

# Third Universal Periodic Review of New Zealand's Human Rights Performance

## Submission from the Office of the Children's Commissioner

12 July 2018

### Who we are

The Office of the Children's Commissioner (OCC), established in 1989, is an Independent Crown Entity that has a legislative mandate under the Children's Commissioner Act 2003.<sup>i</sup>

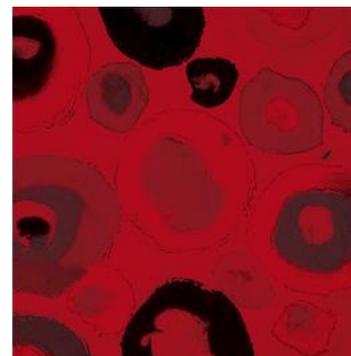
The OCC advocates for the interests, rights and wellbeing of all children and young people and has three key functions:

- 1) Monitoring, assessing and reporting on services provided to children in State care;
- 2) Advocating on issues that affect children and young people;
- 3) Monitoring, advancing and raising awareness of the United Nations Convention on the Rights of the Child (the Children's Convention).

The Commissioner is also a 'National Preventative Mechanism' under the Crimes of Torture Act 1989<sup>ii</sup> and has responsibilities under the Optional Protocol to the United Nations Convention Against Cruel, Inhuman or Degrading Treatment or Punishment.<sup>iii</sup>

### Context for children's rights since the last UPR in 2013

1. There are just over 1.1 million children under the age of 18 in New Zealand - that's about a quarter of the country's population. 71% of children are Pākehā (European descent), 26% are Māori (indigenous peoples of New Zealand), 15% are Asian, 14% are Pacific peoples and 2% are Middle Eastern, Latin American or African.<sup>iv</sup> Ethnic diversity is rapidly increasing. One third of children live in the biggest and most diverse city, Auckland, where 50% of people identify as Māori, Asian or Pacific peoples, and 44% were born overseas. The fastest growing group of young people in Auckland are Pacific peoples.<sup>v</sup>
2. While New Zealand has generally done well in enabling economic and social participation of its people, income inequality and poverty have increased, rising housing costs have hit the poor hardest, and the rate of improvement in many health outcomes has been slower for disadvantaged groups than for others.<sup>vi</sup> Children and young people are the group that carry the largest burden of poverty and its impacts.
3. Approximately 70% of children and young people in New Zealand do well, and some do outstandingly well. But 20% are struggling, and 10% do as badly as — if not worse than — children living in the most disadvantage in comparable OECD countries. Too many children in Aotearoa continue to face unacceptable levels of poverty, abuse, neglect, violence and racial bias.



The Office of the Children's Commissioner represents **1.1 million** people in Aotearoa New Zealand under the age of 18, who make up 23% of the total population.

We advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

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4. New Zealand’s colonising heritage has sown the seeds of intergenerational disadvantage for Māori. As a result, too many Māori families today struggle with low incomes, increasingly precarious employment, and enormous disadvantage when it comes to housing, wages and education.
5. Since the last Universal Periodic Review in 2013, child poverty has become a priority issue for government, leading to some positive policy developments for children. However, the UN Committee on the Rights of the Child examination of New Zealand in 2016 was a stark reminder that there is still much to do. Urgent Concluding Observations from the Committee noted unacceptably high rates of violence, abuse and neglect of children, particularly for those in State care and in secure detention; the lack of a strategy to address increasing rates of child poverty and inadequate housing and social protection measures; and persistently disproportionate negative outcomes for Māori children, Pacific children and children with disabilities.<sup>vii</sup>

## Structure of this report

6. This submission will focus on five key areas that require urgent attention in order to fulfil the rights of children in line with the UN Convention on the Rights of the Child (the Children’s Convention) and the Treaty of Waitangi (the founding document of Aotearoa New Zealand).<sup>viii</sup> These five areas are informed by the Children’s Commissioner’s current priorities; the Concluding Observations from the UN Committee on the Rights of the Child;<sup>ix</sup> evidence and research; and by what the OCC is hearing from children themselves.
7. Areas of critical importance that are *not* covered in this submission include: violence, abuse and neglect; youth justice; and the rights of children in State Care and protection.
8. We support the content relating to children’s rights in submissions from New Zealand’s National Preventive Mechanism under the Optional Protocol to the Convention against Torture, the Human Rights Commission<sup>x</sup> and the joint submission from the children’s sector led by Action for Children and Youth Aotearoa.<sup>xi</sup>
9. The five priority areas for children in Aotearoa this submission will focus on are:
  - A. Building the foundations to implement the Children’s Convention
  - B. Right to an adequate standard of living - poverty, housing and health
  - C. Right to non-discrimination
  - D. Right to participate
  - E. Right to education
10. A summary of recommendations made in this report can be found in *Appendix One*.

