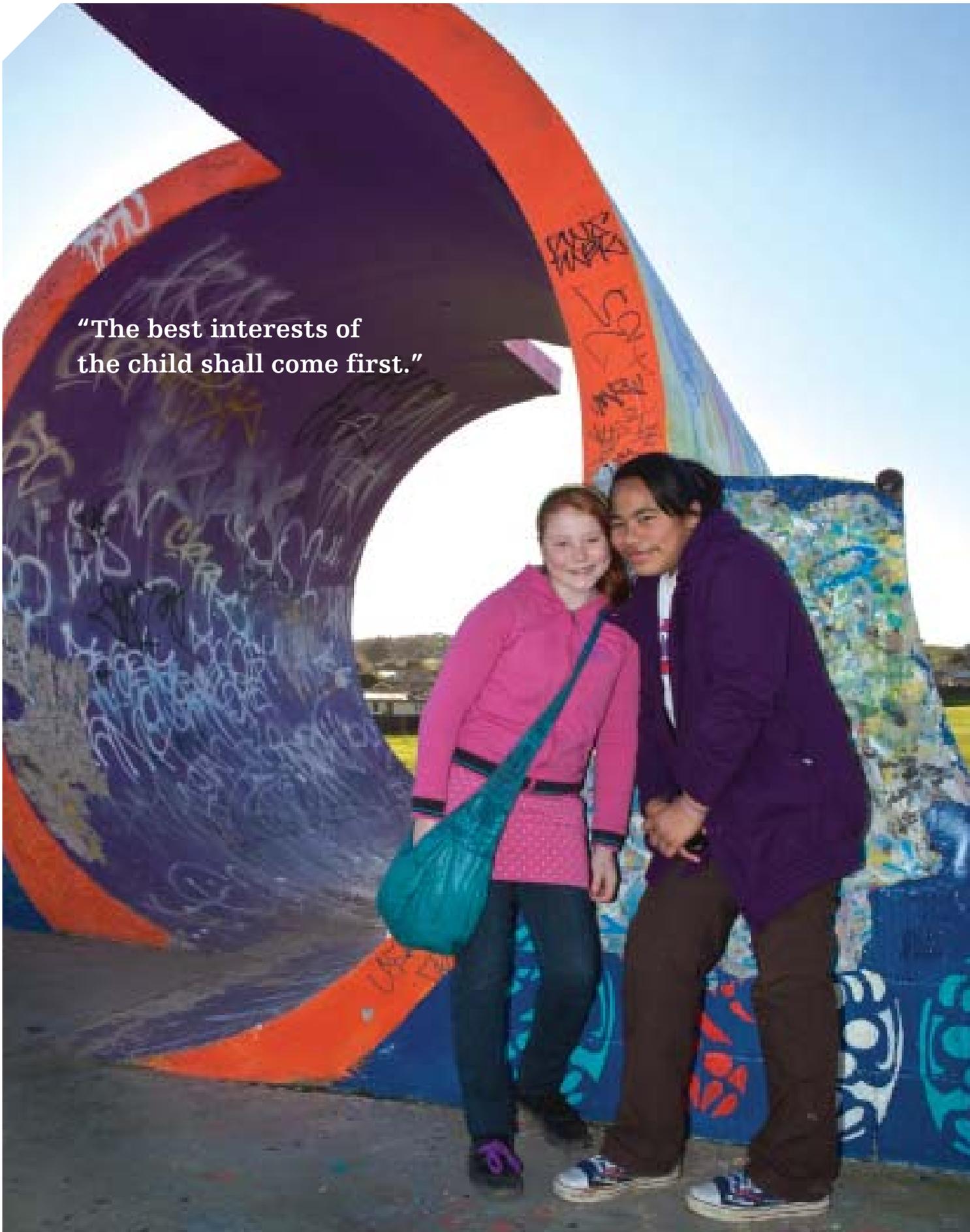


16. Rights of Children and Young People

Tikanga Tamariki me te Taiohi

**“The best interests of
the child shall come first.”**



The best interests of the child shall come first.

