



REPORT OF THE NEW ZEALAND CHILDREN'S COMMISSIONER TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD 2010

INTRODUCTION

1. New Zealand's Children's Commissioner has a statutory responsibility to advance and monitor the application of the United Nations Convention on the Rights of the Child (UNCROC) by departments of State and other instruments of the Crown¹.
2. A prior report was provided in November 2008. This report substantially updates that report and can be read on its own. The report includes some general comment on the situation of children in New Zealand and draws the Committee's attention to both:
 - those general measures of implementation where improvement would significantly enhance respect for children's rights and interests in New Zealand; and
 - specific aspects of New Zealand laws, policies and services where New Zealand could do better in meeting children's rights and interests.

This introduction provides some general background. A full set of recommendations is contained at its end, in paragraph 15.

General Comment

Progress

3. There are things to celebrate in the general position of children in New Zealand, their enjoyment of rights, and some recent progress towards full implementation of UNCROC. As is appropriate the positive developments in children's lives over the reporting period are set out in more depth in the government's report. The most significant have been:
 - In respect to the implementation of rights to protection, legislative amendment to prohibit use of force against children for the purpose of correction.
 - In respect to rights of provision of services for children's development, the introduction of the Working for Families package of financial assistance for children and their families, and the provision of 20 hours free early childhood education for 3 and 4 year olds.

¹ Children's Commissioner Act 2003, s12

4. In respect of rights of participation progress has been slower. However, in general the well being of children overall is better now than it was 15 years ago in significant areas of material well being, education and to a lesser extent health.

Priority, disparities and participation.

5. While commendable, the developments that have advanced realisation of children's rights have been specific responses to specific issues, such as family incomes or rates of immunisation, and do not reflect any strategic focus on meeting the best interests of children across government.
6. There is still some way to go in fully realising the UNCROC general principles of best interests, non-discrimination and participation.

Priority for children

7. Children and their interests are relatively invisible in public affairs in New Zealand and little priority is given to them, or their rights and interests, by decision-makers. For example children have remained the group in our society most likely to be living in hardship or income poverty, a circumstance that has persisted for twenty years through times of growth and of recession². Yet there has been little explicit and consistent government attention to addressing the relatively high levels of income poverty and hardship for a significant group of children. Partly this is because children have little political "clout". They do not vote and New Zealand's democratic processes are not well suited to taking children's interests into account. Neither are there mechanisms to ensure the deliberate and systematic consideration of children and their interests when laws, policies and practices are being formulated. This is the key challenge in giving effect to the best interests principle.

Disparities – ensuring maximum survival and development

8. Persistent disparities remain in the lives of New Zealand children. Education and health indicators tell us that children are, in the main, better off in these areas than at last report, but there are groups of children, up to 20 percent in some dimensions of well being, who fall well behind. This has been a persistent feature of generally good education outcomes (where New Zealand children on average achieve well in cross national assessments), and of levels of health status³ where rates of illness such as rheumatic fever and chronic respiratory ailments are associated with poverty and overcrowding.⁴ The Working for Families package has meant many children are materially better off, but some 20 percent of children remain below the commonly used EU measure of

² Children have a hardship rate (unacceptably low living standards) of 19 percent. This compares to 13 percent for the whole population and 4 percent for those over 65. This is based on a measure of living standards that uses household incomes and non-income measures including information on food, clothing, accommodation, ability to pay the bills on time, keep the home warm, purchase school uniforms etc. Perry, B *Non-income measures of material wellbeing and hardship: first results from the 2008 New Zealand Living Standards Survey, with international comparisons* Working Paper, Ministry of Social Development, 2009.

³ Craig E, Jackson C, Han DY, NZCYES Steering Committee. *Monitoring the Health of New Zealand Children and Young People: Literature Review and Framework Development*. 2007. Auckland: Paediatric Society of New Zealand, New Zealand Child and Youth Epidemiology Service. Available on <http://www.paediatrics.org.nz>

⁴ Ministry of Social Development, *Children and young people: indicators of wellbeing in New Zealand 2008: summary table of indicators*, www.msd.govt.nz

income poverty.⁵ Of particular concern is the disproportionate number of Maori and Pacific children who live in hardship and have poorer health and education outcomes⁶. These disparities put at risk the right to maximum survival and development for too many children.

Participation

9. Children are relatively invisible in the public domain. Their views do not appear often in the media. Their interests tend to be subsumed into those of the adult leaders of households, families, schools and other institutions. Their identity tends to be collapsed into being dependents in families or pupils in schools. This relative invisibility is reinforced by some longstanding beliefs and attitudes about children that tend to devalue them as citizens.⁷ Children are seldom recognised by the state as active participants in all the settings in which they live, play, learn and grow. This is the key challenge to achieving rights to have a voice and recognising the principle of participation.

Summary

10. In summary, while progress has been made in the implementation of UNCROC and in the enjoyment by children in New Zealand of their rights under the Convention, much remains to be done. The greatest challenges are threefold:
 - having children's rights and interests given more weight in central government policy and operational decision-making
 - addressing the disparities in wellbeing that see some 20 percent of children fall well behind in their right to optimal development
 - increasing children's participation in decision making and in the governance and management of the institutions in which they spend much of their time
11. These challenges are substantial because they are systemic and attitudinal. Nevertheless they must be addressed if we are to ensure that each and every child in New Zealand enjoys the rights guaranteed to them under the Convention.

General recommendations

12. Consistent with the summary conclusion above, the Committee is recommended to explore the following themes in its discussions with the New Zealand government:
 - (i) *the weight given to children's interests, rights and well-being in policy and operational decision-making*
 - (ii) *the disparities in children's material well-being, health, welfare, education and housing*
 - (iii) *the level of children's visibility and participation in New Zealand society.*

⁵ Perry, B *Household income in New Zealand: Trends in indicators of inequality and hardship 1982 - 2008: short summary*, Ministry of Social Development, www.msd.govt.nz

⁶ Ibid

⁷ Although attitudes are slowly changing, historically we have tended to regard children as either:

- (i) "human becomings" - still developing and therefore not full citizens;
- (ii) "innocents" - vulnerable, dependent and in need of protection; or
- (iii) "sinners" - in need of firm guidance as to what is right and proper

13. In particular the Committee might like to question, amongst other things, how the New Zealand government:
- *factors children, and their rights, into government decision-making processes*
 - *provides information about the impact on children, including their views, to decision-makers*
 - *prioritises children's needs, especially in economic policy development and budget allocation*
 - *ensures equity in the enjoyment of children's rights and addresses disparities.*
14. In addition to these general recommendations, others of a more specific nature that are made in the report are collated and set out below.

