

The New Zealand Children's Commissioner's views on priorities for children

Informing the List of Issues Prior to Reporting
for New Zealand's 6th periodic review by the
United Nations Committee on the Rights of the Child

March 2020



MANAAKITIA Ā TĀTOU TAMARIKI

Children's
Commissioner



New Zealand's 6th Periodic Review under the UN Convention on the Rights of the Child

Reporting Stage: List of Issues Prior to Reporting

Submission of the Office of the Children's Commissioner

1st March 2020

The Children's Commissioner is an Independent Crown Entity established under the Children's Commissioner Act 2003 and represents 1.123 million children and young people in Aotearoa New Zealand under the age of 18.

The Children's Commissioner is Judge Andrew Becroft.

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Message from the Children's Commissioner



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

The Children's Commissioner is independent from the government and advocates for the interest, rights and wellbeing of all New Zealand children.

Tēnā koutou katoa, greetings to you all

When assessing life in New Zealand for our children there is something of a paradox. Across a range of indicators, the great majority of children do well, some world-leadingly well. However, 20% are struggling and require support from time to time and 10% face severe adversity in many aspects of their lives, whether it be from material deprivation, poor health, abuse and neglect or from difficulties learning at school.

There is an important question for us to explore: why is there such stark inequity of outcomes for children in a country recognised as a liberal democracy with a focus on social justice for all? Of one thing I am certain; all children would benefit significantly if New Zealand were to fully embed the United Nations Convention on the Rights of the Child (the Children's Convention) across our legislation, policies and practices; especially the 30% whose needs are clearly not being adequately met.

As Children's Commissioner, I have the privilege and statutory responsibility to raise awareness and understanding of the Children's Convention, and to advance and monitor the application of it by departments of the State and other Instruments of the Crown.¹

One of the ways I fulfil this mandate is by convening the [Children's Convention Monitoring Group](#), which includes the Human Rights Commission (New Zealand's National Human Rights Institution), the Children's Rights Alliance

Aotearoa (comprised of civil society organisations and academics who advance children's rights); Save the Children New Zealand; and UNICEF New Zealand.

I draw your attention to three *Getting it Right* reports published by the Children's Convention Monitoring Group that highlight where New Zealand is making progress in advancing children's rights and identifies areas where action is still needed. The first is an introduction to the [Children's Convention in Aotearoa](#), the second, [Building Blocks](#), is focussed on the General Measures of Implementation, and the third, [Are We Listening?](#), highlights the importance of child and youth participation. We have introduced these annual reports to shine a spotlight on New Zealand's compliance with the Children's Convention. I encourage you to refer to the recommendations in these reports when developing the List of Issues for the New Zealand Government.

I wrote [my last report to the Committee](#) just one month after I started my term as Children's Commissioner in August 2016. There has been significant progress in advancing children's rights in Aotearoa since then, particularly in the legislative and policy space. Amendments to the Oranga Tamariki Act 1989,² the development of the Child Poverty Reduction Act 2018,³ and the formulation of a Child and Youth Wellbeing Strategy are three examples that demonstrate a strong cross-party commitment to children's rights. We would barely have dreamed about this



sea change in public policy for children four years ago.

Despite these encouraging developments in child-focussed policy, the benefits of this work are yet to be seen in the lives of children. Progress in implementing the Children's Convention has been frustratingly slow and fragmented. Deep and persistent inequities remain and are most keenly felt by specific cohorts of children such as mokopuna Māori (Māori children), Pasifika children and children with disabilities.

My legislative mandate includes advocating for the rights, welfare and best interests of children and ensuring that children's views are listened to and acted upon. In the last four years we have listened to thousands of children about their views on issues such as their education⁴ and wellbeing.⁵ I wish to acknowledge these children. Their views have informed the content of this report.

The 2016 Concluding Observations from the Committee have provided a strong starting point for the content of this report as have other issues identified in human rights reporting processes such as the International Covenant on Economic, Social and Cultural Rights, the Universal Periodic Review, the Convention on the Rights of People

with Disabilities, the UN Declaration on the Rights of Indigenous People and the UN Sustainable Development Goals.

This report should be read alongside reports from the Human Rights Commission and the Children's Rights Alliance Aotearoa, both of which I support.

Rather than a comprehensive picture of all the issues facing New Zealand children, this report will focus on four priority areas that I believe require urgent focus and attention and which the Committee would be well placed to ask the NZ Government about. These areas are informed by evidence and research and by what my office is hearing from children themselves.

Thank you for the opportunity to raise issues of concern for the children of Aotearoa New Zealand with the United Nations Committee on the Rights of the Child. I remain cautiously optimistic about the progress we are making while calling on the government for bold and courageous implementation of the Children's Convention.

I hope this report will assist you in identifying issues to raise with the New Zealand Government in the next stage of this review process.

“Take care of our children; take care of what they hear; take care of what they see; take care of what they feel; for how the children grow so will be the shape of Aotearoa.”

Dame Whina Cooper (1895 - 1994)

Children's Commissioner
Judge Andrew Becroft



Introduction

Most children in New Zealand are doing well. Across a range of indicators, about 70% do well in their overall wellbeing; 20% face challenges that require significant support from time to time; and 10% profoundly struggle on an ongoing basis.

Despite relative economic stability and significant GDP growth in recent years,⁶ New Zealand has seen increasing inequality and poverty affecting children. The rising costs of housing and the poor-quality of diminished housing stock is at crisis point. The rate of improvement in many health and education outcomes has been markedly slower for some groups, including mokopuna Māori. Children are the group that carry the largest burden of poverty and its impacts.