Convention on the Rights of the Child, Article 3 (edited)

Introduction Timatatanga

This chapter outlines the international and domestic framework for the protection of children's rights, focusing on key issues and developments since 2004. Overall, most children in New Zealand are able to enjoy their rights, but they remain one of the most vulnerable groups in our society. There are still significant numbers of children who experience violence and neglect, poverty and poor health, and barriers to the full enjoyment of their right to education. Entrenched disparities are an enduring feature of the situation of children in New Zealand, and those under 18 are persistently the age group most likely to experience poverty and hardship. Furthermore, children remain relatively invisible – their views are not routinely sought and their rights are often not explicitly or adequately considered in policy and decision-making.

WHAT ARE CHILDREN'S RIGHTS?

Children and young people (all human beings under the age of 18) have the same basic human rights as adults. Children also have specific human rights that recognise their special need for protection.

Children's rights are commonly viewed as falling into three categories: provision rights, protection rights and participation rights. Provision rights include the right to an adequate standard of living, the right to free education, the right to adequate health resources and the right to legal and social services. Protection rights include protection from abuse and neglect, protection from bullying, protection from discrimination, and safety within the justice system. Participation rights include the right to freedom of expression and the right to participate in public life.

Children live, learn and grow, not in isolation but as part of families, whānau and communities. Even though they are autonomous rights-holders, children – particularly younger children – are dependent on others (for example,

parents or teachers) to give effect to their rights. As children grow, they are able to exercise their rights in an increasingly independent manner.

Children's rights are enshrined in the United Nations Convention on the Rights of the Child (UNCROC). This is one of the key international human rights treaties and is the most widely accepted of the human rights instruments. It has been ratified by 195 countries, including New Zealand in 1993.

CHILDREN'S RIGHTS IN NEW ZEALAND

The Commission's 2004 review of human rights in New Zealand¹ found that most children are able to enjoy their basic rights. However, it identified poverty and abuse experienced by a significant number of New Zealand children and young people as some of New Zealand's most pressing human rights issues. Other issues of particular concern included inequalities affecting Māori and Pacific peoples; disabled children and children with mental ill health; access to education and a need for human rights education; and the need to strengthen legal protections for children and young people.

There have been significant achievements and improvements since 2004. These include:

- actions to reduce violence against children and young people, including the amendment to section 59 of the Crimes Act (discussed in more detail below)
- changes through the Immigration Act 2009 and funding allocation in Budget 2010, to ensure that undocumented children are able to access education
- increased support, through the Working for Families package, to families with at least one adult in full-time work
- improved access to primary healthcare
- improvements in key social and economic indicators for Māori and Pacific peoples
- introduction of a revised national curriculum for primary and secondary schools and introduction of 20 free hours of early childhood education for three- and four-year-olds.

Despite these developments, many of the pressing issues identified in 2004 still stand. Disparities in outcomes

1 Human Rights Commission (2004), *Human Rights in New Zealand Today – Ngā Tika Tangata o te Motu* (Auckland: HRC). Accessible online at <http://www.hrc.co.nz/report/>.

for certain groups, and the levels of poverty and abuse experienced by some children, remain issues of particular concern, especially given recent economic conditions. While there have been a range of improvements for children, they remain one of the most vulnerable groups in our society.

International context Kaupapa ā taiao

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCROC)

UNCROC sets out the basic human rights all children have, without exception. These include the rights to:

- survive and develop
- be protected from harmful influences, abuse and exploitation
- participate fully in family, cultural and social life.

Children's rights are considered holistically, and the articles in UNCROC are regarded as indivisible and interdependent. UNCROC's four core principles guide the application of all other children's rights: non-discrimination; prioritising the best interests of the child; the right to life, survival and development; and respect for the views of the child.

There are two optional protocols to UNCROC: on the sale of children, child prostitution and child pornography; and on the involvement of children in armed conflict.

UN Committee on the Rights of the Child

State parties' implementation of their obligations under UNCROC is monitored by a United Nations committee of experts, the Committee on the Rights of the Child (CRC).

Since 2005, the CRC has issued general comments that provide guidance on the implementation and monitoring of children's rights in relation to:

- early childhood education
- protection from corporal punishment
- rights of children with disabilities
- rights in juvenile justice
- rights of indigenous children
- the right to be heard.

