60

children, was undesirable<sup>31</sup> and noted the heightened anxiety and fear perceived by children during such events<sup>32</sup>.

54. **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.**

Measures to address violence against children (LOI Item 9)

55. The Government’s most recent report under its Better Public Services Target 4 indicates gradual reductions in the number of children experiencing substantiated physical abuse over the past couple of years. In the year to September 2015, physical abuse was substantiated for 3,011 children, compared to the 3,110 the previous year.<sup>33</sup>
56. The New Zealand Child Poverty Monitor: Technical Report indicates similar reductions in the number of hospitalisations of New Zealand children aged 0–14 years for injuries arising from assault, neglect or maltreatment. It also reports “a small but significant” fall in the hospitalisation rate from 20.8 hospitalisations per 100,000 children in 2000–2001 to 15.9 hospitalisations per 100,000 children in 2014.<sup>34</sup>
57. A recent New Zealand Family Violence Clearinghouse report further indicates that in the 2014/15 year 150,905 reports of concern were received, up from 146,657 the previous year. However, the numbers of reports requiring further action dropped significantly, from 54,065 to 45,463.<sup>35</sup> Conversely, homicides of children aged under 5 increased significantly from 4 cases in the 2013/14 reporting period to 11 in 2014/15<sup>36</sup>.

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<sup>31</sup> *ibid* paras 275-279

<sup>32</sup> *ibid* para 277

<sup>33</sup> <http://www.ssc.govt.nz/bps-supporting-vulnerable-children#result4>

<sup>34</sup> Simpson J, Duncanson M, Oben G, Wicken A, Pierson M. Child Poverty Monitor 2015 Technical Report. Dunedin: NZ Child and Youth Epidemiology Service, University of Otago; 2015, <http://www.nzchildren.co.nz/>

<sup>35</sup> NZFVC, Data Summaries: Children and Youth affected by Family Violence, July 2016

<https://nzfvc.org.nz/sites/nzfvc.org.nz/files/DS3-Children-and-Youth-2016.pdf>

<sup>36</sup> *ibid*

58. In 2013, the New Zealand Family Violence Clearinghouse (NZFVC) called for the development of adequately resourced co-ordinated support services for children and their families, as part of multi-agency response systems<sup>37</sup>. The multi-disciplinary Children's Action Plan and the reforms introduced by the Vulnerable Children's Act 2014 provides a policy and practice framework for such an approach. However, the Government has reported that it expects that actions taken through the Children's Action Plan may increase reporting of child assaults by raising awareness of child abuse, which may lead to a short term increase in substantiated findings of physical abuse against children. In addition, there have been recent reports of concern from front-line Children's Teams professionals that current resources are struggling to meet the demand for services.<sup>38</sup>
59. More generally, the Government has developed a high level cross-agency approach to addressing family violence. The Ministerial Group on Family and Sexual Violence oversees the implementation of a cross-government work programme jointly led by the Ministries of Social Development and Justice. The work programme is developing a number of new service, workforce and policy initiatives, including, among other things, an integrated safety response model led by the Police, a common risk assessment and management framework, a workforce development project, and appoints specified government agencies to lead coordination of primary prevention and perpetrator programmes, and coordinate services and investment decisions in these areas.<sup>39</sup>
60. **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.**

Bullying in schools (LOI Item 10)

61. Despite initiatives developed to address bullying in New Zealand schools, such as the establishment of the cross-sector Bullying Prevention Advisory Group (BPAG), the Government is yet to develop a comprehensive anti-bullying program as part of a strategy to address and reduce instances of bullying in schools, and monitor the impact of bullying on student well-being and mental health, as recommended by the Committee on Economic, Social and Cultural Rights in 2012.<sup>40</sup> While the Government has invested in a general intervention programme to encourage positive culture in schools, *Positive Behaviour for Learning*, it is not an anti-bullying programme and does not include specific interventions

<sup>37</sup> Murphy, C., Paton, N., Gulliver, P., Fanslow, J. (2013). Policy and practice implications: Child maltreatment, intimate partner violence and parenting. Auckland, New Zealand: New Zealand Family Violence Clearinghouse, The University of Auckland, <https://nzfvc.org.nz/sites/nzfvc.org.nz/files/DS3-Children-and-Youth-2016.pdf>

<sup>38</sup> <http://www.radionz.co.nz/news/national/300431/children's-action-teams-'overworked'>, April 2016

<sup>39</sup> Cabinet Social Policy Committee, Ministerial Group on Family and Sexual Violence: Update on the Progress of the Work Programme, April 2016 <https://www.justice.govt.nz/assets/Documents/Publications/Ministerial-group-fv-sv-work-programme.pdf>

<sup>40</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, on the third periodic report of New Zealand on the implementation of the ICESCR (2012). Para 19.



for the bully, bullied and bystander that are part of other successful anti-bullying programmes.