In 2016, the Committee provided 105 Concluding Observations to improve the rights of children in New Zealand. Some of these observations were highlighted as requiring urgent attention including:

- 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, Pasifika children and children with disabilities.

While wellbeing indicators for children have not significantly changed in the last four years, there have been some fundamental advances in children's rights - particularly in the legislation and policy space - that address some of the Committee's Concluding Observations.

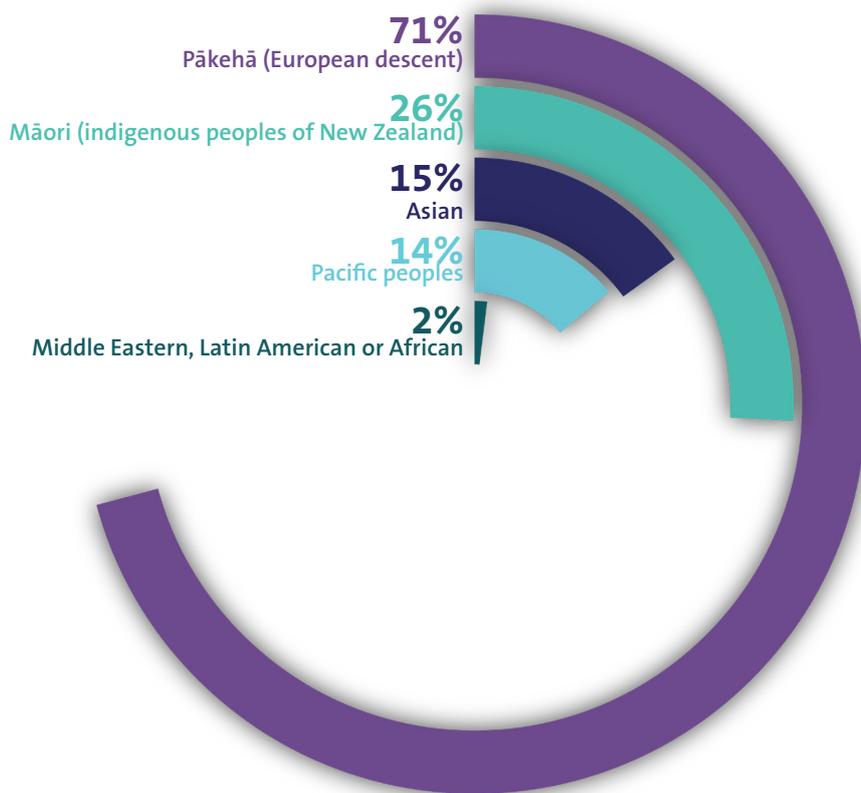


The following report looks at the Children’s Commissioner’s four priority areas where significant gains can be made for children’s rights and wellbeing. Each priority includes suggested questions the Committee may wish to ask the New Zealand Government.

The four priority areas are:

1. Improving systems, supports and services for mokopuna Māori
2. Enhancing child wellbeing
3. Encouraging Oranga Tamariki, the Ministry for Children (Oranga Tamariki), in its transformation of the care and protection and youth justice systems
4. Ensuring access to education for all.

Percentage of Children in New Zealand by ethnicity⁷



*Note: ethnicities add to over 100% because some children have more than one ethnicity



1. Improving systems, services and supports for mokopuna Māori and whānau

“Māori are not problems to be solved, we are potential to be realised.”

Rangatahi (Māori young person), Office of the Children’s Commissioner 2017

In Aotearoa New Zealand, the Children’s Convention needs to be implemented in the context of Te Tiriti o Waitangi (the Treaty of Waitangi), New Zealand’s founding document. Te Tiriti, te ao Māori (a Māori world view), the historical adoption of British laws and views of childhood, and the impact of colonisation underpin the setting in which children’s rights can be adopted and implemented in New Zealand law and practices.

Most mokopuna Māori are doing well. However, while Te Tiriti o Waitangi, the Children’s Convention and the United Nations Declaration on the Rights of Indigenous Peoples reinforce the rights of mokopuna Māori as indigenous children, inequality of outcomes persist.

	Māori	Non-Māori
Youth suicide (15-24 years) 2016 ⁸	33.5 (per 100,000)	12.5 (per 100,000)
18 year olds with NCEA Level 2 or above, 2018 ⁹	76.1%	88.3%
Rheumatic fever all ages 2018/19 ¹⁰	9 (per 100,000)	4.2 (per 100,000)
Child material hardship (0-17 years) 2019 ¹¹	23%	15%
Not in Education, Employment or training (NEET) rate 16-19 years, 2018 ¹²	14.5%	5.6%
Youth justice number and percentage of children aged 10-16 charged in court, 2018/19 ¹³	246 (72%)	63 (18%) (NZ European)

Addressing racism, discrimination and systemic barriers which get in the way of some mokopuna Māori thriving was identified as a priority in the Committee’s Concluding Observations for New Zealand’s fifth periodic report.

Since then there have been some improvements in the way Te Tiriti o Waitangi and working with Māori has been incorporated in legislation.¹⁴ However, the impact of these changes is yet to be seen and there is little evidence of significant reform that has devolved power and resources to Māori. A number of reviews, including one of the criminal justice system,¹⁵ have highlighted the long lasting and continuing impacts of colonisation and racism on outcomes for Māori. In 2020, inequities remain and in some cases differences between Māori and non-Māori have become markedly worse.