## A. Building the foundations to implement the Children’s Convention

11. The Children’s Convention Monitoring Group,<sup>xii</sup> led by the OCC, called on the Government in April 2018 to invest in the infrastructure needed to ensure the Children’s Convention is fully implemented in New Zealand. The group published a report identifying ten areas where improvements need to be made to enable implementation of the Convention<sup>xiii</sup> (*Appendix two*).
12. There is little evidence of consistent and progressive implementation of the UN Convention on the Rights of the Child (Children’s Convention) into domestic law in New Zealand in the last 25 years. Legislation remains out of step with international standards and there is a structural mismatch between the processes required to ensure implementation of the Children’s Convention and the way laws and policies are developed.
13. New commitments to coordinating and implementing a work programme for the Children’s Convention, support for child rights training and the government roll out of a child impact assessment tool are encouraging.<sup>xiv</sup> Recent amendments to the Oranga Tamariki Act 1989, include reference to the provisions and principles of the Children’s Convention and the Disability Convention,<sup>xv</sup> particularly the ability of children to participate and have their voices heard.<sup>xvi</sup>
14. A ‘Children’s Independent Oversight’ review is currently taking place and we recommend sufficiently resourcing the OCC to effectively fulfill its mandate and functions to monitor and advance child rights is considered as part of that review.<sup>xvii</sup>
15. We recommend the Government urgently review specific issues relating to the rights of children and young people in youth justice. In particular, we urge the Government to:
  - Withdraw New Zealand’s reservation to Article 37(c) of the Children’s Convention, which outlines the right of children to be separated from adults when detained by authorities unless it is considered in the child’s best interest not to do so.<sup>xviii</sup>
  - Review rules that allow young people on remand in detention to be detained with young people who have been sentenced. These rules should align with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the ‘Havana Rules’).<sup>xix</sup>
  - Make an amendment to clarify and provide a consistent approach by statute regarding young offenders receiving a custodial sentence not having time spent in detention while on remand deducted from their sentence (unlike adults whose sentence is reduced for time already spent in detention).

### **Recommendations**

- 1) *Accelerate Government action to put in place the foundations required to fully implement the Children’s Convention as recommended in the ‘Getting it Right - Building Blocks’ report written by the Children’s Convention Monitoring Group (Appendix two).*
  - a) *Urgently review specific issues that relate to the rights of children and young people in youth justice (as outlined in para 15).*

## B. Right to an adequate standard of living – poverty, housing and health

### Moving from child poverty to child wellbeing

16. The number of children in New Zealand who experience poverty and material deprivation remains stubbornly high. The latest data shows that 27% of all children and young people live in households with low incomes and 7% of children live in severe poverty.<sup>xx</sup>
17. These figures are further compounded by ethnic and socio-economic disparities, including family status and disability. Māori children disproportionately carry the burden, with rates of child poverty twice that of Pākehā children.
18. The Child Poverty Reduction Bill, introduced in January 2018 has the potential to transform how the lives and wellbeing of New Zealand children are considered.<sup>xxi</sup> We strongly encourage the Government to consider the recommendations in the OCC's submission on the Child Poverty Reduction Bill.<sup>xxii</sup> We recommend that the Bill and the Child Wellbeing Strategy contained in the Bill, explicitly reference the Children's Convention and embed children's rights.

### Housing

19. Issues related to the affordability and availability of housing have led to what is commonly referred to in New Zealand as a 'housing crisis'.<sup>xxiii</sup> This crisis has led to a situation where too many children are unable to access warm, dry and safe homes.
20. Children's health, education and overall wellbeing are deeply influenced by the quality of housing in which they live. The number of children admitted to hospital is strongly linked with poor housing standards, a problem which is compounded by overcrowded households.<sup>xxiv</sup> Insecure housing is also associated with poorer educational outcomes for children, because they may have to shift schools frequently or have more days off. Improving the quality of housing enhances children's health and attendance at school.
21. Homelessness, overcrowding, insecurity of tenure, residential mobility and a significant lack of social housing are just some of the issues that are having a direct and disproportionate impact on the health, safety, education and standard of living of our children. The complex array of issues that have conspired to bring about this crisis are well documented in a government report published in February 2018 called '*A Stocktake of New Zealand's Housing*'.<sup>xxv</sup> The Government is stepping up efforts to address housing issues but New Zealand has a long way to go to meet the SDG 11 target of ensuring access to adequate, safe and affordable housing for all.