62. In addition, it is not apparent that progress has been made in addressing the additional recommendations of the Committee on Economic, Social and Cultural Rights that the Government systematically collect data on violence and bullying in schools and monitor the impact of the student mental health and well-being initiatives recently introduced in schools on the reduction of the incidence of violence and bullying.
63. There is a notable lack of any explicit statutory requirement upon schools to address bullying, collect data on it, or monitor its effects. Indeed, there is no provision in either the Education Act 1989, nor the National Administration Guidelines vested under that Act, that includes reference to bullying. The recommendation of the Ombudsman that the National Administrative Guidelines should be amended to include a guideline that requires school boards of trustees to implement an effective anti-bullying programme<sup>41</sup> has not been implemented.
64. However, the Education Act 1989 is currently being reviewed and legislative changes are likely to be introduced later in 2016. The new legislation is likely to include an expanded set of specific legal requirements for school boards of trustees, and introduce provisions to enhance data collection. The Commission has recommended the inclusion of provisions that require measures to specifically address bullying<sup>42</sup>. While there is no indication to date as to whether the legislative amendments will include such measures, there is clearly an opportunity to do so.
65. **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.**

Measures to reform Child, Youth and Family (LOI Item 11)

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<sup>41</sup> Report of David McGee Ombudsman on complaints arising out of bullying at HVHS in December 2007 (2011) at [http://www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/505/original/bullying\\_report.pdf?1355787360](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/505/original/bullying_report.pdf?1355787360)

<sup>42</sup> Submission of Human Rights Commission, *Updating the Education Act 1989: A public discussion document*, 14 December 2015, Recommendation 2, p 11,

66. As noted above, major reform of New Zealand's child protection system is currently underway. This has followed the Children's Commissioner's inaugural 2015 State of Care report and the subsequent Government-commissioned reports and recommendations of the Modernising Child Youth and Family Expert Panel.
67. In addition to the funding and service delivery reforms that are outlined above in paragraphs 29-32, the prospective reforms contain a number of aspects that further the implementation of the CRC in New Zealand, including:
- Raising the upper age threshold under which a young person can receive support/be subject to an intervention under the care and protection system to 17 years, in doing so bringing the system into conformity with the CRC.
  - Introducing independent advocacy services for children in the care and protection system.
68. More generally, the reforms have responded to the call of the both the Expert Panel and the Children's Commissioner for the adoption of a more child-centred approach to policy and practice. This has included the introduction of measures to encourage and assist the participation of children and young people subject to a statutory care and protection processes.<sup>43</sup>
69. To date, the first tranche of legislative reform has been introduced in the form of the Children, Young Persons and Their Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016. The Bill seeks to raise the upper age of the care and protection system to 17 years, introduce the basis for the independent advocacy services, improve participation of children and young people and enable delegations of social work functions to external agencies.
70. The Bill is broadly constructed and lacks operational detail. The second tranche of reform, which to date is yet to be introduced, will contain the bulk of the operational reform, including the establishment of a new Government department to replace Child, Youth and Family. It is not clear at this stage whether the second tranche will include a statutory linkage to the functions of the Children's Teams, Vulnerable Children's Hub and information database, all of which have been implemented under the Children's Action Plan. These services are non-statutory and work with children at risk of harm who do not yet meet the threshold for statutory intervention.
71. **The Committee may wish to recommend that the New Zealand Government:**

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<sup>43</sup> Children Young Persons and the Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016, clause 8

- (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.**

*Adoption law*

72. In March 2016, the Human Rights Review Tribunal released its judgment in *Adoption Action Inc v Attorney General* [2016] NZHRRT 9. The Tribunal largely found in favour of the plaintiff's claim and declared that a number of the provisions of the Adoption Act 1955 and a provision of the Adult Adoption Information Act are inconsistent with the right to freedom from discrimination under s 19 of New Zealand Bill of Rights Act.
73. The Government has not appealed the decision. The Minister of Justice has, however, tabled in Parliament a response to the Tribunal's decision which indicates that the Government does not intend to prioritise making changes to current legislation. Instead, it will leave it to the Courts and the Ministry of Social Development to ensure that the existing law is interpreted and applied in a rights-consistent way. The Minister further indicates that while legislative reform may be useful, this would not be contemplated until the Modernising Child Youth and Family reforms are completed.<sup>44</sup>

74. **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.**

Inclusive education for children with disabilities (LOI Item 12)