Evidence of progress since 2016

- Amendments to the Oranga Tamariki Act 1989 provide for a practical commitment to Te Tiriti o Waitangi in legislation and focus on improving outcomes for mokopuna Māori, their whānau, hapū and iwi. This new legislation makes explicit a commitment to working in partnership with iwi and Māori organisations;¹⁶
- Increased funding for Whānau Ora in the 2019 'Wellbeing Budget' demonstrates support for mokopuna Māori particularly in health and social services;¹⁷
- Addressing racism and discrimination is a priority in the Child and Youth Wellbeing Strategy (see page 11);
- The government is currently developing a plan of action to drive and measure New Zealand's progress towards the aspirations of the United Nations Declaration on the Rights of Indigenous Peoples.¹⁸

Areas for change

In order to honour Te Tiriti o Waitangi and better serve the needs of mokopuna Māori, the government must take drastic measures to ensure the individual and collective rights of mokopuna Māori are fulfilled. These measures must be considered across legislation, policies and practices affecting mokopuna Māori and take into account the collective dimension of Māori cultural identity.

Current and future government reforms, such as those in justice and education, provide an opportunity to invest in and embed culturally appropriate and responsive practices across systems. Reforms should also recognise the right of Māori to exercise their own autonomy in improving their own outcomes, as defined by them, and support this to happen.

The Committee may want to ask the New Zealand Government

- 1.1 How will the government ensure the rights of mokopuna Māori are upheld in laws, policies and practices in the context of Te Tiriti o Waitangi, the Children's Convention and the United Nations Declaration on the Rights of Indigenous Peoples? What mechanisms, training and tools are in place to ensure that the development of policies, legislation and government services are systematically assessed for their impact on mokopuna Māori and their whānau?
- 1.2 Has the government considered setting clear targets for departments that focus on reducing inequitable outcomes for mokopuna Māori and whānau?
- 1.3 How does the government plan to support mokopuna Māori within the context of their whānau, hapū and iwi before they reach the threshold for statutory intervention – including embedding and resourcing culturally appropriate systems, services and supports that address the root causes of vulnerability like low income and poor housing – to ensure they grow up thriving and supported within their communities?
- 1.4 How will the government address the youth Māori suicide rate?
- 1.5 How will the government ensure the voices of mokopuna Māori are heard and that their views are considered in decisions that affect them?
- 1.6 What is the government doing to address all forms of racism and discrimination?
- 1.7 How is the government devolving resources to, and engaging with, whānau, hapū, iwi and Māori organisations to determine and drive the solutions that work for them?



2. Enhancing child wellbeing

“Being happy, confident, and not living in poverty.”

13-year-old student, Office of the Children’s Commissioner, 2019
(when asked what the word ‘wellbeing’ means to them)

The government’s increased focus on child wellbeing since the Committee’s last report in 2016 is significant. There have been some fundamental shifts in legislation, policy development, and the consideration of children’s views. The Child Poverty Reduction Act 2018¹⁹ and the Child and Youth Wellbeing Strategy²⁰ are examples of recent government-led developments that provide opportunities to drive positive change for children’s rights, but it is too early to see the impact of these gains. There has been little movement in child wellbeing indicators since 2016 and the rates at which children in New Zealand experience poverty, material deprivation, violence, abuse and neglect remain stubbornly high.

Data from the *Child Poverty Monitor*²¹ published in 2019 shows that 23% of all children and young people live in households with low incomes, 13% of children live in poverty and 6% of children live in severe poverty.²² Māori children are disproportionately affected, with rates of child poverty twice that of non-Māori children (see table on page 8).

Families with children continue to face significant barriers in securing quality housing. Rents are high and increasing, the quality of many rental properties is sub-standard, and the rental market provides few protections for tenants. Being unable to secure quality housing is a significant driver of child poverty. Indeed, the 2019 *Child Poverty Monitor* report shows that more than 30% of the lowest income households with children spend more than half of their income on housing costs.

The combination of low incomes and high rents is leading to homelessness and overcrowding and increasing the risk of infectious diseases, to which children are particularly vulnerable. The shortage of affordable housing is reflected in the sharp increase in the number of emergency housing grants issued. Introduced to fund temporary accommodation in places such as hostels and motels to meet people’s immediate housing needs, the number of grants issued have almost doubled in the last year.²³ Furthermore, the waitlist for public housing is at a record high – almost three times as many houses are on the waitlist than when the current government was elected in October 2017.²⁴ In addition to a shortage of affordable housing, there is an extreme shortage of accessible housing which particularly affects disabled children and their families and disabled parents of children. These issues were recently highlighted by the UN Special Rapporteur on the Right to Housing on her visit to New Zealand, who branded the housing crisis “a human rights crisis of significant proportions.”²⁵

Evidence of progress since 2016

Measuring and reducing child poverty

A significant piece of legislation intended to enhance child wellbeing is the Child Poverty Reduction Act 2018. This Act aims to reduce child poverty by requiring the government set targets on defined primary and secondary child poverty measures and indicators and to report on them annually. The 2019 ‘wellbeing budget’ moved beyond simple measures such as GDP by organising spending in five priority areas including improving child wellbeing. This approach intends to more easily assess and track how well New Zealand is investing in children.



