

GETTING IT RIGHT

THE CHILDREN'S CONVENTION IN AOTEAROA

The UN Convention on the Rights of the Child Monitoring Group

We monitor 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.

NOVEMBER 2017

www.occ.org.nz/childrens-rights-and-advice/uncroc/

ISBN 978-0-473-41951-6



MESSAGE FROM THE CHILDREN'S COMMISSIONER



In September 2016, I attended New Zealand's fifth examination by the Committee on the Rights of the Child in Geneva. While there, I realised that other countries take the Children's Convention, and their practical compliance with it, much more seriously than we do here in Aotearoa, New Zealand. Many government departments are unaware of its provisions, and still less apply it to their day-to-day business.

It is an exciting document - even 28 years after it was written, it still speaks powerfully. It is a charter of guarantees which all children deserve and when faithfully applied and upheld, will ensure that our children flourish, prosper and thrive.

A key statutory obligation for the Children's Commissioner is to raise awareness and understanding of the Children's Convention and to advance and monitor the application of it by the Departments of State and other instruments of the Crown.¹ One of the ways that I do this is by convening the 'UN Convention on the Rights of the Child Monitoring Group' (UMG) to support this work.

In New Zealand, we have a unique context with Te Tiriti o Waitangi, to apply the Children's Convention for all children. As a country, I think we need to be much more enthusiastic and positive about child rights – especially in the context of a child's connection with their family, whānau, hapū, iwi and communities.

One year on from the report by the Committee, we can see that some initiatives have taken place, but much progress is still needed. Starting from April 2018, we will provide a yearly report on the Government's compliance with the Children's Convention, and progress in adopting those areas where we fall short. This is a collaborative effort and I would like to acknowledge the work of the UMG.

We welcome the new Government's focus on children's issues. It signals a commitment to putting the rights and wellbeing of children at the centre of government action. It also heralds an opportunity to listen more to children's voices and put the fundamental principles of children's rights into practice.

This report signals that we must take our obligations to children's rights seriously. We need to be far more committed to applying the Children's Convention and honest about our progress in implementing it. This report launches this commitment.

Judge Andrew Becroft, Children's Commissioner

¹ Section 12(1)(d) and (f) of Children's Commissioner Act 2003.

CHILDREN IN AOTEAROA, NEW ZEALAND



Most children in New Zealand do well. Most children eat healthy food and live with their families in safe, warm homes. Most children go to school and have time to play and to be with family and friends. They are loved and they are cared for.

But for many children, growing up in New Zealand is really tough. Too many children in Aotearoa face unacceptable levels of abuse, neglect, violence and racial bias. Children are persistently the population group most likely to experience the sharp edge of poverty and hardship.

New Zealand children are often overlooked and seldom heard. Children are unable to vote and rarely have a voice in decision making. Despite representing a quarter of the population, what children in New Zealand think about things - like their schooling, where they like to play, or what makes them feel safe - is often not considered when making rules or developing policies.

***“We know that most of our children do well, and some do outstandingly well. But 20% are struggling, and 10% do as bad if not worse, than most comparable OECD countries.*”**

All our children would benefit significantly if New Zealand were fully applying the Convention, but especially the 30% whose needs are not being met.”

- Judge Andrew Becroft, Children’s Commissioner

CHILDREN'S RIGHTS IN AOTEAROA, NEW ZEALAND

Children live, learn and grow, not in isolation but as part of families, whānau, hapū, iwi and communities. Children have the same basic human rights as adults, but they also have additional rights in recognition of their special need for protection. Children – particularly younger children – are dependent on adults, like parents and teachers, to support them to develop and thrive.

Children's rights are set out in the United Nations Convention on the Rights of the Child (the Children's Convention or the Convention). This is the most widely accepted international human rights treaty in history. It has been ratified by 195 countries, including New Zealand who signed it on 6th April 1993.

The Children's Convention defines the universal basic rights of all people under 18 years old. While all the major international human rights conventions apply to children,² the Children's Convention outlines what all countries have promised to do to ensure children have the opportunity to live safe, healthy and happy childhoods.

The Children's Convention provides a framework for thinking about all the interrelated issues affecting children - like health, education, play, family, language, culture, identity, privacy and having a say - in a way that enhances their wellbeing.

When the New Zealand Government ratified the Children's Convention, it agreed to promote, protect, respect and fulfil the rights of all children.

The Government made a promise to New Zealand children to put the rights guaranteed in the Children's Convention in our laws, policies and practices. The Government also agreed to share publicly what they are doing to ensure children are safe, healthy and thriving and to report their progress to the United Nations every five years.

***"The government should help children who are struggling and send food to schools and send financial help to schools and families in need."* - Mai World Survey³**

² www.hrc.co.nz/your-rights/human-rights/international-human-rights-legislation/international-obligations/

³ Mai World is an initiative of the Office of the Children's Commissioner to collect and share children and young people's voices www.occ.org.nz/4youth/maiworld/

THE UN CONVENTION ON THE RIGHTS OF THE CHILD

- Adopted by the UN General Assembly on 2 September 1990. New Zealand ratified it in 1993.
- The most widely ratified international human rights treaty in history (195 countries ratified).
- Includes civil, political, economic, social and cultural rights of children up to the age of 18 unless national laws recognise an earlier age of majority.
- Includes 54 Articles and three Optional Protocols.⁴



FOUR FUNDAMENTAL PRINCIPLES*

1. Non-discrimination (Article 2)

Children should not experience discrimination of any kind on any grounds.



2. The best interests of the child (Article 3)

In all decisions affecting children, their best interests should be a primary consideration.



3. Ensuring the child's survival and development (Article 6)

Children have an inherent right to life and governments should ensure to the maximum extent possible that they can survive and thrive.