75. As noted in the Commission's pre-session submission, the Ministry of Education is yet to introduce a new inclusive education policy or strategy since *Success for All* ceased in 2014. In 2015, the Ministry introduced its Special Education Action Plan, which is primarily focused on service delivery arrangements and does not include any reference to inclusive education principles or specific goals to increase inclusion.
76. However, the current update of the Education Act 1989 provides an opportunity to incorporate inclusive education principles within its framework, as recommended by the UN Committee on the Rights of Persons with Disabilities.<sup>45</sup>

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<sup>44</sup> Hon Amy Adams, *Government response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney-General*, presented under s 92K of the Human Rights Act 1993, accessed <http://www.justice.govt.nz/assets/Documents/Publications/govt-response-declarations-inconsistency-hrrt.pdf>, see paras [7]-[10]

<sup>45</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of New Zealand*, 3 October 2014, CRPD/C/NZL/CO/1 para 50

77. New Zealand's Independent Monitoring Mechanism on the Convention on the Rights of Persons with Disabilities (IMM) has recently issued an interim report on the status of inclusive education in New Zealand. The IMM has issued a number of recommendations aimed at furthering the right to inclusive education under the CRPD. These include inclusion of the right within both the purposive and operational provisions of the Education Act 1989, establishment of an Inclusive Education Advisory Group to improve collaboration across sector, improved data collection and analysis; and incorporation of inclusive education targets within the New Zealand Disability Strategy and Disability Action Plan.
78. Furthermore, the Principal Youth Court Judge has drawn attention to the link between youth offending (and subsequent custodial incarceration) and the existence of unmet needs due to recognised or unrecognised learning and behavioural disabilities<sup>46</sup>. International evidence suggests that the rates of prevalence of undiagnosed neuro-disabilities in New Zealand are likely to be high.<sup>47</sup> It follows that poor outcomes in the justice system may be indicative of problems within the primary and secondary school sector concerning screening, assessment and provision of ongoing support for these children and young people. This issue is currently under the consideration of the Education and Science Select Committee's Inquiry into the identification of and support for students with dyslexia, dyspraxia, and autism spectrum disorders. Overall, this cohort of students makes up over 10% of the school population.
79. **In light of the IMM's findings, 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.**

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<sup>46</sup> Judge Andrew Becroft, *From little things, big things grow – emerging youth justice themes in the South Pacific*, Australian Youth Justice Conference, 20-22 May 2013, p 22-23

<sup>47</sup> Office of the Children's Commissioner for England, *Nobody made the connection: the prevalence of neurodisability in young people who offend*, 19 October 2012, <http://www.childrenscommissioner.gov.uk/publications/nobody-made-connection-prevalence-neurodisability-young-people-who-offend>

**(e) Strengthen current measures to identify, assess and provide supports to school students with neuro-disabilities and learning disorders.**

Health outcomes for children, in particular for Māori children (LOI Item 13)

*Outcomes for Māori children*

80. Māori children and young people are over-represented in negative health outcomes. For example, around one in five Māori children has asthma – a rate 1.4 times that of non-Māori children.<sup>48</sup> Māori children are almost twice as likely to be either obese or morbidly obese compared with non-Māori children.<sup>49</sup> Māori young people have a suicide rate that is 2.8 times higher than that of non-Māori youth.<sup>50</sup> Māori children have a higher rate of unmet health needs: Māori children were 1.4 times more likely not to have accessed primary health when they needed it than non-Māori children.<sup>51</sup> Māori children are also more likely to be exposed to the risk factors linked to poor health, social, educational and developmental outcomes.<sup>52</sup>
81. In addition, the 2016 *Family and Whanau Status Report* produced by the Social Policy Evaluation and Research Unit (SUPERU) indicates that Pacific families with children experience similarly disproportionate negative health outcomes<sup>53</sup>. For example, Pacific children are much more likely to be obese and more likely to face an unmet primary healthcare need than other non-Pacific children.<sup>54</sup>

*Wider determinants of health for Māori and Pacific children*

82. Key issues affecting the health of Māori children and young people, include poverty, material deprivation and poor quality housing. Poverty rates for Māori and Pacific children are consistently higher than for European children.<sup>55</sup> On average, during 2012 to 2014, just under half (46%) of children living in poverty were Māori or Pacific. Over the three years 2012–2014, on average, around 33% of Māori children and 28% of Pacific children lived in

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<sup>48</sup> Ministry of Health, (2015), *Annual Update of Key Results 2014/15: New Zealand Health Survey*, at p 51. Accessible at: <http://www.health.govt.nz/publication/annual-update-key-results-2014-15-new-zealand-health-survey>

<sup>49</sup> *ibid.*, at p 17.