The government has also introduced several initiatives aimed at enhancing the wellbeing of children and their whānau, including a 'Families Package' aimed at providing targeted assistance to improve incomes for low and middle-income families with children. This includes a universal payment for babies under a year old, an increase in tax credits and an increase in paid parental leave from 18 to 26 weeks.

A national strategy for child and youth wellbeing

The Child and Youth Wellbeing Strategy, launched in 2019, is a national strategy which aims to address issues such as child poverty, inadequate housing and social protection measures.²⁶ The Strategy which is a requirement of the Children's Act 2014,²⁷ takes a holistic and aspirational approach to improving the wellbeing of children and young people under 25 years old and includes a commitment to putting the rights and wellbeing of children at the centre of government action. The government highlighted the Strategy when it joined the global pledge of recommitment to the Children's Convention on November 20th 2019.²⁸

A Youth Plan, setting out actions the government will take to support young people aged 12-24 years old, is part of the Child and Youth Wellbeing Strategy. This Youth Plan aims to support youth-specific outcomes by focusing on areas that young people have said are important to them including a focus on youth voice, mental wellbeing and leadership.

The government has recognised that to enhance child wellbeing, the impact of family and sexual violence must be urgently addressed. A Joint Venture for Family and Sexual Violence was established in 2018 and a national strategy and action plan to prevent and reduce family and sexual violence is currently being developed.

Government coordination and implementation of the Children's Convention

A refreshed Children's Convention cross-agency work programme with seven work programme items was approved by Cabinet in 2018. It includes children's rights training and the promotion of a child impact assessment tool designed to help policy makers consider the impacts of policy on children and young people.²⁹ This work programme is overseen by a Children's Convention Deputy Chief Executive Group who are the permanent coordinating mechanism with responsibility and authority to coordinate the implementation of the Children's Convention across government. This group signed a Terms of Engagement with the Children's Convention Monitoring Group in March 2018, formalising their commitment to advancing children's rights across government.³⁰

Children's participation

In 2011, and again in 2016, the Committee observed that the views of children in New Zealand are not adequately respected, they do not have the means to express their views in the public domain and their views are not systematically considered in the formulation of laws and policies.³¹

In the 2019 report *Are we Listening?*³² we noted that there are signs of positive change in the children's participation space. The student-led school strike for climate movement is a recent example of the way children in New Zealand are finding creative ways to have their voices heard (by decision makers) about issues important to them.

Within government there has been an upswing in interest from agencies in considering the views of children. In 2018, the Office of the Children's Commissioner and Oranga Tamariki asked more than



6,000 children and young people across the country what wellbeing means to them and what they need to have a good life, which informed the government's Child and Youth Wellbeing Strategy.³³ The Children's Act 2014 (amended in 2018) was the first example of a legislative obligation to consult with children and young people in the formulation of the Child and Youth Wellbeing Strategy. Other recent legislative changes which incorporate children's rights to participation include the Oranga Tamariki Act 1989 and the Family Violence Act 2018, which now include provisions for children to express their views on matters that affect them and for adults to consider those views in their decision making.³⁴

Areas for change

Government needs to work alongside communities to enhance child wellbeing

While government plays an important role in enhancing wellbeing, it needs to work alongside, support and resource communities who work directly with children to bring about positive change. Implementing the Child and Youth Wellbeing Strategy will require government to ensure families, communities and local service providers have the resources, skills and agency to bring about change.

Urgent and bold changes to welfare are required to support families and children

While there has been a clear focus in recent years on the need to address child poverty and enhance child wellbeing, there is little evidence of impact at the time of writing. A significant proportion of children continue to live in poverty and rates of deprivation have stagnated. Implementing the outstanding recommendations of the Welfare Expert Advisory Group, including increasing welfare payment levels by up to 47% would create much needed change.³⁵ We are very concerned that only three out of the WEAG's 42 recommendations have been implemented so far.

Other areas which require attention, and are explained in further detail in two Children's Convention Monitoring Group reports, *Building Blocks* and *Are We Listening?* are included below:

Strengthening the way in which we allocate resourcing for children

We recommend future budgets build on the 'wellbeing budget' approach by assessing the impact of investments for children in line with the principles and provisions of the Children's Convention.

Embedding a children's rights approach into legislation, policies and practices

Robust and systematic processes are required to ensure that explicit reference to children's rights and the application and embedding of the Children's Convention take place when developing and amending legislation, policies and practices. To enable this to happen, there is a clear need for increased understanding of children's rights and how to apply the Convention across government. The development and delivery of mandatory training for public servants on children's rights and to improve the use of tools such as the Child Impact Assessment tool across government is critical.

Support for the participation of children and young people

There has been some progress in recent years in enabling children to share their views, particularly in the care and protection and youth justice systems, and in the obligation to do so in the Child and Youth Wellbeing Strategy. However, there is a need to embed mechanisms that consistently facilitate and effectively provide ongoing support to enable children to have their views heard and to ensure those



views are considered. The ‘Make It 16’ campaign to lower the voting age in New Zealand to 16 (from 18) is an example of a youth-led initiative that makes a compelling argument for the right of children to have their views considered.³⁶

Using data effectively

While official government data on children is collected via a range of surveys, an overarching, comprehensive approach to data collection and an information system on all areas of children’s rights and wellbeing is lacking. There is a lag on available data about children owing in part to the 2018 census being delayed, which means some data is now more than 18-months out of date. High quality, disaggregated data that considers children’s rights and the Sustainable Development Goals (SDGs) is needed. This data should be collected, stored and shared in a way that is consistent with children’s privacy and information rights, views and best interests.