4. Participation (Article 12)

Children have a right to an opinion, and for that opinion to be heard, on matters that affect them.

OPTIONAL PROTOCOLS TO THE CONVENTION

There are three Optional Protocols that complement the Convention and provide greater protection for children in certain areas. These Optional Protocols are treaties in their own right. They are 'optional' because the obligations may require more significant changes than those in the original Convention so countries must independently choose whether or not to be bound by them.

1. Optional Protocol on the Involvement of Children in Armed Conflict – New Zealand ratified in 2001.
2. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography – New Zealand ratified in 2011.
3. Optional Protocol on a Complaints Procedure (for rights violations) – New Zealand has not yet ratified.

4. www.ohchr.org/en/professionalinterest/pages/crc.aspx

* Articles 4 and 5 of the Children's Convention are also very important. Article 4 requires countries to do all they can to implement the Convention. Article 5 recognises the role of parents, and wider family and communities, in guiding and supporting children.



ARE WE GETTING IT RIGHT?

The UN Committee on the Rights of the Child (the Committee) is made up of experts on children and their rights. The Committee uses its expertise to examine how well countries are implementing the Children's Convention; to discuss issues with the Government; and make recommendations aimed at helping progress children's rights.

New Zealand was last reviewed by the Committee in September 2016. This was New Zealand's fifth report to the UN. The Committee came back with 105 recommendations to improve the rights of children in New Zealand. Some of these Concluding Observations were highlighted as requiring urgent attention.⁵

- 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**.
- Persistently disproportionate negative outcomes for **Māori children, Pasifika children and children with disabilities**.

“Māori are more than problems to be solved, we are potential to be realised.” - Mai World Survey

The Committee acknowledged initiatives which have taken place in recent years to advance the rights of children in Aotearoa, including the establishment of Oranga Tamariki, the Ministry for Vulnerable Children, and the reforms focussed on family violence.

While there has been positive progress and commitment to considering the views of children and their needs in the legislation and service design for Oranga Tamariki, the Committee remained concerned with the **lack of an overarching plan to progress the rights of all children** and recommended swift action be taken to implement and promote the Children's Convention.

⁵ www.occ.org.nz/assets/Uploads/Final-concluding-observations.pdf

“We need love. We need adults who don’t just see us as we are now but what we can be in the future.” - Mai World Survey

HOW HAS THE NEW ZEALAND GOVERNMENT RESPONDED?



In 2014, the Government identified three key areas where they would focus efforts to improve outcomes for children and give effect to obligations under the Children’s Convention.

1. Investigating raising the age that young people leave care to 18.
2. Improving the input of children and young people’s views in the formulation of legislation and policies associated with their rights.
3. Facilitating consideration of children’s rights in the development of major policy and legislative initiatives, to ensure that New Zealand’s obligations under the Children’s Convention are taken into account.

Following the establishment of Oranga Tamariki, some recent key initiatives that have progressed these three areas include:

- Raising the age of care and protection for children to 21 (with transition support and advice available up to age 25) and including 17 year olds in State care and youth justice (from 1 July 2019).
- Amendments to the Oranga Tamariki Act (1989)⁶ demonstrating a commitment to the provisions and principles of the Children’s Convention, particularly the rights of children to participate and have their voices heard.⁷
- Testing of a child impact assessment tool designed to help policy makers consider the impacts of policy on children and young people.
- The views of children and young people contributed to the redesign of the care and protection and youth justice system. These views were considered in the establishment of VOYCE – Whakarongo Mai, an independent connection and advocacy service for children and young people in State care.

⁶ The Oranga Tamariki Act 1989 is the new name given to the Children, Young Persons, and Their Families Act 1989.

⁷ For example, legislative changes have strengthened the requirements for Courts and other entities covered by the Act to respect children’s rights as set out in the Children’s Convention.



RECOMMENDATIONS

We are committed to working alongside Government to advance the rights of children in New Zealand. We urge the new Government to act on the following three recommendations:

1. Build upon and expand the rollout of a child-centred, rights-based approach to policy and legislative reform while addressing the recommendations identified by the UN Committee. Identify where children's rights are not being met, what needs to be done, who will do the work, timeframes for implementation and how the work will be monitored.
2. Identify and resource a permanent coordinating mechanism so that lead government agencies have the responsibility and authority to implement the Children's Convention.
3. Ensure children and young people's views are taken into consideration in the development of legislation and policies in line with the Children's Convention.

WHO WE ARE AND WHAT WE DO

The UN Convention on the Rights of the Child 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.⁸

The Office of the Children's Commissioner convenes this group. Permanent members include Action for Children and Youth Aotearoa (ACYA), the Human Rights Commission⁹, Save the Children New Zealand and the United Nations Children's Fund New Zealand (UNICEF).

We will continue to keep a watchful eye on how the Government is keeping its promises to New Zealand children and progressing areas of concern leading up to New Zealand's next UN review in 2021. Each year until then, the group will publish progress reports focusing on legal and policy developments for children and young people in New Zealand and how those developments align with the principles of the Children's Convention.

We hope these reports will highlight progress of children's rights and identify where New Zealand can do better.¹⁰ The group will also meet regularly with Government to share information and ideas about how to progress child rights and to offer support, advice, tools and training.

⁸ UMG Terms of Reference: www.occ.org.nz/assets/Uploads/UMG-TOR-adopted-May-2017.pdf

⁹ The Human Rights Commission is New Zealand's National Human Rights Institution (NHRI) and as such fulfils the role of promoting and ensuring the implementation of the Children's Convention alongside the Children's Commissioner.

¹⁰ These reports will also contribute to other human rights treaty reviews like the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of Persons with Disabilities, and the Universal Periodic Review.