<sup>50</sup> *ibid.*, at p 19.

<sup>51</sup> *Ibid.*, at p viii.

<sup>52</sup> Ministry of Health, (2015), *Health and Independence Report 2015*, at pp 32-33. Accessible at: <http://www.health.govt.nz/system/files/documents/publications/health-and-independence-report-2015-oct15.pdf>.

<sup>53</sup> Social Policy Evaluation and Research Unit, 2016 *Family and Whanau Status Report*, p39, 41, 46, [http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016\\_0.pdf](http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016_0.pdf)

<sup>54</sup> Sorensen, Jensen et al, *Pacific People in New Zealand: How are we doing?*, Pacific Futures Ltd, 2015, accessed <http://pasifikafutures.co.nz/wp-content/uploads/2015/06/PAF0018-Pasifika-People-in-NZ.pdf>

<sup>55</sup> Simpson J, Duncanson M, Oben G, Wicken A, Pierson M., (2015), *Child Poverty Monitor 2015 Technical Report*, Dunedin: NZ Child and Youth Epidemiology Service, University of Otago; 2015. Accessible at: <http://www.nzchildren.co.nz/#>.

poor households, compared to an average of 16% of European children<sup>56</sup>. In particular, the higher rates of poverty and material deprivation experienced by Māori children potentially reflects the relatively high proportion living in sole parent beneficiary households.<sup>57</sup>

83. Māori and Pacific children are also more likely to live in poor housing conditions and experience negative health outcomes accordingly<sup>58</sup>. 2013 Census data indicated that 38% of Pacific people, 20% of Māori and 18% Asian people live in crowded households, compared to 4% of Europeans<sup>59</sup>. Housing issues are further exacerbated for disabled Māori children: 45 % living in houses considered cold, 39 % in houses regarded as damp, and 16% in houses that were considered not large enough.<sup>60</sup>
84. From 2011-2013 a Parliamentary Select Committee Inquiry was conducted into the ‘determinants of health for Tamariki Māori (Māori children)’. The Committee’s report was released in 2014, and included over 40 recommendations relating to: research and policy; health services; education; employment and incomes.<sup>61</sup> Key principles identified included:
- The wellbeing of Māori children is inextricable from the wellbeing of their whānau.
  - Acknowledging the importance of collective identity for a Māori child is a first step in realising the potential of a whānau-centred approach to their wellbeing.
  - Enduring change and success for whānau (and therefore Māori children) is possible where whānau themselves are engaged in making the decisions that will affect them.
  - The intergenerational nature of many of the problems facing Māori children be acknowledged and addressed.
  - The application of the Whānau Ora approach is fundamental.

#### *The impact of climate change*

85. The UN Committee on the Rights of the Child has highlighted the relevance of the environment, and specifically climate change, to children’s health.<sup>62</sup> The Committee has stated:

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<sup>56</sup> ibid

<sup>57</sup> ibid

<sup>58</sup> See paragraphs 83 and 84 below

<sup>59</sup> Ministry of Health. 2014. *Analysis of Household Crowding based on Census 2013 data*. Wellington: Ministry of Health, p vi <http://www.health.govt.nz/publication/analysis-household-crowding-based-census-2013-data>

<sup>60</sup> Statistics NZ, (2013), *He Hauā Māori: Findings from the 2013 Disability Survey*. Accessible at: [http://www.stats.govt.nz/browse\\_for\\_stats/health/disabilities/He-haua-maori-findings-from-2013-disability-survey.aspx](http://www.stats.govt.nz/browse_for_stats/health/disabilities/He-haua-maori-findings-from-2013-disability-survey.aspx).

<sup>61</sup> Māori Affairs Committee, (2014), *Inquiry into the Determinants of Health for Tamariki Māori*. Accessible at: [http://www.parliament.nz/resource/en-nz/50DBSCH\\_SCR6050\\_1/bbe4e16f5d440017fd3302f051aca3edff179b7f](http://www.parliament.nz/resource/en-nz/50DBSCH_SCR6050_1/bbe4e16f5d440017fd3302f051aca3edff179b7f).

<sup>62</sup> UN Committee on the Rights of the Child, (2013), *General Comment No. 15 on the rights of the child to the highest attainable standard of health*, CRC/C/GC/15. Accessible at:

Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children's health and exacerbates health disparities. States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies.