Recommendations

15. The recommendations the Committee are invited to consider in this report are:
- (i) *That the Ministry of Social Development be responsible for leading government's work to implement UNCROC, including addressing any recommendations outstanding from the concluding observations on the initial and second periodic reports as well as those made in response to the third and fourth consolidated reports currently being considered.*
 - (ii) *That the Ministry of Social Development report annually to the Commissioner for Children on:*
 - *what progress there has been towards removing each reservation and what impediments to removal remain*
 - *the impact on children of each of the reservations remaining in place*
 - *any policy work or practice changes needed to mitigate the negative effects on children of the reservations remaining in place*
 - *any risk to New Zealand's compliance with the spirit and intent of UNCROC and the extent to which the reservation is undermining realisation of related rights under UNCROC.*
 - (iii) *That new procedures be established, or existing procedures enhanced, to protect against the passing of legislation which is inconsistent with New Zealand's obligations under UNCROC.*
 - (iv) *That the passage of the Children, Young Persons and Their Families Amendment Bill (No6) (2007) through Parliament be expedited.*
 - (v) *That government undertake work to examine how more weight could be given to children's rights, interests and well-being in government's decision-making processes including an explicit requirement on relevant agencies to provide information to decision-makers on the impact on children of policy proposals.*
 - (vi) *That government:*
 - (a) *establish, as soon as possible, processes to assess the impact on the material circumstances of children, of tax, fiscal and economic policy;*
 - (b) *undertake work to examine how to:*

- *take children's interests into account, and wherever possible give them priority in the development of tax, fiscal and economic policies;*
 - *protect children from income poverty as a result of tax, fiscal and economic policies;*
- (c) *specifically identify the level of investment in children in budget and appropriation processes; and*
- (d) *increase the resources allocated to children in line with the OECD's recommendations.*
- (vii) *That government should review the information collected about children with a view to improving its consistency with UNCROC definition, its completeness and its robustness.*
- (viii) *That steps be taken to ensure children's views are taken into account in the development of policies and practices to address climate change.*
- (ix) *That, with a view to increasing children's participation and visibility within New Zealand society:*
- (a) *the Ministry of Social Development, as part of its leadership role in implementing UNCROC, ensure information and training about UNCROC are provided to public servants, with a particular emphasis on participation rights.*
 - (b) *children's participation rights be incorporated when legislation, regulations, or practice guidelines are being developed or reviewed.*
- (x) *That New Zealand's adoption law be reformed to bring it in line with modern adoption practices, UNCROC and the Committee's previous recommendations.*
- (xi) *That, in the health sector, government give priority to the development of services for adults with drug and alcohol addictions, and other mental health issues, who have parenting responsibilities for young children*
- (xii) *That steps be taken urgently to increase the availability of, and access to, services to address mental ill health and behavioural problems amongst children.*
- (xiii) *That those provisions of the Children Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2009 which are contrary to UNCROC, the "Beijing Rules" or the "Riyadh Guidelines" be repealed.*
- (xiv) *That*
- (a) *consideration be given to the development of a stand-alone regulatory framework governing children's work*
 - (b) *employment policy and practice as it applies to children should:*
 - *apply the best interests principle*
 - *take children's views into account*
 - *ensure protections for children who work are effective*

GENERAL MEASURES OF IMPLEMENTATION (arts 4, 42 and 44.6)

Work on the Committee's previous recommendations

16. The Ministry of Youth Development developed and led a work programme to address the Committee's concerns between 2000 and 2008. However the work programme has been retired⁸ pending the Committee's concluding observations on New Zealand's 3rd and 4th periodic reports. Responsibility for co-ordinating the government's UNCROC report moved from the Ministry of Youth Development to the Ministry of Social Development in 2009.
17. It has not been entirely clear over the past two years which Ministry within central government has overall responsibility for managing and leading work to meet government's obligations under UNCROC, rather than just co-ordinating the reporting. It is understood that, in addition to its role co-ordinating the government's report, the Ministry of Social Development is taking leadership of UNCROC implementation including government's response to the Committee's recommendations. This commitment should be welcomed and reinforced.
18. The Committee may wish to consider making the following recommendation:

That the Ministry of Social Development be responsible for leading government's work to implement UNCROC, including addressing any recommendations outstanding from the concluding observations on the initial and second periodic reports as well as those made in response to the third and fourth consolidated reports currently being considered.

Removal of reservations

19. Despite some significant recent progress, especially in relation to the general reservation and the reservation to article 37(c), barriers remain to the removal of the reservations.

General reservation – children unlawfully in New Zealand

20. Amendments to immigration legislation⁹, and pending regulations, raise the upper age of the child from 17 to 18 years, make it possible for children ordinarily resident in New Zealand to go to school and remove a requirement for schools to share information about immigration status with immigration authorities. These changes should enable children unlawfully in New Zealand to attend school. As a result of these changes too, government should be in a position to better assess the number of children affected by the general reservation.
21. The complexity of the health funding structure makes it difficult to address the issue of access to health services for children unlawfully in New Zealand. Access to health care varies according to the funding policies of individual District Health Boards, which determine, in part, the practice of individual doctors. Government should be encouraged to continue work on these issues

⁸ Ministry of Youth Development, *United Nations Convention on the Rights of the Child: 2008 reporting (summary document)*, <http://www.myd.govt.nz/working> with young people/uncroc, page 8

⁹ Immigration Act 2009

to ensure all children in New Zealand are able to access appropriate healthcare when they need it.

22. Similarly more work is needed to establish the impact of the general reservation on the provision of income support and social assistance.

Reservation to article 32(2) – children in employment

23. There has been increased focus on children's work over the reporting period. The launch of the "My first job" website is a positive development. However it appears unlikely that a minimum age for employment will be introduced in the near future. Please see paragraphs 131 to 136 below for further comments on children in employment.

Reservation to article 37(c) – age-mixing

24. The government should be commended for the continued improvements in this area, particularly in relation to detention in prisons, at the border, under military law and in mental health facilities. However several barriers to removal still remain. As long as the upper age limit of the Children, Young Persons and their Families Act remains 17, all 17 year olds will be dealt with under the adult justice system. There is provision for vulnerable young men up to the age of 20 to be held in youth units where it is in their best interests to do so. Age-mixing still occurs in police custody and transport. The lack of youth beds for girls in prisons means they are regularly held with older women in women's prisons. Furthermore there is now potential for children as young as 12 and 13 to be held in detention with adults.¹⁰
25. Consideration has been given to the safety issues raised by age-mixing. Age-mixing also raises serious questions about the provision of age-appropriate services to children and young people held with adults. For example, a recent report by the New Zealand Parole Board has found that young offenders in prison are not receiving the education services they are entitled to¹¹.

Comment

26. It is almost 17 years since New Zealand ratified UNCROC. The Committee first recommended New Zealand take steps to withdraw the reservations to UNCROC in 1997¹². A generation of children have grown up during that period including many who will have been affected by these reservations, such as those whose access to health and education has been restricted by the unlawful immigration status of their parents. We quite simply do not know how many children are in this situation. Some of the children who have been born during this time will be working and for a few this work will be unsafe or possibly exploitative. Some will face the prospect of being held in detention with adults.