UNCROC affirms that everyone under 18 years has the right to:

- life (Article 6)
- a name and nationality (Article 7)
- have their best interests considered when decisions are made about them (Article 3)
- be with their parents or those who will care for them best (Article 9)
- have a say about things that affect them and for adults to listen and take their opinions seriously (Article 12)
- have ideas, say what they think and get information they need (Article 13)
- meet with other children (Article 15)
- privacy (Article 16)
- protection of reputation (Article 16)
- protection from harm and abuse (Article 19)
- special care, education and training, if needed (Article 23)
- healthcare, enough food, a place to live and clean water (Article 24)
- an adequate standard of living for physical, mental, spiritual, moral and social development (Article 27)
- education (Article 28)
- learn about and enjoy their own culture, speak their own language and practise their own religion (Article 30)
- rest and play (Article 31)
- not be hurt, neglected, used as a cheap worker or used as a soldier in war (Articles 32–38)
- know about their rights and responsibilities (Articles 29, 42).²

2 See Human Rights in Education, *UNCROC in a Page*, accessible online at <http://www.rightsined.org.nz/index.php/resources/human-rights/6-treaties-and-other-international-instruments/10-uncroc-in-a-page.html>

Complaints process

Unlike other core international human rights treaties, UNCROC does not currently include a communications procedure that enables individuals to complain to the committee about breaches of the convention. The CRC has stated that the development of a communications procedure for the convention would significantly contribute to the overall protection of children's rights.

In 2009, the UN Human Rights Council passed a resolution to establish a working group to explore the development of a procedure for individual complaints.³ The first meeting of the working group was held in December 2009 to discuss issues such as the reasons for and implications of a complaints procedure, and the effectiveness of existing international, regional and national mechanisms. Following those discussions, the Human Rights Council asked the working group to prepare a proposal for a draft optional protocol. The proposal was issued in September 2010.⁴

OTHER HUMAN RIGHTS STANDARDS

The rights of children and young people are also protected under other human rights treaties and conventions. The International Covenant on Economic Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (CRPD) all contain specific provisions relating to children's rights, as does the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).⁵

Two of the eight fundamental International Labour Organisation (ILO) Conventions also relate to children's rights. They are Convention 138, on the Minimum Age for Admission to Employment (1973), and Convention 182, on the Worst Forms of Child Labour (1999).

New Zealand context Kaupapa o Aotearoa

UNCROC IN NEW ZEALAND

Reservations

New Zealand ratified UNCROC in 1993 with three formal reservations. These related to children unlawfully in New Zealand, the protection of children in employment, and the mixing of juvenile and adult prisoners.

The first is a general reservation, which reserves the right of the Government to provide different benefits and other protections in the convention, "according to the nature of their authority to be in New Zealand". Progress towards removing this reservation was made through changes to immigration legislation allowing undocumented children to be legally enrolled at school.⁶

In relation to the reservation about employment, the Government has maintained the position that existing law and policy provide adequate age thresholds for entry into work and protection for children and young people in employment. Despite this view of New Zealand's basic compliance, removal of the reservation appears unlikely in the near future.⁷

There have been some improvements in relation to the reservation concerning age-mixing in detention, particularly in the context of prisons, at the border, under military law and in mental health facilities. Lack of specialised youth facilities for girls in prison and age mixing in police custody are among the issues that need to be addressed.

Almost 17 years since ratifying UNCROC, New Zealand has still not fully committed to the convention by removing these reservations. While government agencies have undertaken work towards withdrawing the

3 Report of the open-ended working group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to provide a communications procedure, A/HRC/13/43, 21 January 2010

4 Proposal for a draft optional protocol prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an optional protocol to the convention on the rights of the child to provide a communications procedure, A/HRC/WG.7/2/2, 1 September 2010

5 For example: ICESCR, Article 10 (special protection and assistance for children); ICCPR, Article 10(2)(b) and (3) (rights of juvenile offenders) and Article 24 (children's rights to special protection); CRPD, Article 7 (rights of children with disabilities); UNDRIP, Article 22 (rights of indigenous children, including protection from violence and discrimination)

6 Immigration Act 2009. See further discussion below.

7 ILO 138 is discussed further in the chapter on the right to work.

reservations, the CRC has expressed concern and disappointment at the slowness of the process and lack of progress.⁸

New Zealand has signed, but not ratified, the optional protocol on the sale of children, child prostitution and child pornography. The Child and Family Protection Bill 2009 was introduced to make the remaining legislative changes necessary for ratification. New Zealand ratified the optional protocol on the involvement of children in armed conflict in 2001.