86. This call has been echoed by health professionals in New Zealand; 16 health professional groups issued a joint statement, calling for stronger action across government.<sup>63</sup> The 'Joint Call for Action' noted (among other points) that those at highest health risk from climate change in New Zealand include Māori, Pacific peoples, children, elderly and low income people.
87. The coalition of health professionals also noted that measures to address climate change have the potential to widen or reduce existing health inequities, depending on design and implementation. The actions called for by the coalition of health professionals included:
- Improved health sector planning to prepare for health impacts of climate change.
  - Implementation of measures that prioritise and protect groups likely to be worst affected – Māori, Pacific peoples, children, elderly and low income people.
  - Health (including equity) Impact Assessment (HIA) to be routinely undertaken to inform key climate-relevant policies.

#### *Current policy measures and outcomes*

88. The Government's Better Public Services (BPS) targets have led to a significant reduction in hospitalisation rates for children with first episode rheumatic fever, since the policy's inception in 2011.<sup>64</sup> Immunisation rates have also increased significantly during that period, and are currently at just under 94%, just below the BPS target rate of 95%.
89. *The New Zealand Child Poverty Monitor: Technical Report 2015*, however, indicates that in recent years there has been an overall increase in hospitalisations of children aged 0-14 for medical conditions with a social gradient.<sup>65</sup> The most common primary diagnoses for medical conditions with a social gradient were respiratory illnesses (for example:

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[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en)

<sup>63</sup>See: [http://www.orataiao.org.nz/joint\\_nz\\_health\\_professionals\\_call\\_for\\_action\\_on\\_climate\\_change\\_and\\_health](http://www.orataiao.org.nz/joint_nz_health_professionals_call_for_action_on_climate_change_and_health)

<sup>64</sup> <http://www.ssc.govt.nz/bps-supporting-vulnerable-children#result4>

<sup>65</sup> Simpson J, Duncanson M, Oben G, Wicken A, Pierson M., (2015), *Child Poverty Monitor 2015 Technical Report*, Dunedin: NZ Child and Youth Epidemiology Service, University of Otago; 2015. Accessible at: <http://www.nzchildren.co.nz/#>. states that in the five years 2010–2014 there were 205,661 hospitalisations of children aged 0–14 years for medical conditions with a social gradient: an overall rate of 45.41 per 1,000 children. From 2000 to 2014 the number of hospitalisations for medical conditions with a social gradient increased from 32,907 (a rate of 37.61 per 1,000 children) to 41,729 (45.77 per 1,000 children)

asthma and wheeze, acute respiratory infections, acute bronchiolitis and pneumonia), gastroenteritis, other viral infections and skin infections.<sup>66</sup>

90. *The New Zealand Child Poverty Monitor: Technical Report 2015* also indicates considerable ethnic disparities in these hospitalisation rates, reporting that while they increased for children aged 0–14 years in all ethnic groups from 2000 to 2014, the increase was less marked for European/Other children compared with Māori, Pacific and Asian/Indian children.<sup>67</sup>
91. Furthermore, in the five years from 2008–2012 the mortality rates from medical conditions with a social gradient were found to be significantly higher for Māori and Pacific children compared with other New Zealand children aged 0–14 years. In addition, the mortality rate for injuries with a social gradient was significantly higher for Māori children compared with other New Zealand children<sup>68</sup>.
92. There is accordingly a stark disparity between the success of the BPS targets, which have led to an improvement in the targeted child health outcomes, and the overall decline in health outcomes for children living in disadvantageous social conditions, particularly Maori and Pacific children. In addition, single parent families with younger children across the ethnic spectrum experience low mental health outcomes.<sup>69</sup> This perhaps indicates that an expanded set of child health targets ought to be developed and possibly incorporated within a multi-sectoral child poverty reduction framework, similar to the systemic model recommended by the Expert Advisory Group on Child Poverty.
93. **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.**

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<sup>66</sup> *ibid*

<sup>67</sup> *ibid*

<sup>68</sup> Simpson J, Duncanson M, Oben G, Wicken A, Pierson M., (2015), *Child Poverty Monitor 2015 Technical Report*, Dunedin: NZ Child and Youth Epidemiology Service, University of Otago; 2015. Accessible at: <http://www.nzchildren.co.nz/#>

<sup>69</sup> Social Policy Evaluation and Research Unit, 2016 *Family and Whanau Status Report*, p 41, [http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016\\_0.pdf](http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016_0.pdf)



Right to housing/adequate standard of living, in particular for Maori and Pacific children (LOI Item 14)