### Health

22. A combination of poverty, substandard housing and inadequate access to basic healthcare, underpin the high rates of respiratory and communicable disease in children.<sup>xxvi</sup>
23. Māori children and young people have a higher rate of unmet health needs.<sup>xxvii</sup> This is indicative of the socio-economic barriers many Māori whānau face. For example, many potentially avoidable hospital admissions for poverty-related infectious diseases such as serious skin infections, respiratory infections, influenza, pneumonia and gastroenteritis are higher for Māori children.<sup>xxviii</sup>

24. Pacific peoples experience similarly inequitable health outcomes. Life expectancy is over four years less than for the total population and infant mortality rates remain 20% higher than for the rest of the population.<sup>xxxix</sup> It is of particular concern that Pacific children and young adults are nearly 50 times more likely than New Zealand European children, and twice as likely as Māori children, to be admitted to hospital with acute rheumatic fever.<sup>xxx</sup>
25. Children and young people have increasingly raised concerns about mental health, suicide and lack of timely services and supports. In fact, New Zealand has some of the highest youth suicide rates in the world.<sup>xxxi</sup> If that were not bad enough, the suicide rate of Māori young people is 2.8 times higher than that of non-Māori youth.<sup>xxxii</sup> The government is currently undertaking an inquiry into mental health and addiction and we urge the Inquiry to specifically consider the needs of children and young people.
26. In 2015 the age of entitlement to free primary health care was raised from 6 to 13 leading to a corresponding rise in attendance by children. The upper age for free care was extended to 14 in 2018 with plans to increase incrementally. We are encouraged by this action but recommend increasing the provision of free primary health care to all children under 18 immediately. This is a requirement to meet, in part, SDG target 3.8.

### **Recommendations**

- 2) *Prioritise the enactment of legislation to reduce child poverty and advance child wellbeing, aligned with the Children's Convention, the Treaty of Waitangi, and the SDGs.*
- 3) *Develop and implement a national housing strategy that prioritises the rights of children and is linked to SDG target 11.1. The strategy should address the shortcomings identified in the 2018 Housing Stocktake report.<sup>xxxiii</sup>*
- 4) *Increase the provision of free primary health care services to all children aged under 18 and take action to reduce ethnic disparities in health outcomes.*

## C. Right to non-discrimination

27. Many, in fact most, Māori children do well. But too many Māori children and young people are included in the 30% who experience real adversity. There are systemic barriers in education, health, care and protection and youth justice which make it more difficult for Māori children to thrive. Failings in the way that state institutions interact with Māori are representative of a failure to honour the Treaty of Waitangi.
28. These long standing issues are not just historic. In a recent engagement that the OCC conducted with children and young people about their experience of education, Māori children and young people told us – unprompted - that they experience racism at school. We heard from children who described feelings of being treated unequally because of their culture.<sup>xxxiv</sup>
29. Discrimination is also felt by other groups of children including Pacific peoples, migrants, refugees and people with disabilities. These groups experience markedly worse outcomes across a range of key socio-economic indicators.

### **Recommendations**

- 5) *Address all forms of racism and discrimination and properly resource and support Māori communities, whānau, hapū and iwi to determine and drive the solutions that work for them.*

## D. Right to participate

30. Children have expressed to us the importance of family, their value of education, and communicated serious concerns about bullying, discrimination and racism taking place in their schools and communities. Having children's views included in the design and implementation of government policies would have a positive impact on the quality of decision making, especially as it relates to children. For example, in education, health and housing policy, and in the way we respond to family violence and child poverty.
31. There has been progress in embedding child participation rights in Oranga Tamariki legislation and through the redesign of the care and protection and youth justice systems. These changes reinforce that decisions affecting children and young people should consider the child's views as well as their age, identity, cultural connections, education and whether they experience disability.
32. The recent introduction of a child impact assessment tool for policy makers is a welcome development. The tool supports better policy advice and child-centred practice by considering the impact of policy and identifying when it is important to hear the views of children and young people in the process.<sup>xxxv</sup>