The Committee may want to ask the New Zealand Government

- 2.1 How will the government’s approach to poverty reduction prioritise groups disproportionately impacted by poverty, including Māori children, Pasifika children and children with disabilities?
- 2.2 What are the government’s plans to increase the quantity and quality of affordable and accessible housing?
- 2.3 How will the government build on the 2019 wellbeing budget to transparently and regularly measure and track resource allocation on children’s rights and wellbeing and assess the impact of investments for children in line with the principles and provisions of the Children’s Convention?
- 2.4 How will the government ensure that there are robust processes for embedding children’s rights and the Children’s Convention into new and amended legislation, policies and practices?
- 2.5 How will children’s rights underpin the Child and Youth Wellbeing Strategy in practice? For example, how will the delivery of the Strategy ensure outcomes for all cohorts of children under each domain (for example disability, ethnicity, LGBTQI)? How will children and their whānau and communities monitor and provide feedback as well as be involved in putting the Strategy into action?
- 2.6 How will the government effectively resource and deliver children’s rights training and ensure the universal and successful use of tools such as the Child Impact Assessment tool across government at all levels so public servants know and understand how to apply a child rights approach?
- 2.7 How does the government plan to develop a child rights and SDG-compliant data infrastructure that generates high quality disaggregated data and is collected, stored and shared in a way consistent with children’s privacy and information rights, views and best interests?



3. Encouraging Oranga Tamariki in its transformation of the care and protection and youth justice systems

“Making people that are in care feel more wanted like feel like they belong with the crowd. For them feel like they’re not being judged wherever they go because they are in care.”

Young person, Office of the Children’s Commissioner, 2019

(when asked, “What is the one thing you want to tell the Prime Minister that children and young people need to live good lives, now and in the future?”)

The Office of the Children’s Commissioner has the statutory mandate to provide independent monitoring and assessment of Oranga Tamariki—Ministry for Children, the State agency responsible for the care and protection of children and for children who have, or are alleged to have, committed an offence.

We know that children in State care continue to experience poor outcomes and have their rights compromised. Asking children and young people in State care about their experiences has given us valuable insights into what needs to change in the State care system. One of the key findings in the *What Makes a Good Life* report was that when Oranga Tamariki gets things right it can make a big difference, but that Oranga Tamariki can sometimes make things worse. Many children and young people we spoke to felt that they were not properly supported or listened to while in care; some were not told what was going on, while others did not know what they were entitled to and had a sense of feeling “stuck in the system.” They also said they sometimes feel stigmatised and discriminated against because of their care status.³⁷

Another key finding in the report was that across a range of wellbeing indicators, children and young people in non-whānau (non-kin) care fare worse than their peers. This included being less likely to feel they can make decisions for themselves, can cope when life gets hard, feel like they belong at school or have friends they can talk to.

At the end of June 2019, there were 6,429 total children in State care. Of that number, 4,420 of them were Māori (69%). Māori children make up only 26% of all children in New Zealand, so the proportion of Māori in State care reveals a considerable inequity.³⁸

Recent statistics show this inequity is persistent and increasing. The rate of Māori children in custody has been comparatively higher than non-Māori over a long period of time. In 2018, the rate of State custody for under 18-year-old Māori children was 155 per 10,000 population. This was almost seven times higher than non-Māori, up from five times higher in 2014.³⁹ Data also reveals substantial, persistent and increasing inequities for Māori compared with non-Māori removal of babies into State custody.⁴⁰ A number of reviews of Oranga Tamariki practices related to the uplifting of babies into State care when notifications of care and protection concerns are made are currently underway.

There are similar inequities in the youth justice system; for example, in the 2018/19 year, 72% of Māori children aged 10-16 years were charged in court compared to 18% of European children in the same age group.



Evidence of progress since 2016

Children in State care was highlighted as an area that requires urgent focus and attention in our last report to the Committee in November 2015 and again in our supplementary submission following the appointment of a new Children's Commissioner in August 2016. In particular, these submissions commented on the significant reforms underway of the care and protection system, which aimed to replace Child, Youth and Family with a new child wellbeing agency and establish a new, fully child-centred operating model. The new agency, Oranga Tamariki—Ministry for Children, was established on 1 April 2017 and has since undergone a raft of legislative, resourcing, process, policy and practice changes. Some of these 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 (in line with the Committee's recommendation);
- Amendments to the Oranga Tamariki Act 1989 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. This includes explicitly incorporating the Children's Convention in the legislation. (The effects of this inclusion still await judicial analysis and consideration);⁴¹
- Considering the views of children and young people in the redesign of the care and protection and youth justice systems. 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;⁴²
- Investigating the abuse of children, young people and vulnerable adults in care between 1950 and 1999 in a Royal Commission of Inquiry;⁴³
- Strengthening the monitoring of the Oranga Tamariki system through an Independent Children's Monitor that aims to achieve a more supportive care and protection system with renewed care standards.⁴⁴

Areas for change

Based on the experiences of the children and young people we heard from as part of the *What Makes a Good Life?* report we identified several things that need to happen if the wellbeing of children in State care is to improve:

- Specific attention needs to be given to the significant challenges that children and young people in care face relative to other children and young people in cross-government initiatives, initiatives in Government departments, and Non-Government Organisations;
- Improvements to the services provided by Oranga Tamariki need to continue to be made so that the experiences of children and young people in care improve;
- The family of children in care need to be appropriately supported so that the separation of children from their families can be avoided;
- Those caring for children and young people in care need to have support to meet children and young people's needs, including through the welfare system; and
- Children and young people need to be provided with opportunities to share their views, to understand their unique experiences and aspirations.⁴⁵



Other aspects of the care and protection system that need to change are:

Replacing care and protection residences with community-based homes

Care and protection residences house children and young people aged 9 to 17 who cannot safely live with their families or in the community due to serious risk of harm. Most young people in care and protection residences have been exposed to serious physical, sexual or emotional abuse within their families. They are not placed there due to committing offences.