¹⁰ Children Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2009, section 14. Under this amendment children aged 12 and 13 who commit serious offences can be prosecuted in the Youth Court.

¹¹ New Zealand Parole Board *Education of Youth in Prisons in New Zealand: the current state* Report to the Office of the Ombudsmen, May 2010

¹² CRC/C/15/Add.71, paragraph 21.

27. The progress that has been made towards removing the reservations should be acknowledged. Nevertheless the pace of work has been slow and pressure should continue to be placed on the government to work towards removal.
28. Continued effort is also needed to ensure children do not suffer while the reservations remain in place. On-going assessment of the impact of the reservations on children would help to ensure that New Zealand's adherence to the spirit and intent of UNCROC is not compromised and that any negative effects on children of the reservations remaining in place are identified and mitigated.
29. To encourage the New Zealand government to continue in its efforts to work towards removal of the reservations the Committee may wish to consider making the following recommendation:

That the Ministry of Social Development report annually to the Commissioner for Children on:

- **what progress there has been towards removing each reservation and what impediments to removal remain**
- **the impact on children of each of the reservations remaining in place**
- **any policy work or practice changes needed to mitigate the negative effects on children of the reservations remaining in place**
- **any risk to New Zealand's compliance with the spirit and intent of UNCROC and the extent to which the reservation is undermining realisation of related rights under UNCROC.**

Tokelau

30. The extension of UNCROC to Tokelau is a matter for the people of Tokelau and the New Zealand Government. The Commissioner's office is available to assist in raising awareness and understanding of UNCROC in Tokelau should such assistance be requested. There are limits on the Office's ability to monitor the position of children in Tokelau, and the application of the Convention there, because of resource constraints and the nature of the relationship between the Tokelaus and the New Zealand government.

Legislation

31. UNCROC has been occasionally referred to in policy development and law reform work¹³. There have also been several legislative developments that give effect to UNCROC.¹⁴ However the harmonisation of domestic law and policy with UNCROC continues to be ad hoc and piecemeal and often a happy coincidence of law reform rather than the reason behind a change.

Assessing new legislation against UNCROC

32. The ease with which legislation that erodes UNCROC rights can be passed is concerning. For example, the Children Young Persons and their Families

¹³ See for example Law Commission's Review of Privacy laws, Report to the Minister of Labour, April 2009.

¹⁴ These are set out in the table in paragraph 1.34 of the New Zealand government's third (and fourth consolidated) report.

(Youth Courts Jurisdiction and Orders) Amendment Act 2009 lowers the age at which children can appear before the courts for certain offences¹⁵.

33. A private members bill proposes that a legislative requirement be enacted for the Children's Commissioner to report to Parliament, through the Minister responsible for the Office, on the impact on children of legislative proposals. The idea has merit but has not yet been considered by Parliament.
34. The Committee may wish to consider making the following recommendation:

That new procedures be established, or existing procedures enhanced, to protect against the passing of legislation which is inconsistent with New Zealand's obligations under UNCROC.

Review of Existing Legislation

35. The government has not initiated a comprehensive review of legislation affecting children to assess compliance with UNCROC, as it was recommended to do by the Committee.
36. The previous Children's Commissioner had conducted a comprehensive review of legislation and policy compliance with UNCROC. The review was completed in 2006 and has been used as a source document to inform policy and law reform work. For example, it fed into the Children, Young Persons, and Their Families Amendment Bill (No 6) (2007) providing support for proposed amendments to raise the upper age provisions of the Act from 17 to 18 and reinforce participation rights.

Harmonisation of existing legislation with UNCROC

37. There have been several developments in the harmonisation of legislation with UNCROC. Two significant developments are highlighted in this report.

Children Young Persons and Their Families Amendment Bill (No6)

38. Among other things the Children, Young Persons and Their Families Amendment Bill (No6) (2007)¹⁶ proposed to raise the upper age of the Act to include 17 year olds, provide for greater participation by children and young people and respect for their views in decisions made about them, and implement an independent complaint system for children and young people in care.
39. The Bill has been before Select Committee who reported back in 2008. It lapsed at the end of the last Parliament but has been reinstated and is currently before the House of Parliament. Passage of the Bill does not appear to be a priority on the legislative programme.
40. The Committee may wish to consider making the following recommendation:

That the passage of the Children, Young Persons and Their Families Amendment Bill (No6) (2007) through Parliament be expedited.

¹⁵ Under this amendment children aged 12 and 13 who commit serious offences can be prosecuted in the Youth Court. See note 10 above.

¹⁶ The full text of the Bill is available on <http://www.legislation.govt.nz>.

Crimes (Substituted Section 59) Amendment Act 2007

41. The passing of the Crimes (Substituted Section 59) Amendment Act in 2007 is a major development in harmonisation of New Zealand legislation with UNCROC. Further information is provided in paragraphs 5.17 to 5.23 of the Commissioner's 2008 report.
42. This law affords children a similar level of protection from assault as other New Zealanders thereby affirming their status as citizens in their own right. It is commendable that, despite strong public pressure, the government has remained committed to prohibiting the physical discipline of children for the purposes of correction.

Co-ordination and National Plans of Action

43. No permanent mechanism to coordinate activities by all actors and stakeholders implementing the Convention has been established as recommended by the Committee in its concluding observations on New Zealand's second periodic report.¹⁷

Priority for children

44. Children's interests, rights and well-being are not considered in a co-ordinated, systematic and deliberate way in policy development or in decision-making at a policy and operational level. Neither is there adequate recognition of the strategic importance of addressing issues affecting children or the impact of policies and practices on them.
45. The lack of mechanisms to ensure children are systematically factored into government decision-making:
 - reflects and reinforces children's relative invisibility
 - results in inadvertent negative impacts on children
 - allows discrimination against certain groups of children.
46. These problems are potentially compounded when decision-making and service delivery are further delegated from central government to agencies such as territorial local authorities and District Health Boards.
47. Item 29 on the government's UNCROC work programme¹⁸ was titled Placing Children at the Centre of Policy-Making. The last update in 2008 indicates that this work focussed primarily on the use of child impact assessments. It has not been progressed.
48. Child impact statements offer some potential to improve the weight given to children's interests in policy work. However, there are other mechanisms also worthy of further consideration such as a Minister for Children, a Select Committee responsible for children's issues, a government policy agency responsible for advocating in the interests of children at the policy table, greater

¹⁷ CRC/C/15/Add.216. para 11

¹⁸ *Current status of and update on work programme items* <http://www.myd.govt.nz/working-with-young-people/uncroc>

capacity within existing government agencies to consider children's best interests in policy development and building in processes that require it.