### **Recommendations**

- 6) *Ensure all public servants receive training on child rights and are equipped with the knowledge and tools needed to carry out quality child impact analyses and consultation with children and young people.*

## E. Right to education

33. The New Zealand education system is designed for the 'majority' and does not always deliver well for children who have greater needs such as children with intellectual disabilities or neurodiversity. The education system is characterised by relatively high levels of disparity and at every stage the system is less successful for Māori, children from low income families, and for Pacific peoples. There is a significant review of the education system currently taking place which provides an opportunity to address some of these long standing issues.<sup>xxxvi</sup>
34. Having specific strategies for both Māori children and Pacific children has led to some improvements in recent years, however current data shows continuing disparities in educational outcomes across ethnicities.<sup>xxxvii</sup> Furthermore, schools continue to stand-down, suspend, and exclude more Māori students than any other ethnic group.<sup>xxxviii</sup>
35. Some children with neurodevelopmental issues and/or mental health difficulties face barriers to accessing full-time education and are over-represented in school disciplinary processes, particularly exclusions. Long delays continue for students in accessing early intervention and specialist services, including communication and behaviour support.
36. Reported levels of bullying in New Zealand schools is the second highest in the OECD.<sup>xxxix</sup> The Government is yet to require that schools take action to prevent and reduce instances of bullying in schools, and monitor the impact of bullying on student wellbeing and mental health.
37. While there are some references to 'rights' in the New Zealand Curriculum, there are no specific requirements to teach or receive learning about human rights or children's rights and no references to the Children's Convention itself, nor recognition that children are entitled to their rights as accorded by the Convention.

### **Recommendations**

- 7) *When reviewing the education system, the Government should ensure that:*
  - a) *children are listened to and that their views are taken into account at all levels;*
  - b) *services and supports for tamariki Māori are improved by addressing unconscious bias and removing systemic racism;*
  - c) *education is inclusive of all children - especially those with intellectual disabilities or neurodiversity;*
  - d) *every school take action to prevent and respond to bullying;*
  - e) *urgent measures are taken to reduce suspensions and exclusions from school;*
  - f) *child rights education in schools is resourced and promoted.*

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- <sup>i</sup> Children’s Commissioner Act 2003  
<http://www.legislation.govt.nz/act/public/2003/0121/latest/DLM230429.html>
- <sup>ii</sup> Crimes of Torture Act 1989  
<http://www.legislation.govt.nz/act/public/1989/0106/25.0/DLM192818.html>
- <sup>iii</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment <https://www.ohchr.org/en/ProfessionalInterest/Pages/OPCAT.aspx>
- <sup>iv</sup> Ethnicities add to over 100% because some children have more than one ethnicity  
<http://www.occ.org.nz/assets/Uploads/AgesEthnicityMarch2018.pdf>
- <sup>v</sup> <https://www.stats.govt.nz/topics/population>
- <sup>vi</sup> OECD, Economic Surveys New Zealand: Overview (June 2015)  
<https://www.oecd.org/eco/surveys/New-Zealand-2015-overview.pdf>
- <sup>vii</sup> Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of New Zealand 2016  
[https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT\\_CRC\\_COC\\_NZL\\_25459\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_COC_NZL_25459_E.pdf)
- <sup>viii</sup> The Treaty of Waitangi/Te Tiriti o Waitangi, is Aotearoa New Zealand’s founding document  
<https://www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/the-basis-for-all-law/treaty-of-waitangi/>
- <sup>ix</sup> Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of New Zealand 2016  
[https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT\\_CRC\\_COC\\_NZL\\_25459\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_COC_NZL_25459_E.pdf)
- <sup>x</sup> <https://www.hrc.co.nz/>
- <sup>xi</sup> <http://www.acya.org.nz/>
- <sup>xii</sup> The Children’s Convention Monitoring Group monitors the New Zealand Government’s implementation of the Children’s Convention, its Optional Protocols and the Government’s response to recommendations from the United Nations Committee on the Rights of the Child.  
<http://www.occ.org.nz/childrens-rights-and-advice/uncroc/uncroc-role/>
- <sup>xiii</sup> Building Blocks - Building the Foundations to Implement the Children’s Convention 2018  
<http://www.occ.org.nz/publications/reports/getting-it-right-building-blocks/>
- <sup>xiv</sup> <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>
- <sup>xv</sup> The Convention on the Rights of Persons with Disabilities  
<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>
- <sup>xvi</sup> Many amendments incorporated under the Children, Young Persons and Their Families Act (Oranga Tamariki) Legislation Act 2017 have entered into force and final amendments will take effect on 1 July 2019 <http://www.legislation.govt.nz/act/public/1989/0024/121.0/DLM147088.html>
- <sup>xvii</sup> <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/oversight-for-children/children-s-oversight-consultation-document.pdf>
- <sup>xviii</sup> <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- <sup>xix</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules), 1990, see para 17,  
[https://www.unodc.org/pdf/criminal\\_justice/United\\_Nations\\_Rules\\_for\\_the\\_Protection\\_of\\_Juveniles\\_Deprived\\_of\\_their\\_Liberty.pdf](https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf)
- <sup>xx</sup> <http://www.childpoverty.co.nz/>
- <sup>xxi</sup> <http://www.legislation.govt.nz/bill/government/2018/0014/latest/d56e2.html>
- <sup>xxii</sup> OCC Submission on the Child Poverty Reduction Bill 2018  
<http://www.occ.org.nz/publications/submissions/moving-from-child-poverty-to-child-well-being/>
- <sup>xxiii</sup> <https://www.beehive.govt.nz/sites/default/files/2018-02/A%20Stocktake%20Of%20New%20Zealand's%20Housing.pdf>
- <sup>xxiv</sup> <http://www.childpoverty.co.nz/flow-infographics/crowded-homes-and-child-poverty-2016>
- <sup>xxv</sup> <https://www.beehive.govt.nz/sites/default/files/2018-02/A%20Stocktake%20Of%20New%20Zealand's%20Housing.pdf>
- <sup>xxvi</sup> <http://www.nzchildren.co.nz/>
- <sup>xxvii</sup> For example, around one in five Māori children has asthma – a rate 1.4 times that of non-Māori children. Māori children are almost twice as likely to be either obese or morbidly obese compared with