New Zealand is also a party to the other key international conventions, including ICESCR, ICCPR and CRPD and CAT. In 2007, New Zealand ratified the Optional Protocol to CAT and established a preventive monitoring system covering all places of detention, including child and young persons' residences. New Zealand has ratified ILO Convention 182 but not Convention 138.

International review and reporting

As a state party to UNCROC, the New Zealand Government is obliged to report regularly to the CRC on how UNCROC is being implemented in New Zealand.

New Zealand's third and fourth periodic reports were submitted by the Government in November 2008 and will be considered by the CRC in January 2011.

The Children's Commissioner submitted separate reports. Among the issues highlighted by the Commissioner were the slow progress in removing the remaining reservations to UNCROC, the lack of a coordinated approach to developing law and policy impacting on children, and inequalities of outcomes for various groups of children and young people.⁹

UNCROC expressly provides for civil society to have a role in monitoring its implementation by submitting 'shadow reports' to the committee. Action for Children and Youth Aotearoa (ACYA) coordinated and submitted a major report to the committee in July 2010.¹⁰ Save the Children NZ coordinated the preparation of a report that conveys the views of children and young people on the convention and its implementation in New Zealand. The report includes digital stories with groups of young people, and the findings of online and school-based surveys.¹¹

Children's rights issues have also been raised in the context of the Universal Periodic Review¹² and by other treaty bodies that have examined New Zealand's human-rights performance in recent years.¹³ These bodies have made comments and recommendations in relation to:

- the removal of reservations and ratification of outstanding human rights instruments (such as the optional protocol on the sale of children, child prostitution and child pornography)
- full implementation of juvenile justice standards – including raising the age of criminal responsibility; ensuring that juveniles are detained separately from adults; and ensuring that detention of children is used only as a measure of last resort
- ensuring that all children enjoy the right to education – including undocumented children, disabled children, children from low-income families and families living in rural areas
- protection of children against abuse and neglect, and effective coordination of efforts to prevent child abuse
- data collection and monitoring on trafficking.

8 United Nations Committee on the Rights of the Child (2003), Concluding Observations: New Zealand, CRC/C/15/Add.216, paras 6–7

9 Office of the Children's Commissioner (2010), *Report of the New Zealand Children's Commissioner to the United Nations Committee on the Rights of the Child 2010* (Wellington: OCC). Accessible online at http://www.occ.org.nz/_data/assets/pdf_file/0005/7682/CC_UNCROCREPORT_02.09.10.pdf

Office of the Children's Commissioner (2008), *Report on the Implementation of the United Nations Convention on the Rights of the Child in New Zealand* (Wellington: OCC). Accessible online at http://www.occ.org.nz/_data/assets/pdf_file/0009/6894/OCC_UNCte_211108.pdf

10 ACYA (2010), *Children and Youth in Aotearoa 2010* (Auckland: ACYA). Accessible online at http://acya.org.nz/site_resources/library/Documents/Reports_to_UN/CYA_2010/Children_and_Youth_Aotearoa_2010.pdf

11 Information on the project is accessible online at <http://a12aotearoa.ning.com/>

12 The Universal Periodic Review (UPR) mechanism is a comprehensive, regular review of the human rights performance of each UN member state, undertaken by the UN Human Rights Council.

13 Human Rights Council (2009); Committee Against Torture (2009); Committee on the Elimination of Racial Discrimination (2007); Committee on the Elimination of Discrimination Against Women (2007); Human Rights Committee (2010)

The Government's response to the recommendations arising from the Universal Periodic Review included commitments to:¹⁴

- ratifying the optional protocol to UNCROC relating to the sale of children, child prostitution and child pornography
- addressing discrimination and socio-economic disparities suffered by vulnerable groups and taking action to understand the causes of inequality
- improving resourcing of services for disabled children
- continuing to work towards removal of the reservation to UNCROC relating to age mixing in detention
- reducing violence within families and its impact on children
- recording and documenting cases of trafficking and exploitation of children.