49. Improving the weight given to children's interests requires:
 - good information about the situation of children,
 - analytical frameworks and a public service workforce that can
 - accurately assess the impact of policies on children
 - identify policy outcomes that will advance the interests of children
 - mechanisms for obtaining children's views on issues that affect them.
50. Even without changes to government structures much could be done to improve the way government factors children's rights and interests into its decision-making. For example:
 - workforce development - equipping analysts so they provide advice to ministers on children's best interests and assess the impact of policies on children
 - giving priority to issues affecting children when policy work programmes are being planned
 - ensuring children's interests are systematically considered, and where possible given priority, in the development of economic and fiscal policy and decisions about service provision
 - extending existing legislative vetting processes to include a check for UNCROC compliance when new legislation is before Parliament
 - setting up new processes for comment on proposed legislation.
51. Over the coming year my Office¹⁹, together with significant NGO coalitions²⁰, will be working towards children's rights and interests being given more weight by decision-makers.
52. With a view to enhancing New Zealand's compliance with Article 4 and encouraging government to better consider children's best interests in policy development and operational decision-making, the Committee may wish to consider making the following recommendation:

That government undertake work to examine how more weight could be given to children's rights, interests and well-being in government's decision-making processes including an explicit requirement on relevant agencies to provide information to decision-makers on the impact on children of policy proposals.

Independent monitoring

53. The Children Commissioner's Office has a role in monitoring the implementation of children rights, explicitly in the case of rights to protection from abuse and neglect, and more generally in its role in advocating for children's rights to provision and participation. The independence of the Office in legislation is satisfactory. The resources given to the Office have been increased in 2009 – 2010 by some 20 percent, which has been used to enhance the Office's ability to monitor government services to protect children from abuse and neglect and to recognise the vulnerabilities of young offenders. The effectiveness of the Office is limited in an environment where it is

¹⁹ Children's Commissioner, Statement of Intent, 2010-2013

²⁰ Every Child Counts, Action for Children and Youth Aotearoa

uncommon for children's interests to be formally taken into account in decision-making by central government.

54. The Office's monitoring of the Convention's application is complemented by the active role played by NGO advocacy groups for children such as Action for Children and Youth Aotearoa Incorporated²¹ (ACYA) and Every Child Counts (ECC)²². ACYA promotes the well-being of children and young people through educating and advocating on children's rights and encouraging the government to act on the recommendations of the UN Committee on the Rights of the Child. It co-ordinates the NGO report to the Committee. ECC is a coalition of individuals and agencies working to promote the status and well-being of children and to enhance the provision of services to them.

Resources for children – ensuring maximum survival and development

55. The lack of weight given to children's rights, interests and well-being generally in government decision-making includes tax, fiscal and economic policies. Budget processes do not assign any priority to ensuring, to the maximum extent possible, the survival and development of children. Neither is reducing child poverty an explicit government target, (although it is implicit in some policies for families such as compensation for consumption tax (GST) increases and benefit reform.) One consequence of this is that children are the age group most likely to be in income poverty and in households in material hardship²³.
56. There have been increases in resources for children over the reporting period and many children are materially better off. The Working for Families package resulted in poverty rates falling from 29 percent to 20 percent between 2001 and 2008. Without the Working for Families package it is estimated that the poverty rate would have increased to 30 percent over this period²⁴.
57. However 20 percent of New Zealand children still live in situations of income poverty. Poverty rates are significantly higher among Maori and Pacific children than European/Pakeha children. For some children poverty has deepened, that is they have fallen further below the poverty line. There is evidence that younger children are relatively "deeper" in poverty than any other group. While the full impact of the recent economic downturn is yet to be measured, a rising unemployment rate has meant more benefit dependent families with children, the group most likely to live in income poverty. There are suggestions that income poverty for children may be on the rise again.
58. The effects of poverty on children are complex and long lasting. Living in financial hardship impacts on:
- nutrition - buying cheaper cuts of meat, going without fruit and vegetables

²¹ <http://www.acya.org.nz>

²² <http://www.everychildcounts.org.nz>

²³ The material contained in paragraphs 55 to 57 is drawn from Perry, B *Household incomes in New Zealand: Trends in indicators of inequality and hardship 1982 to 2008*, Wellington, Ministry of Social Development, 2009 www.msd.govt.nz

²⁴ *Ibid*, finding 1. This finding is based on a poverty measure that uses after housing costs incomes and a fixed line (1998) measure.

- housing²⁵ - feeling cold to save on heating costs, making do without enough bedrooms, sharing beds
 - health - postponing visits to the doctor or dentist
 - education – going without computer or internet access, limited children's involvement in school trips, sports and extracurricular activities.
59. My Office's work *This is how I see it: children, young people and young adults views and experiences of poverty*²⁶ found that poverty impacts on schooling, social inclusion and self-esteem. Some of the children and young adults comments included:
- Can't afford school uniform....Lack of books...Left out....Get picked on at school....Stress....Shame.....Low self-esteem.....Unhappy....Lonely....Sad....Depressed....Angry....Feelings of worthlessness.*
60. The Government's own research into material well-being and hardship shows that children are the age group in New Zealand most likely to have relatively high hardship rates, some 19 percent of children were below a quite stringent level of deprivation²⁷.
61. In September 2009 the Commissioner wrote to the Prime Minister and Minister of Finance asking them to ensure that the interests of children be taken into account in tax, economic and fiscal policy, and arguing that government should:
- consider the impact on children of the changes being considered
 - give weight to options that will reduce poverty rates for young children in benefit dependent families, since that is where child poverty is "deepest" and most persistent
 - set as a bottom line that any changes they recommend will not increase the rate of income poverty for children in New Zealand
62. It is not clear that this is being done. Government needs to give much more explicit and transparent consideration to children's interests, and wherever possible give them priority, in the development of tax, fiscal and economic policies. In the meantime, given the fiscal position of the government, it is essential that government gets advice and takes cognisance of the impact on the material circumstances of children of tax, fiscal and economic policy. The impact on children vulnerable to poor material, health, education, and housing outcomes should be a prime focus.
63. Currently spending on children is not specifically identified within budget and appropriation processes. Until the resources being allocated to children are clearly identified it is difficult to assess and monitor the level and adequacy of investment. The OECD has noted an under-investment in children and prescribed stronger policy focuses on child poverty and child health, more

²⁵ More details on housing issues for children are found in *Children's Housing Futures* by Public Policy and Research/ CRESA prepared for the Centre for Housing research, Aotearoa New Zealand, April 2010

²⁶ <http://www.occ.org.nz/home/childpoverty/the> report

²⁷ Perry, B *Non-income measures of material wellbeing and hardship: first results from the 2008 New Zealand Living Standards Survey, with international comparisons* Working Paper, Ministry of Social Development, 2009.

spending on early years and disadvantaged children and spending on older children targeted to those who are disadvantaged²⁸.