94. As noted in the thematic report that accompanies this submission, the prevalence of substandard housing is a major public health issue in New Zealand, with multiple effects on the health and wellbeing of children.<sup>70</sup> Children are often living in cold, damp homes, contributing to a greater burden of disease and poorer outcomes, particularly amongst those who live in lower-income households, and amongst Māori and Pacific children<sup>71</sup>. Furthermore, of the children who live in income poverty in New Zealand, more than 70% live in private rental accommodation. This housing is less affordable as rents are not capped but are subsidised, less habitable because most State housing is insulated but a significant percentage of this housing is not. Security of tenure is also an issue, particularly in private rentals
95. New Zealand's severely deprived housing population has risen both numerically and proportionately during the twelve-year duration between the 2001 and 2013 Census reports<sup>72</sup>. Insecure housing exacerbates ill health, and is associated with poorer educational outcomes for children, as they may have to shift schools frequently, have more days of school, and lack an appropriate space in which to do homework. Overcrowding is disproportionately spread across age, ethnic and socio-economic lines. Data from the 2013 Census indicated that over half of New Zealand's 72,124 crowded households (representing about 10 percent of the population) have two or more children (at least one child aged between 5 and 14 years) living in them<sup>73</sup>.
96. The 2013 Census data also indicated that 38% of Pacific people, 20% of Māori and 18% Asian people live in crowded households, compared to 4% of Europeans<sup>74</sup>. Furthermore, of those New Zealanders who live in crowded households, approximately 35,000 (9%) live in households that do not use any form of heating in their houses<sup>75</sup>. The highest percentage (16%) is in the Counties Manukau DHB region, where 14,103 people living in crowded households use no heating. This region, home to many of New Zealand's most economically deprived urban communities, also experienced a 9% increase in overcrowding in the period between the 2006 and 2013 Census surveys.<sup>76</sup>
97. The Expert Advisory Group on Solutions to Child Poverty reported that many children with disabilities live in housing that is unsafe, cold, damp, and not sufficiently

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<sup>70</sup> Howden-Chapman P, Carroll P. eds. *Housing and Health: Research, Policy and Innovation*. Wellington (NZ): Roger Steele, 2004

<sup>71</sup> Ministry of Health. 2014. *Analysis of Household Crowding based on Census 2013 data*. Wellington: Ministry of Health

<sup>72</sup> Howden-Chapman P, *Home Truths: Confronting New Zealand's Housing Crisis*. Wellington (NZ), Bridget Williams Books, 2015, endnote 35, p. 97, from K Amore, *Severe Housing Deprivation 2001-2013*, He Kainga Oranga/Housing and Health Research Programme, Wellington, forthcoming.

<sup>73</sup> Ministry of Health. 2014. *Analysis of Household Crowding based on Census 2013 data*. Wellington: Ministry of Health, p vi <http://www.health.govt.nz/publication/analysis-household-crowding-based-census-2013-data>

<sup>74</sup> *ibid*

<sup>75</sup> *ibid*

<sup>76</sup> *ibid*

accessible<sup>77</sup>. High housing costs, particularly in Auckland and Christchurch, also place considerable economic pressure on families of disabled children, which often have fewer resources to meet living costs. Currently, the Ministry of Health provides funding support to enable disabled people to make modification to their homes. If modifications are for children aged 16 or under, the applicants are not asset tested to ascertain eligibility<sup>78</sup>. The Child Poverty Action Group has recommended that the Government investigate an individualised funding model, as trialled in Australia, to “provide tailored programmes and services, including housing to disabled children and their families.”<sup>79</sup>.

98. As noted in the Commission’s pre-session submission, the 2012 report of the Expert Advisory Group on Solutions to Child Poverty recommended a suite of measures to improve housing for children living in poor households and address the corresponding impacts on child health and well-being. More recently, the 2016 Families and Whanau Status report produced by the Social Policy and Evaluation Unit (SUPERU) found that improving well-being for children aged under 18 requires a policy focus on the economic security and housing of single parent families of all ethnicities and of Maori, Pacific and Asian two parent families<sup>80</sup>.
99. The Government has taken action to improve housing quality, which have led to improvements in health outcomes. The Warm Up New Zealand home insulation funding programmes has been found to correlate with reduced hospitalisation rates for children in low income households<sup>81</sup>. Furthermore, amendments to the Residential Tenancies Act will require mandatory insulation standards for all social housing and rental accommodation by 2019. However, notwithstanding these developments, significant numbers of New Zealand homes are inadequately insulated. The Energy Efficiency and Conservation Authority (EECA) estimates that at least 600,000 houses still have no or inadequate ceiling or underfloor insulation, of which 300,000 are low income households.
100. **The Committee therefore may wish to recommend that the New Zealand Government<sup>82</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.**

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<sup>77</sup> Expert Advisory Group on Solutions to Child Poverty, *Working Paper 21: Child Poverty and Disability*, 2012, <http://www.occ.org.nz/assets/Uploads/EAG/Working-papers/No-21-Child-poverty-and-disability.pdf> p 10

<sup>78</sup> <http://www.health.govt.nz/your-health/services-and-support/disability-services/types-disability-support/equipment-and-modifications-disabled-people/housing-modifications-disabled-people/modifying-your-home-cost-contribution>

<sup>79</sup> Donna Wynd (Eds) *‘It shouldn’t be this hard’: children, poverty, and disability’*. Auckland: Child Poverty Action Group. 2015, pp. 31.