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non-Māori children. See Ministry of Health, (2015), *Annual Update of Key Results 2014/15: New Zealand Health Survey*, at pp 17, 51. Accessible at: <http://www.health.govt.nz/publication/annual-update-key-results-2014-15-new-zealand-health-survey>

<sup>xxviii</sup> Ibid

<sup>xxix</sup> Stats NZ,

[http://archive.stats.govt.nz/browse\\_for\\_stats/people\\_and\\_communities/pacific\\_peoples/pacific-progress-health/overall-health.aspx](http://archive.stats.govt.nz/browse_for_stats/people_and_communities/pacific_peoples/pacific-progress-health/overall-health.aspx)

<sup>xxx</sup> Ibid

<sup>xxxi</sup> <https://data.oecd.org/healthstat/suicide-rates.htm>

<sup>xxxii</sup> <http://www.health.govt.nz/publication/annual-update-key-results-2014-15-new-zealand-health-survey>

<sup>xxxiii</sup> <https://www.beehive.govt.nz/sites/default/files/2018-02/A%20Stocktake%20Of%20New%20Zealand's%20Housing.pdf>

<sup>xxxiv</sup> <http://www.occ.org.nz/publications/reports/education-matters-to-me-experiences-of-tamariki-and-rangatahi-maori/>

<sup>xxxv</sup> <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>

<sup>xxxvi</sup> <https://www.education.govt.nz/ministry-of-education/consultations-and-reviews/>

<sup>xxxvii</sup> [http://www.stats.govt.nz/browse\\_for\\_stats/snapshots-of-nz/nz-social-indicators/Home/Education/18-year-olds-with-higher-qualif.aspx](http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Education/18-year-olds-with-higher-qualif.aspx)

<sup>xxxviii</sup> <http://www.educationcounts.govt.nz/statistics/indicators/main/student-engagement-participation/Stand-downs-suspensions-exclusions-expulsions>

<sup>xxxix</sup> PISA 2015 Results, Student's Wellbeing, Volume III, page 138 on bullying rates, [http://www.keepeek.com/Digital-Asset-Management/oecd/education/pisa-2015-results-volume-iii\\_9789264273856-en#.WPemLvmGMUE#page5](http://www.keepeek.com/Digital-Asset-Management/oecd/education/pisa-2015-results-volume-iii_9789264273856-en#.WPemLvmGMUE#page5)