64. The Committee may wish to consider making the following recommendation:

That government:

- (a) establish, as soon as possible, processes to assess the impact on the material circumstances of children of tax, fiscal and economic policy;**
- (b) undertake work to examine how to:**
 - take children's interests into account, and wherever possible give them priority, in the development of tax, fiscal and economic policies;**
 - protect children from income poverty as a result of tax, fiscal and economic policies;**
- (c) specifically identify the level of investment in children in budget and appropriation processes; and**
- (d) increase the resources allocated to children in line with the OECD's recommendations.**

Data collection

65. There have been some significant positive developments in the collation of information about children, particularly in the development and monitoring of indicators²⁹. There have also been some sector specific improvements. For example the Department of Labour has done good work to gather information about young workers³⁰.

66. The way information is gathered varies according to sector and purpose. Information collection tends to be co-ordinated across issues such as family violence but no centralised agency is responsible for collating information about children gathered by the various sectors. While there is considerable data available about children there is no overall strategy for making the best use of that data.

67. Not all the data sources on which monitoring work is based³¹ use definitions of a child based on UNCROC. Continued effort is needed to align information collection with UNCROC, especially the definition of a child. Particular

²⁸ *Doing better for children* OECD 2009, report prepared for the OECD by Chapple, S and Richardson, D.

²⁹ See for example: Perry, B *Non-income measures of material wellbeing and hardship: first results from the 2008 New Zealand Living Standards Survey, with international comparisons* Working Paper, Ministry of Social Development, 2009; Craig E, Jackson C, Han DY, NZCYES Steering Committee. *Monitoring the Health of New Zealand Children and Young People: Literature Review and Framework Development*. 2007. Auckland: Paediatric Society of New Zealand, New Zealand Child and Youth Epidemiology Service. Available on <http://www.paediatrics.org.nz>; Ministry of Social Development, *Children and young people: indicators of wellbeing in New Zealand 2008: summary table of indicators*, www.msd.govt.nz; Perry, B *Household income in New Zealand: Trends in indicators of inequality and hardship 1982-2008: short summary*, Ministry of Social Development, www.msd.govt.nz

³⁰ *School children in paid employment: a summary of research findings – abridged - draft* <http://www.dol.govt.nz/consultation/myfirstjob>

³¹ For example census data and the Household Economic Survey.

attention should be given to ensuring any new data collection and collation work uses age definitions that are consistent with UNCROC.

68. In addition there is scope to improve data collection about children by agencies already collecting more general data. For example, in the criminal justice sector no agency collects or monitors information about the number of children who have a parent in prison. Similarly no data has been collated about children affected by "leaky homes".
69. The Committee may wish to consider making the following recommendation:

That government should review the information collected about children with a view to improving its consistency with UNCROC definition, completeness and robustness.

DEFINITION OF THE CHILD (art 1)

70. There have been slow but incremental steps towards aligning the definition of a child with UNCROC.³²
71. The Children, Young Persons and their Families Amendment Bill (No6) had lapsed but has been reinstated and is currently before the Parliament. If passed in its current form it would bring the Act in line with UNCROC's definition of a child.

GENERAL PRINCIPLES (arts 2, 3, 6, and 12)

Non-discrimination

72. Continued efforts are required to address direct and indirect discrimination against children and groups of children in New Zealand and to ensure that rights under UNCROC, especially the social and economic rights, apply equally to all children in New Zealand. Indicators of well-being show very clearly that Maori and Pacific children continue to be the ones least likely to have their social and economic rights met compared with the general child population.³³
73. Children with a disability also face discrimination, especially in relation to access to education. More information on this is provided in paragraph 117 below.

Climate Change

74. Climate change is an issue raised in *Hear Our Voices* and also of concern to those on the Children's Commissioner's Young People's Reference Group³⁴. It is a key human rights issue with the potential to impact on the resources available for ensuring children's survival and development. Steps need to be

³² See for example the changes to age parameters set out in the table in paragraph 1.34 of the New Zealand government's third (and fourth consolidated) report.

³³ Indicators of well-being are found in a number of reports noted above in footnote 35.

³⁴ The Young People's Reference Group is a group of young people aged between 12 and 18 years from around New Zealand who provide advice to the Office of the Children's Commissioner.

taken to ensure children's views are heard in the development of policies and practices to address climate change.

75. The Committee may wish to consider making the following recommendation:

That steps be taken to ensure children's views are taken into account in the development of policies and practices to address climate change.

Participation: Respect for the views of the child

76. Respect for children's participation rights is limited. This undermines the perception of children as active subjects of rights and contributes to their relative invisibility within society. Better recognition of participation rights would not only benefit those individual children who are involved in proceedings but also have the cumulative effect of raising the visibility of children as a whole.
77. Increased efforts are needed to raise awareness and understanding of UNCROC among officials, including policy advisors, with particular emphasis on participation rights, especially those in Article 12.
78. The Committee recommended in its concluding observations on New Zealand's second periodic report that there be a review of legislation and regulations affecting children, including proposed legislation, to ensure that the right of each child to be heard, and have his or her views taken into account in accordance with article 12, is appropriately integrated and applied. No such review has taken place.
79. The Select Committee process offers an opportunity for child advocates, including the Commissioner's Office, to argue for the inclusion of article 12 rights within new legislation. However a better approach would be to incorporate participation rights when legislation, regulations, or practice guidelines are being developed or reviewed. Ensuring those charged with drafting legislation and developing policy and practice standards are well versed in children's rights, including participation rights, would help to make sure these rights are better recognised.
80. Notwithstanding the limits on children's participation there is a general level of openness to considering the views of children in New Zealand. For example, in education it is increasingly common to find primary schools with good mechanisms for consulting with pupils and involving children in decision-making. The respect given to those views can vary but it is expected that increasingly the views of the child will be given due weight.
81. Research has identified a number of issues surrounding children's voices in court processes³⁵. The Minister of Justice's recent consideration of how a more inquisitorial system might better serve child witnesses³⁶ is commendable and may help to address the issues that have been identified by the research.
82. There are several good examples of participation by young people in local government. For example, the Invercargill Youth Council³⁷ provide young

³⁵ Hanna K, Davies E, Henderson E, Crothers C, Rotherham C *Child witnesses in the New Zealand criminal courts: a review of practice and implications for policy* Institute of Public Policy, an institute of AUT University, Auckland, 2010

³⁶<http://www.beehive.govt.nz/release/minister+looks+court+systems+europe+and+uk>

³⁷ <http://www.icc.govt.nz/YourCouncil/YouthCouncil.aspx>

people's views to the Invercargill City Council. In Taranaki the Stratford Youth Council³⁸ works to make Stratford a better place for youth by speaking on behalf of youth, creating and participating in local events, and working towards solving youth issues. The Ministry of Youth Development has recently developed a set of guidelines to encourage local government agencies to involve children and young people in their work.