Despite this, most of these residences are prison-like and children and young people are detained there without choice. We have heard from children and young people that being in such settings is difficult – the physical conditions are sometimes poor and there is a lack of freedom and support to be independent.⁴⁶

We are encouraged that Oranga Tamariki has committed to phasing out most of these residences over time and replacing them with smaller community-based options, but we remain concerned this is not happening quickly enough.

Limiting the use of Police cells to hold young people on remand

Under the Oranga Tamariki Act 1989 (the Act), adult Police cells are one of five options available to the Youth Court when deciding where to remand a young person pending their court hearing.⁴⁷ The Office of the Children's Commissioner has advocated for this option to be removed as part of amendments made to the Act – however, despite other amendments being made, it still remains an option.

Police cells are not an appropriate custodial environment for anyone, particularly children, for more than very short periods. Being held in a Police cell for extended periods can quickly lead to physical, mental, and emotional harm, and a real risk of self-harm. However, there is no limit on the amount of time a young person can be held in Police custody under section 238(1)(e) of the Act. While in practice this is reviewed every 24 hours, it is not uncommon for young people to be held in Police cells for several days at a time.

The conditions experienced by young people on remand in Police cells are a breach of young people's rights under Article 37 of the Convention. Our strong position is that the option of remanding children in police cells should be abolished. This would particularly benefit Māori young people given 70% of young people held in Police cells are Māori.⁴⁸

Raising the age of criminal responsibility from 10 to a minimum of 14 years old

The New Zealand justice system criminalises children, with the minimum age of criminal responsibility set at 10 years old for murder and manslaughter.⁴⁹ The minimum age of criminal responsibility should be raised to 14. We encourage discussion about a higher minimum age, noting that UN General Comment 24 calls on states to increase their minimum age to at least 14, if not 15 or 16.

Māori children are particularly affected by criminalisation, with those aged 10-13 who offend 3 times more likely to have proceedings brought against them than their non-Māori peers. This again speaks to the need to prioritise reducing the systemic racism experienced by Māori.



The Committee may want to ask the Government

- 3.1 How will the government devolve power and resources to Māori, in line with their rights as indigenous people, to care successfully for their own children and young people in line with section 7AA of the Oranga Tamariki Act, and how will this be monitored?
- 3.2 How will the government address the inequities experienced by Māori in State care, including reducing systemic racism?
- 3.3 How will the government improve the wellbeing of children in State care?
- 3.4 What is the government's timeframe for the phased closure of the national care and protection residences and the reduced use for remand purposes of the national youth justice residences in favour of community-based options?
- 3.5 When will the government remove the option to use police cells to hold young people on remand?
- 3.6 How will the government address the criminalisation of children in the justice system, recognising that Māori children are particularly affected by this criminalisation?
- 3.7 When will the government raise the age of criminal responsibility from 10 to a minimum of 14 years old?
- 3.8 We note that 17-year olds convicted of serious crimes are still dealt with by the adult courts. Will the government work towards including all 17-year olds in the youth justice system?
- 3.9 How will the government address the substantial, persistent and increasing inequities with regard to the removal of Māori babies into State care?



4. Ensuring access to education for all

“Success in school would look like teachers and students building a relationship together so students can feel comfortable.”

Student in teen parent unit, Office of the Children’s Commissioner, 2018

The governance of the New Zealand education system is a devolved one, with administration and management of the 2,500 individual schools largely the responsibility of independently elected Boards of Trustees primarily consisting of parents. While most of New Zealand’s 816,000 school students fare well, the New Zealand education system is failing to deliver equitable outcomes for some groups of students – particularly Māori, Pasifika and disabled students. Indeed, according to UNICEF’s most recent Innocenti Report Card, New Zealand has one of the most inequitable education systems in the world.⁵⁰

Ministry of Education data shows that Māori and Pasifika students are less likely to leave school with a qualification of any kind, and more likely to leave school with a lower qualification than students of Asian or European ethnicity.⁵¹ Data also shows that schools suspend or exclude Māori and Pasifika students from school at higher rates.⁵² Drivers of this inequality include poverty, which disproportionately affects Māori and Pasifika families, coupled with systemic racism, both of which are part of a larger picture of ongoing colonisation.

This is reflected in what students told us in the 2018 *Education Matters to Me* engagements, in which one of the key findings was that some teachers at school are racist towards Māori students and expect them to fail because they are Māori. Students told us that such racial stereotyping and low expectations meant they are more likely to feel unmotivated to try. Some students identified this as a significant contributing factor to their eventual exclusion from school. What we do know is Māori students experience enhanced outcomes when participating in Māori immersion education.

Students with disabilities and/or learning support needs are similarly underserved by the education system. Some schools discourage students from enrolling despite a legal obligation to do so by claiming their needs would be better met at another school. Some families are also asked to contribute financially to the cost of teacher aides or are told that their child cannot attend school for the whole school day because the school is not able to afford the support required to enable them to attend school fulltime.