<sup>80</sup> Social Policy Evaluation and Research Unit, 2016 *Family and Whanau Status Report*, p 33, [http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016\\_0.pdf](http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016_0.pdf)

<sup>81</sup> Housing and Health He Kainga Oranga, *Summary Paper Two: Evaluation of Warm Up New Zealand: Heat Smart Programme*, July 2016.

<sup>82</sup> Please refer to the accompanying thematic report for further detail.

### *Social Security legislation*

101. The Government's response to the Committee's List of Issues states that a number of provisions of the Social Security Act 1964 "specifically address the principle of the best interests of the child".<sup>83</sup> In fact, the Act does not contain any provision that expressly requires the best interests of an affected child to be taken into account by an official making a decision under that Act, including decisions to impose a sanction against a parent, caregiver or young person for non-compliance with benefit conditions. The Expert Advisory Group on Solutions to Child Poverty recommended that section 1B of the Act should be amended to include a best interest requirement<sup>84</sup>.
102. The Social Security Legislation Rewrite Bill was introduced in 2016 for the principal purpose of improving the readability and accessibility of its text, which had become convoluted due to decades of amendments. The Commission has recommended that amendments are made to the Bill to introduce a requirement that decision-makers taken into account the best interests of the child as a primary consideration in any decision made under its auspices. The Bill is currently under the consideration of Parliament's Social Services Committee.
103. **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.**

### *Measures to assist children affected by the Canterbury Earthquakes*

104. The 2010-2011 Canterbury earthquakes resulted in significant loss of life and destruction of homes, businesses, community<sup>85</sup> and city infrastructure. Over the past five years the Government has invested considerable resource in the recovery process. However, during this time significant human rights issues have continued to emerge relating to rights to property, health, housing and participation by affected people in decision making. The Government has acknowledged the ongoing impact of secondary stressors such as community dislocation, financial distress, unresolved insurance issues and damaged housing, which continue to result in high levels of psychosocial harm.
105. Earthquakes differ from other natural disaster events in that there is no clearly defined end point. More than 14,580 aftershocks have been triggered by the September 2010

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<sup>83</sup> New Zealand Government response to the list of issues in relation to the Fifth Periodic Report under the United Nations Convention on the Rights of the Child, June 2016, para 121

<sup>84</sup> Expert Advisory Group on Solutions to Child Poverty, *Solutions to Child Poverty in New Zealand: Evidence for Action*, 2012, Recommendation 6, p 38, 39

<sup>85</sup> Community infrastructure includes churches, church halls and community centres. The loss of these facilities has been particularly challenging, increasing social isolation for some groups, especially older people and disabled people.

earthquake<sup>86</sup>. The ongoing aftershocks have exacerbated people's initial traumatic experiences by causing them to relive these over and over again thereby delaying recovery.

106. New Zealand ranks 13th highest in the OECD for suicide rates. In 2014/2015 564 people took their own life. This number has remained relatively static over the past 8 years, including following the earthquakes. However, since the earthquakes, the total calls for service relating to attempted suicide in Canterbury have grown by between 200 and 400 calls each year. Canterbury Police responded to more than 2800 attempted suicides last year, an increase of 55 percent compared to 2011, and a higher figure than for some other regions combined.<sup>87</sup>
107. The immediate effects of the earthquakes on children and young people in Canterbury were reflected in an increase in behavioural issues, stress, anxiety and depression. Long-term issues are also evident with a University of Canterbury Study of 100 children finding that between 14% and 21% of children starting school in 2013 were displaying symptoms of post-traumatic stress disorder.<sup>88</sup>
108. Access to mental health services in Canterbury has increased dramatically in the years following the earthquakes. Prior to the earthquakes, mental health in Canterbury was on a par or better than most other districts. However, since 2011 the severity of needs of children and young people presenting to mental health services have continued to increase. Overall there has been:
  - a 60% increase in children and young people seeking mental health help – representing an average of 300 more children a month using mental health services compared to pre-quake levels.
  - a 125% increase in mental health presentations to the emergency department (representing all ages)
  - a 33 % increase in adults seeing help—700 more per month than pre-quake levels
  - a 77% increase in new adult rural mental health service cases
109. In March this year the Government provided a one-off additional funding package in recognition of the increased demand on Canterbury's mental health services. However, the Canterbury District Health Board states that it has directed more resource than it is

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<sup>86</sup> The largest since December 2011 occurred on 14 February 2016, just eight days before the fifth anniversary of the 22 February 2011 event. The aftershock, which was of 5.7 magnitude, caused significant cliff collapse above Taylors Mistake in the Port Hills/Banks Peninsula area, with some areas retreating by 5 metres.