83. Children's views are not often sought after or given prominence by the media. Instead children are often portrayed in ways that reinforce traditional views of childhood.
84. The children and young persons' report *Hear Our Voices* is commended to the Committee's attention. We will be working with Save the Children New Zealand to launch the document and key policy statements domestically.
85. The Committee may wish to consider making the following recommendation:

That, with a view to increasing children's participation and visibility within New Zealand society:

- (a) **the Ministry of Social Development, as part of its leadership role in implementing UNCROC, ensure information and training about UNCROC are provided to public servants, with a particular emphasis on participation rights.**
- (b) **children's participation rights be incorporated into legislation, regulations, or practice guidelines when they are being developed or reviewed.**

CIVIL RIGHTS AND FREEDOMS (arts 7, 8, 13-17 and 37a)

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

86. As a National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,³⁹ the Children's Commissioner has responsibility for monitoring nine section 364 residences⁴⁰.
87. On the evidence of these inspections none of the children and young people detained in the residences visited have been subject to any torture, inhuman, degrading or ill-treatment. There are some concerns about the readiness with which some residences use timeout and secure care as sanctions, and the extent to which management approval and review mechanisms act as a safeguard. The concerns have been raised with Child, Youth and Family who have taken action to address those concerns as part of implementing the new residential framework.

³⁸ <http://www.stratfordyouthcouncil.com/index.html>

³⁹ Please see paragraph 4.3 and 4.4 of the Commissioner's 2008 report.

⁴⁰ These are residences established by the chief executive of Child, Youth and Family with the approval of the Minister, under section 364 of the Children, Young Persons and Their Families Act 1989, for the care and control of children and young persons.

Detention of young people in police cells

88. There has been a continuing decline both in the actual number of young people and the average length of time spent in police cells. In 2009, 77 young people were detained in police cells for an average duration of 1.9 days.⁴¹
89. It is unlikely that the average length of time young people spend in police cells will decrease much below 48 hours because of the difficulties in obtaining a judge on a Sunday when a young person is arrested on a Saturday evening. Child, Youth and Family have recently implemented an escort service to take young people from their place of arrest to the nearest residence and this will help to ensure young people are not detained in police cells due to lack of transport.
90. The passing of the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 extended the Youth Court's jurisdiction to cover 12 and 13 year olds. There is now potential for 12 and 13 year olds to be detained in police cells. A notification system to inform the Commissioner's Office as soon as a 12 or 13 year old is detained would be useful.

Violence and ill-treatment.

91. Children continue to be exposed to, and harmed by, unacceptably high levels of violence both within their families and also wider communities, including their schools. Protecting children from exposure to violence and abuse must continue to be a focus for all those working with families and young children. Information is available on the risk factors for child maltreatment.⁴² This information needs to be used to build effective prevention programmes. The Taskforce for Action on Violence incorporated initiatives to prevent violence to and neglect of children. More information on prevention of child abuse and neglect is found in paragraphs 94 to 100 below.

Mass Media

92. The Office's Young People's Reference Group has raised the need for more robust ratings for television to reduce exposure to inappropriate material. Television is self-regulating and sets its own ratings. The Broadcasting Standards Authority, the Press Council and the Advertising Standards Authority all provide mechanisms for enforcing standards. However the Office's experience is that the thresholds for proving a breach of standards are quite high and it can be difficult to bring a successful complaint.

⁴¹ Child, Youth and Family Services figures, year to December 2009

⁴² Duncanson M, Smith D, and Davies E *Death and serious injury from assault of children under five years in Aotearoa New Zealand: A review of international literature and recent findings* Report prepared for the Office of the Children's Commissioner 2009

FAMILY ENVIRONMENT AND ALTERNATIVE CARE (arts 5, 18.1, 18.2, 9, 10, 27.4, 20, 21, 11, 19, 39, 25)

Developments since 2008

Whanau Ora

93. Potentially the most far-reaching development since 2008 is a government initiative to bring a new approach to the delivery of social services to families and whanau. It changes the paradigm from the delivery of defined programmes to individuals and families to more of a whanau directed approach to co-ordinating change. The Commissioner supports the approach.

Abuse and neglect

94. The high rate of child maltreatment, including physical, sexual and emotional abuse and neglect, continues to be a major concern. There has been a large increase in the rate of referrals to Child, Youth and Family. This has been driven in considerable part by an increased responsiveness by Police to the situation of children exposed to violence, usually between their parents.
95. The increase in, and source of, referrals suggests that the focus by government agencies on responding to family violence over the last few years⁴³ has helped to ensure children at risk of abuse and neglect are identified and referred to Child, Youth and Family.
96. See paragraph 130 below for comments on responding to the harm caused to children by abuse and neglect.
97. In September 2009 the government, through the Minister of Social Development announced a vulnerable infants initiative to reduce child abuse by focussing on the protection of our most vulnerable children. This initiative has put a particular focus on physical abuse of under two year olds⁴⁴. This is an appropriate priority and should be commended.
98. Responses to abuse and neglect have tended to focus on abuse. My Office has identified a need to better understand and strengthen responses to child neglect under the Children, Young Persons and Their Families Act. We have completed a report with recommendations about how prevention and responses to neglect might be strengthened. Findings will be placed in the context of international best practice responses to child neglect so that evidence-based recommendations can be made to strengthen responses to child neglect.

The Quality of Statutory Child Protection Services.

99. The performance of Child, Youth and Family⁴⁵ has improved over the last three years. The service has the right direction, strategies, policies and practice

⁴³ Taskforce on Violence within Families, <http://wwwmsd.govt.nz>

⁴⁴ *Vulnerable Children Newsletter* available at www.cyf.govt.nz

⁴⁵ Child, Youth and Family is the government agency charged with administering care and protection and youth justice services.

frameworks. In particular its management of demand and control over workflow have improved. There are now:

- low numbers of cases waiting for allocation to a caseworker
- timely responses to high urgent and urgent referrals
- better youth justice services
- a focus on clinical services in residential services
- more appropriate services to families through Differential Response and First Response⁴⁶
- greater management responsiveness to the communities they work in.

100. What is required is a consistent lift in its performance, especially in quality. Areas for particular attention are:

- consistency in the quality and depth of risk assessment and decision-making
- improved quality of services to children in care
- improved responses to children who are moving on a trajectory of serious and persistent offending.

Alternative care

101. There have been some positive changes in the provision of residential services including improved case management and therapeutic care. The practice changes are improving outcomes for some young people in care.

102. The quality of service to children in alternative care in the community needs attention. Monitoring, planning and the timely achievement of care goals are all weak. Also of concern is the standard of care provided by some providers under contract to the statutory agency.

103. There remain some extremely serious gaps in the provision of services for the care and treatment of young people with serious behavioural and mental health issues, including drug and alcohol addiction problems. Please see paragraphs 111 below.

Adoption

104. Changes to New Zealand's adoption law are long overdue to bring it in line with modern adoption practices and UNCROC as noted in the Committee's previous recommendations regarding adoption and the application of Article 12.

105. The Committee may wish to consider making the following recommendation:

That New Zealand's adoption law be reformed to bring it in line with modern adoption practices, UNCROC and the Committee's previous recommendations.