Together, these issues result in students losing out on learning opportunities and increases their risk of disengaging from school. This can have significant flow-on effects for students’ further education and employment prospects. For example, in June 2018, the NEET (Not in Employment, Education or Training) rate for disabled young people aged 15-24 was 43.3%. This was more than four times the rate of nondisabled young people in this age group (9.7%).⁵³

Another consequence of inequity in the education system is that students are often bullied by other students for their identities, including ethnicity, gender diversity, sexuality and disability. Recent Programme for International Student Assessment (PISA) data shows that 15% of 15-year-olds report frequently being bullied – double the OECD average.⁵⁴

Further, 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. There are also no references to the Children’s Convention itself, nor recognition that children are entitled to their rights as accorded by the Convention.



Evidence of progress since 2016

In February 2018, the government announced details of an extensive education work programme for the following three years. This has included significant changes around the way schools are governed through what is known as the 'Tomorrow's Schools Review'. Key decisions to be implemented over the next 2-4 years include:

- The establishment of independent dispute resolution panels to help resolve disputes between students and schools, including decisions relating to the exclusion and expulsion of students;
- The establishment of an agency as part of a redesigned Ministry of Education that will aim to deliver more frontline support for schools;
- The introduction of a new centre of leadership and local leadership advisor roles to help support and further build the capability of principals and school boards;
- Enrolment zones being managed by the Ministry of Education locally, instead of by each school;
- The implementation of a workforce strategy to assure the quality, diversity and professional expertise of teachers, paraprofessionals and specialist professionals.

Other relevant pieces of work underway include:

- A Learning Support Action Plan setting out priority actions which aim to ensure that children and young people get the right support at the right time at school;
- A review identifying opportunities for strengthening the National Certificate of Educational Achievement (NCEA), New Zealand's major schooling qualification;
- A review of how New Zealand's curriculum is taught and progress and achievement within it is measured;
- An Early Learning Action Plan setting the direction for early learning for the next 10 years;
- A commitment to New Zealand history becoming a compulsory component in the national school curriculum in all schools and kura by 2022;⁵⁵
- An additional \$32 million in funding allocated to the Te Kōhanga Reo National Trust (TKRNT) in 2019 to improve wages, pay volunteers and improve and upgrade facilities.

We are encouraged by these significant reforms and consider them to be a positive step towards ensuring that all children receive an inclusive, quality education. We commend the Ministry of Education for their continued efforts to seek the views of children and young people throughout the reform process.

While such an ambitious reform programme should be commended, many initiatives are still at an early stage with details around their implementation, including funding, still to be worked through.



Areas for change

More support for students who need it

There is an urgent need for more strength-based and accessible support services for children with additional learning needs. A coherent and holistic approach is required including stronger links between education and health services and a mutual understanding about what each service will offer. Stronger information sharing processes between the Ministry of Education and schools are also needed so that families do not have to navigate multiple services.

More support for teacher education and ongoing professional development

The increase in support provided to students needs to be coupled with training for teachers and ongoing professional development in addressing bias and tailoring teaching practice to cater for diverse learning needs.

Government needs to work alongside schools and the wider community to address bullying

To address bullying, all schools should be supported to have a wellbeing promotion strategy in place that is focused on creating environments where, in line with the Child and Youth Wellbeing Strategy, children feel accepted, respected and connected. This should be tailored to the needs of the local community and co-designed with children and young people.

Including education on children's rights in the curriculum

The government needs to ensure that child rights education is resourced and promoted.

The Committee may want to ask the Government

- 4.1 How will the government address the inequitable outcomes currently experienced by Māori, Pasifika and disabled students?
- 4.2 How will the government ensure that children are enabled to have a say about decisions that affect them at school, including in school governance, and take account of their views at all levels of education?
- 4.3 How will the government support schools to reduce bullying?
- 4.4 How will the government reduce the rates at which students are removed from school, and address the overrepresentation of Māori, Pasifika and disabled students in removal statistics?
- 4.5 How will the government ensure students are given the opportunity to learn about their rights at school and recognise the Children's Convention within the curriculum?
- 4.6 How will the government ensure the significant education system reforms underway are implemented in a child-centred way?
- 4.7 When will the government settle the Wai 2336 Te Kōhanga Reo claim in full?



Conclusion

There has been significant progress in advancing children's rights in legislation and policy since the UN Committee last reviewed New Zealand in 2016. However, the impact of these changes is not yet being felt in the lives of children and their families. The reality is that while most children in New Zealand do well, inequality is persistent and increasing.

The government's commitment to reducing child poverty and improving the wellbeing of children and young people presents a momentous opportunity for change. As highlighted in this report, substantial progress has been made already in some areas. The care and protection system has undergone a raft of legislative, policy and practice reforms that have the potential to markedly improve the lives of children in care, particularly mokopuna Māori. The Child and Youth Wellbeing Strategy, which takes a holistic and aspirational approach to enhancing the wellbeing of children and young people is world-leading. The reforms underway in education represent a once-in-a-generation opportunity to ensure all children have access to an inclusive, quality education.

This report has highlighted four areas for change to advance children's rights: (1) improving systems, services and supports for mokopuna Māori and whānau; (2) enhancing child wellbeing; (3) encouraging Oranga Tamariki in its transformation of the care and protection and youth justice systems; and (4) ensuring access to education for all. Central to delivering on these areas is the need for government to work alongside communities and adequately measure, assess and evaluate impact. Listening to the views of children and young people and their families and communities is an essential component of success.