<sup>87</sup> Stewart A., Attempted suicides highest in Canterbury, twice as much as Auckland, *The Press*, 20 January 2016, <http://www.stuff.co.nz/national/health/76060300/Attempted-suicides-highest-in-Canterbury-twice-as-much-as-Auckland>, (accessed 10 August, 2016).

<sup>88</sup> Liberty, K., Macfarlane, S., Basu, A., Gage, J. and Allan, M. (2013) PTSD symptoms and coping in children beginning school: Preliminary findings. Christchurch, New Zealand: Researching the Health Implications of Seismic Events (RHISE) Symposium, 22 Nov 2013. In *The New Zealand Medical Journal* 126(1386) <http://currents.plos.org/disasters/article/behavior-problems-and-post-traumatic-stress-symptoms-in-children-beginning-school-a-comparison-of-pre-and-post-earthquake-groups/> (accessed 10 August 2016).

funded for into mental health over the past four years and that the additional funding is insufficient to meet demand. It has warned that the lack of attention to mental health issues is going to have serious future impacts and is affecting the emotional development of children and young people<sup>89</sup>.

110. **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**

New Zealand's youth justice system (LOI Item 15)

111. The Commission welcomes the consideration that Cabinet is giving to bringing the upper age of the youth justice system to enable CRC conformity<sup>90</sup>.
112. However, the Children, Young Persons and their Families (Advocacy, Workforce and Age Settings) Bill, which is currently before Parliament's Social Services Committee, does not include such an amendment. Accordingly, should Cabinet decide to bring this aspect of the youth justice system in to conformity with the CRC, it will have to do so in a subsequent amendment to the CYPF Act. The most likely opportunity for this to occur will be as part of the second tranche of legislation arising from the Modernising Child, Youth and Family reforms.
113. The Commission notes that the Court of Appeal has recognised the special need for protection of young people accorded under the CRC in criminal proceedings, and have affirmed the interpretation of criminal legislation in a manner consistent with international human rights treaties<sup>91</sup>. The Courts have also recognised that the evidence pertaining to the age-related neurological difference between young people and adults and the impact of psychosocial, emotional and other external influences on adolescent decision-making, further supports the application in criminal proceedings of the special protections rights under the CRC<sup>92</sup>.

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<sup>89</sup> Stewart A, CDHB redirected \$30 million to mental health to prevent service 'imploding', *The Press*, 20 May 2016, <http://www.stuff.co.nz/national/health/80172421/CDHB-redirected-30-million-to-mental-health-to-prevent-service-imploding> (accessed 10 August, 2016).

<sup>90</sup> New Zealand Government response to the list of issues in relation to the Fifth Periodic Report under the United Nations Convention on the Rights of the Child, June 2016 para 133

<sup>91</sup> *DP v R* [2015] NZCA 476 at [11]

<sup>92</sup> *Ibid* at [12], citing *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446.

114. The Commission welcomes the focus on reducing the duration and frequency of custodial remands of young people in the Youth Crime Action Plan (YCAP), the Youth Resolution Model (YRM) and the recommendations of the Modernising Child, Youth and Family Expert Panel<sup>93</sup>. The Commission considers that this objective ought to be strengthened by including within the youth justice principles under s 208 of the CYPF Act, a principle that detention pending trial should be used as a last resort measure and for the shortest possible time in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)<sup>94</sup>, as recommended by the Committee in its 2011 Concluding Observations.<sup>95</sup>
115. However, the Commission remains concerned that remands into police custody under s 238(1)(e) of the CYPF Act remain a statutory option. Police cells do not conform to the standards of the Beijing Rules as regards an appropriate custodial environment for children and young people<sup>96</sup>. The Commission considers that the Government should commit to a timeframe for the phasing out the use of police cells as a custodial remand environment and subsequent repeal of s 238(1)(e).
116. **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.**

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<sup>93</sup> New Zealand Government response to the list of issues in relation to the Fifth Periodic Report under the United Nations Convention on the Rights of the Child, June 2016, paras 134-145

<sup>94</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) Rule 13.1

<sup>95</sup> Committee on the Rights of the Child, *Concluding Observations: New Zealand*, 4 February 2011,

CRC/C/NZL/3-4 paragraph 55(c)

<sup>96</sup> Beijing Rules, Rules 13.1-13.5

**(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**