⁴⁶ Differential Response is a formal pathway of referral from Child, Youth and Family to partnered community organisations who provide responses and support to families who do not require statutory intervention. First Response is a joint programme between Police, Child, Youth and Family and a community organisation called SHINE whereby a SHINE social worker will visit a family within two days of a family violence call-out. It is being piloted in central Auckland.

Family Support

106. Insufficient services are available for parents and families who need assistance to overcome difficulties that make them vulnerable to their children being unsafe and insecure. In particular there is a shortage of services to address alcohol and drug misuse, other mental health problems, and problems of attachment and affiliation between mothers and babies.
107. The Committee may want to consider making the following recommendation:

That, in the health sector, government give priority to the development of services for adults with drug and alcohol addictions, and other mental health issues, who have parenting responsibilities for young children.

BASIC HEALTH AND WELFARE (arts 6.2, 23, 24, 26, 18.3, 27.1, 27.2, 27.3)

General wellbeing of children and young people

108. Please refer to the Commissioner's 2008 report paragraphs 6.1 to 6.8. Basic health and welfare has continued to improve for most New Zealand children⁴⁷. Immunisation rates have recently improved markedly. Areas of continued concern include rates of mortality (including infant mortality), suicide and teenage births⁴⁸, unintentional injuries⁴⁹ and respiratory infections⁵⁰.
109. The persistence of large disparities across a range of risk factors and health outcomes for Maori and Pacific children and those in low-income households compared to their peers and the total population⁵¹ is of concern. The ongoing prioritisation of Maori and Pacific children in the monitoring and development of health policy⁵² is appropriate.
110. Child health issues are complex and linked to socio-economic factors. There are pressures on limited health resources that make decisions about priorities

⁴⁷ For example the Ministry of Social Development's *Children and Young People: indicators of Wellbeing in New Zealand 2008*⁴⁷ show that:

- Infant mortality has more than halved since 1988
- immunisation rates have improved since 1991/1992
- fewer children are failing their hearing test at school entry
- fewer 14 and 15 year olds are smoking cigarettes
- the youth suicide rate declined substantially
- fewer children are without a parent in paid employment
- fewer children live in families with low incomes

⁴⁸ Above, note 3, New Zealand does not do as well in these areas compared to other OECD countries.

⁴⁹ According to the Safekids website unintentional injury is the leading cause of death and hospitalisation for children aged 0 to 14 years in New Zealand. <http://www.safekids.org.nz>

⁵⁰ A detailed framework for identifying and monitoring child health indicators has been developed. See Craig E, Jackson C, Han DY, NZCYES Steering Committee. *Monitoring the Health of New Zealand Children and Young People: Literature Review and Framework Development*. 2007. Auckland: Paediatric Society of New Zealand, New Zealand Child and Youth Epidemiology Service. Available on <http://www.paediatrics.org.nz>

⁵¹ Ministry of Social Development, *Children and young people: indicators of wellbeing in New Zealand 2008: summary table of indicators*, www.msd.govt.nz please note the *Variation within the population* column

⁵² Ministry of Health. 2009. *A Focus on the Health of Māori and Pacific Children: Key findings of the 2006/07 New Zealand Health Survey*. Wellington: Ministry of Health.

in health very difficult. Good decision-making requires robust information about child health, including monitoring of child health outcomes. Continued work is needed in this area.

Mental health services for children and young people

111. Concerns remain about the provision of mental health services for children and young people.⁵³ Problems include:

- a lack of forensic, residential placements for young people which means that they are placed inappropriately in adult services
- a continued shortage of health professionals who specialise in the assessment and treatment of children and young people with mental health issues
- co-ordination of services for children who do not meet the threshold for "high and complex" needs⁵⁴
- gaps in alcohol and drug services for young people.

112. The Committee may wish to consider making the following recommendation:

That steps be taken urgently to increase the availability of, and access to, services to address mental ill health and behavioural problems amongst children.

EDUCATION, LEISURE AND CULTURAL ACTIVITIES (arts28, 29 and 31)

113. One general concern in the domain of education, leisure and cultural activities is the relative lack of children's voice in the governance and management of service delivery. This diminishes children's participation rights and reduces the effectiveness of service provision. There are some encouraging developments in participation in primary schools and young people at secondary school have a representative on Boards of Trustees⁵⁵. However, children are little involved in the development of education policy, and research into children's views, while growing, remains limited.

114. The compulsory education sector in New Zealand performs well for some 80 percent of children. The main children's rights issues in education are:

- the disparities in achievement levels which leave 20 percent of children well behind their peers
- access to education for children with diverse needs
- children's rights in disciplinary proceedings
- safety in schools.

⁵³ See Commissioner's 2008 report, paras 6.9- 6.10.

⁵⁴ Child, Youth and Family, Education and Health provide co-ordinated services to children identified as having high and complex needs, inquiries by my Office suggest that service provision to those without such high needs is variable across different regions and population groups.

⁵⁵ For further discussion on children's participation in school decision-making see *CHILDREN: a newsletter from the Office of the Children's Commissioner*, Spring 2009, No.70.

Achievement

115. While improvements can always be made, reading, mathematical and scientific literacy at age 15 is higher than the OECD average. However Maori and Pacific students, and many children from low-income households do not fare as well as their peer age group in these indicators.⁵⁶ There is a long 'tail' with children who are not doing so well falling well behind their peers.

Inclusive education for children with diverse needs

116. A review of Special Education is underway. The aim of the review is to ensure that policies and processes are fair, consistent, reach those most in need, make the best use of government funding, and that parents have choices.⁵⁷
117. Changes are needed to ensure children with diverse needs are able to go to school, participate fully and achieve. The Office of the Children's Commissioner receives complaints about educational access for children with diverse needs, including those with behavioural difficulties. Some children seem to be spending considerable lengths of time out of school while efforts are made to find a suitable place for them. Other complaints are around the complexity and inflexibility of funding for special education support. The current review is timely.

Exclusions, stand-downs and suspensions

118. Exclusion rates have remained relatively constant. Between 2006 and 2008 the age-standardised stand-down rate decreased by 8.8 percent.
119. The Student Engagement Initiative programme has been successful in decreasing the age-standardised suspension rates for Maori and European/Pakeha students in the schools who originally adopted the programme by 66 percent and 56 percent respectively. There has also been a decline in suspensions of Pacific students since they were included in the programme in 2006. It would be good to see this programme, or ones like it, continued and extended to other schools.
120. Once again there are persistent disparities with Maori and, to a lesser extent, Pacific children much more likely to be excluded, stood down or suspended from school than European/Pakeha students.
121. Complaints to the Commissioner's Office indicate variability in fairness of process and outcomes.