In celebrating the 30th anniversary of the Children's Convention, the government made a recommitment to advance children's rights as part of delivering on the Child and Youth Wellbeing Strategy. Indeed, the Prime Minister herself has regularly expressed her government's profound ambition for New Zealand to be the best place in the world to be a child.⁵⁶

We hope the Committee will support the New Zealand government to realise this vision through this review process. Now is the time for bold and urgent action.



Appendix 1

Summary of Questions the Committee may wish to ask the New Zealand Government

Priorities	Questions
1. Improving systems, services and supports for mokopuna Māori and their whānau	<p>1.1 How will the government ensure the rights of mokopuna Māori are upheld in laws, polices and practices in the context of Te Tiriti o Waitangi, the Children’s Convention and the United Nations Declaration on the Rights of Indigenous Peoples? What mechanisms, training and tools are in place to ensure that the development of policies, legislation and government services are systematically assessed for their impact on mokopuna Māori and their whānau?</p> <p>1.2 Has the government considered setting clear targets for departments that focus on reducing inequitable outcomes for mokopuna Māori and whānau?</p> <p>1.3 How does the government plan to support mokopuna Māori within the context of their whānau, hapū and iwi before they reach the threshold for statutory intervention – including embedding and resourcing culturally appropriate systems, services and supports that address the root causes of vulnerability like low income and poor housing – to ensure they grow up thriving and supported within their communities?</p> <p>1.4 How will the government address the youth Māori suicide rate?</p> <p>1.5 How will the government ensure the voices of mokopuna Māori are heard and their views are considered in decisions that affect them?</p> <p>1.6 What is the government doing to address all forms of racism and discrimination?</p> <p>1.7 How is the government devolving resources to, and engaging with, whānau, hapū and iwi and Māori organisations to determine and drive the solutions that work for them?</p>



Priorities	Questions
2. Enhancing child wellbeing	<p>2.1 How will the government’s approach to poverty reduction prioritise groups disproportionately impacted by poverty, including Māori children, Pasifika children and children with disabilities?</p> <p>2.2 What are the government’s plans to increase the quantity and quality of affordable and accessible housing?</p> <p>2.3 How will the government build on the 2019 wellbeing budget to transparently and regularly measure and track resource allocation on children’s rights and wellbeing and assess the impact of investments for children in line with the principles and provisions of the Children’s Convention?</p> <p>2.4 How will the government ensure there are robust processes for embedding children’s rights and the Children’s Convention into new and amended legislation, policies and practices?</p> <p>2.5 How will children’s rights underpin the Child and Youth Wellbeing Strategy in practice? For example, how will the delivery of the Strategy ensure outcomes for all cohorts of children under each domain (For example, disability, ethnicity, LGBTQI)? How will children and their whānau and communities monitor and provide feedback as well as be involved in putting the Strategy into action?</p> <p>2.6 How will the government effectively resource and deliver children’s rights training and ensure the successful use of tools such as the Child Impact Assessment tool across government at all levels so that public servants know and understand how to apply a child rights approach?</p> <p>2.7 How does the government plan to develop a child rights and SDG-compliant data infrastructure that generates high quality disaggregated data and is collected, stored and shared in a way consistent with children’s privacy and information rights, views and best interests?</p>



Priorities	Questions
<p>3. Encouraging Oranga Tamariki in its transformation of the care and protection and youth justice systems</p>	<p>3.1 How will the government devolve power and resources to Māori, in line with their rights as indigenous people, to care successfully for their own children and young people in line with section 7AA of the Oranga Tamariki Act, and how will this be monitored?</p> <p>3.2 How will the government address the inequities experienced by Māori in state care, including reducing systemic racism?</p> <p>3.3 How will the government improve the wellbeing of children in state care?</p> <p>3.4 What is the government’s timeframe for the phased closure of the national care and protection residences and the reduced use for remand purposes of the national youth justice residences in favour of community-based options?</p> <p>3.5 When will the government remove the option to use police cells to hold young people on remand?</p> <p>3.6 How will the government address the criminalisation of children in the justice system, recognising that Māori children are particularly targeted by this criminalisation?</p> <p>3.7 When will the government raise the age of criminal responsibility from 10 to a minimum of 14 years old?</p> <p>3.8 We note that 17-year olds charged with serious crimes are still dealt with by the adult courts. Will the government work towards including all 17-year olds in the youth justice system?</p> <p>3.9 How will the government address the substantial, persistent and increasing inequities with regard to the removal of Māori babies into State care?</p>
<p>4. Access to education for all</p>	<p>4.1 How will the government address the inequitable outcomes currently experienced by Māori, Pasifika and disabled students?</p> <p>4.2 How will the government ensure that children are enabled to have a say about decisions that affect them at school, including in school governance, and take account of their views at all levels of education?</p> <p>4.3 How will the government support schools to reduce bullying?</p> <p>4.4 How will the government reduce the rates at which students are removed from school, and address the overrepresentation of Māori, Pasifika and disabled students in removal statistics?</p> <p>4.5 How will the government ensure students are given the opportunity to learn about their rights at school and recognise the Children’s Convention within the curriculum?</p> <p>4.6 How will the government ensure the significant education system reforms underway are implemented in a child-centred way?</p> <p>4.7 When will the government settle the Wai 2336 Te Kōhanga Reo claim in full?</p>



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