Student safety in schools

122. There have been some improvements in awareness and responses to school violence since 2008. In 2009 the Children's Commissioner conducted an inquiry into school safety that found that schools are becoming safer for students⁵⁸. This inquiry found that what works is:

⁵⁶ Above note 4

⁵⁷ <http://www.minedu.govt.nz/theMinistry/Consultation/ReviewOfSpecialEducation.aspx>

⁵⁸ Carroll-Lind, J, *School safety: an inquiry into the safety of students at school*, Office of the Children's Commissioner, 2009, page xiv, available on <http://www.occ.org.nz>

*shared ownership of a whole school approach, underpinned by clearly stated policies and procedures that incorporate a common definition of bullying and violence, clear guidelines for reporting and recording, established systems for disclosures within a culture of safe-telling, planned prevention and intervention programmes, with the effectiveness and impact of the antibullying initiatives evaluated they implement through a regular self-review programme*⁵⁹.

123. Following this study the Office published a resource to encourage schools to develop positive cultures that help prevent violence and respond appropriately when it does occur⁶⁰.

Early Childhood Education

124. This sector is growing⁶¹ and is increasingly market based and corporate. It is an area where there are significant disparities in usage and access for Maori and Pacific children and those from low income families. Poorer communities tend to be less able to access early childhood care and education because they are not attractive places for providers to invest. Government intervention to provide services in areas such as South Auckland has proved necessary.

Infant care and education

125. The Commissioner is currently looking into early childhood care and education for infants from a perspective of children's interests. This project arose out of the fact that New Zealand is moving quickly towards formal out of home care for under two-year-olds, often for long periods of time. In 2008 approximately 25 percent of all infants (31,487 infants) aged 0-2 years were enrolled in early childhood care and education. Enrolments have increased by almost 6000 or 23.5 percent over the past four years. It is the fastest growing sector of early childhood care and education.
126. The literature on the provision of out of home care raises questions about the impact of care, particularly for long periods, on the immediate wellbeing of infants and on their long-term development unless quality is high and risks are mitigated. This project will result in a report with recommendations to ensure that children's best interests are paramount in this area and decisions, at all levels, about infant care are based on good information about what is in children's best interests.

SPECIAL PROTECTION MEASURES

Children in conflict with the law (arts 40, 37 and 39)

127. Rather than raising the age of criminal responsibility the passage of the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2009 lowered the age at which young people can appear before the courts to include 12 and 13 year olds⁶². This piece of legislation is a significant backward step in New Zealand's respect for

⁵⁹ Ibid

⁶⁰ Carrol-Lind, J, *Responsive schools*, Office of the Children's Commissioner, 2010

⁶¹ The number of services and enrolments is up by 10 percent in the last four years. *Annual census of early childhood education services* July 2009, Ministry of Education, 2009

⁶² Above note 10

children's rights. Those provisions that are contrary to UNCROC, the "Beijing Rules", or the "Riyadh Guidelines" should be repealed.

128. The Committee may wish to consider making the following recommendation:

That those provisions of the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2009 which are contrary to UNCROC, the "Beijing Rules" or the "Riyadh Guidelines" be repealed.

Children in situations of exploitation, including physical and psychological recovery and social reintegration (arts 32, 33, 34, 35, 36, and 39)

Changes to ACC

129. Recently changes have been made to the way the Accident Compensation Corporation applies its funding criteria for mental injury arising from sexual abuse.

130. These changes have highlighted significant gaps in the provision of services for child abuse victims, raising questions about New Zealand's ability to meet Article 39 requirements. Some developments, such as initiatives to provide more therapeutic care in residences, will help to improve access to services for children in residential care who need them. However, access to counselling and support services for other children remains variable. While the Ministries of Social Development, Health and Education are addressing the issues, more work is needed to ensure this translates to improved access to services for all children who need them.

Children in employment

131. Many children in New Zealand work and it is widely regarded as an acceptable and desirable part of growing up. Children themselves often want to work and earn money.

132. Much of the policy work on children in employment has been on the removal of New Zealand's reservation to Article 32(2). The debate has become focussed on the reservation and the issue of a minimum age. However, there is much to be done to achieve adequate employment conditions for children and their protection in the labour market.

133. Based on sample surveys taken between 2004 and 2009⁶³ it seems that at least some children, including primary school aged children:

- get injured at work⁶⁴
- are working to supplement family income
- earn very low pay
- do not have a written employment contract
- have a low awareness of their rights

⁶³ *School children in paid employment: a summary of research findings – abridged - draft*
<http://www.dol.govt.nz/consultation/myfirstjob>

⁶⁴ *Ibid*, page 4. This report notes that injuries are common and occasionally serious. One-sixth of secondary school students in part time work were injured in the last year (as at March 2010) and one fifth reported being injured at some stage in their current job.

- work unsupervised
 - work illegally in age-restricted employment (e.g work between 10pm-6am, work with heavy machinery).
134. It is questionable therefore whether New Zealand's existing policy and legislative framework does, in practice, provide effective protections. Part of the problem is that the thresholds and protections are drawn from such a variety of statutes, policies and practices that it is difficult to know what the regulatory framework for children's employment is. The development of the "My First Job" website⁶⁵ should help to clarify what the current framework is and the Children's Commissioner welcomes its development.
135. Children should be involved in finding policy solutions to child labour issues. The Commissioner's Young People's Reference Group would like to see toolkits and guidelines developed to foster good child employment practices. They do not believe these need to be enshrined in law and would prefer an approach based on policy and practice rather than an over-reliance on regulation.
136. There could be benefit in a stand-alone regulatory framework governing children's work which recognises their inherent vulnerability within the labour market without unduly limiting their ability to enter paid employment. The Committee may wish to consider making the following recommendation:

That:

(a) consideration be given to the development of a stand-alone regulatory framework governing children's work

(b) employment policy and practice as it applies to children should:

- **apply the best interests principle**
- **take children's views into account**
- **ensure protections for children who work are effective.**

OPTIONAL PROTOCOLS

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

137. The Child and Family Protection Bill is currently before the Justice and Electoral Select Committee and is due to be reported back in August 2010. The stated purpose of the proposed amendment is to ensure that New Zealand legislation fully complies with the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography so that it maybe ratified.⁶⁶ The government should be commended for ensuring legislative compliance with the Optional Protocol and encouraged to proceed with ratification.

⁶⁵ <http://www.dol.govt.nz/about/careers/my-first-job.asp>

⁶⁶ Child and Family Protection Bill 72-1(2009), explanatory note. Full text available on <http://www.legislation.govt.nz>

Conclusion

138. The progress made in the implementation of UNCROC, and children's enjoyment of their rights, is encouraging. It is hoped this progress will continue, and be strengthened, by placing more priority on children, ensuring their best interests are considered, and directing resources towards their maximum survival and development. The disparities in outcomes for children in New Zealand do pose a challenge in fully implementing UNCROC. However continuing to strive to ensure all children have their rights met will increase children's visibility and enable their full participation in New Zealand society. This will benefit us all.

139. Thank you for the opportunity to provide this report.



Dr John Angus
Children's Commissioner

03-08-2010

Date