LEGISLATION

Two key pieces of legislation relating to the welfare, care and protection of children and young people are the Children's Commissioner Act 2003 and the Children, Young Persons and Their Families Act 1989 (CYPF Act). These are discussed further in the Commission's 2004 report, along with other significant pieces of legislation that affect children (such as the Education Act 1989, New Zealand Bill of Rights Act 1990 and Crimes Act 1961).¹⁵

Legislative developments since 2004 that have strengthened legal protections for children's human rights include the Care of Children Act 2004 and the Crimes (Substituted Section 59) Amendment Act 2007.

The Care of Children Act 2004 amended the law relating to guardianship and included some significant changes that brought New Zealand law more closely into line with UNCROC. These include requiring that the welfare and best interests of the child are the paramount consideration when the Family Court makes decisions; and provisions that reflect the UNCROC definition of the child as any person under the age of 18. Subsequently, other pieces of legislation have been amended or updated to reflect this definition. Both the Care of Children Act and

the Evidence Act 2006 provide improved recognition and opportunities for children and young people to express their views, and for these to be taken into account in court proceedings.

The Crimes (Substituted Section 59) Amendment Act 2007 deals with corporal punishment of children by parents or guardians. The act removed the justification of the use of force for the purpose of correction as a defence to assault, thus affirming that violence against children was no more permissible than violence against adults. The amendment strengthened the legal framework protecting children from violence.

Another major development has been the Immigration Act 2009, which made changes allowing schools to provide education to children who do not have appropriate immigration status.

The Child and Family Protection Bill 2009, currently before Parliament, will make changes to the Adoption Act to enable New Zealand to ratify the optional protocol on the sale of children, child prostitution and child pornography.¹⁶

While changes in the bill regarding offences and extradition will bring the law more into line with international protections, New Zealand's adoption legislation has been criticised as out of date and in urgent need of reform. Changes are required to bring the law into line with modern adoption practices and with UNCROC, as noted in the CRC's previous recommendations regarding adoption and the application of Article 12. Current shortcomings include:

- Children do not have the opportunity to be heard and have their views given due weight.
- Adopted children have no right to information about, or access to, their biological parents.
- The best interests of the child are not a paramount consideration.
- There is no power for adopted children to preserve at least one of their original names.
- Consent of birth parents is often given without independent advice or counselling.

14 Response of the Government of New Zealand to Recommendations in the Report of 11 May 2009 of the Working Group on the Universal Periodic Review, A/HRC/12/8/Add.1, 7 July 2009

15 Human Rights Commission (2004)

16 The Justice and Electoral Select Committee have reported back recommending that the bill be passed. As at 21 October 2010, the bill is before the Committee of the Whole House.

Proposed changes through the Children, Young Persons and their Families Amendment Bill (No. 6) (2007) would have improved legal protections for children in state care. However, progress of the bill through the legislative process has stalled, despite urging from the UN that the law change be adopted.¹⁷

Following a review of the CYPF Act, the bill proposed to introduce a range of amendments, including improvements to: complaints processes; participation provisions; recognition of victims' rights; and inter-agency collaboration, information sharing and support for transition from care. Significantly, the bill would extend the protection measures under the CYPF Act to include 17-year-olds, thereby bringing the legislation into line with UNCROC and implementing specific recommendations of the CRC¹⁸ and the Committee Against Torture.¹⁹ The bill was introduced into Parliament in 2007 and reported back from the select committee in 2008. Since the change of government, it has not been further progressed.

A further development in contradiction with CRC recommendations is the Children, Young Persons and their Families (Youth Court Jurisdiction and Orders) Amendment Act 2010. The act has brought more child offenders within formal court processes, effectively lowering the age of criminal prosecution. This is despite the CRC recommending that New Zealand's minimum age for prosecution should be raised "to an internationally acceptable level". This issue is discussed further below.

New Zealand today Aotearoa i tēnei rā

New Zealand's 1.05 million children (those aged 0-17 years) make up 26 per cent of the population.²⁰ Around 45 per cent of households have children.

The diversity of children and young people continues to increase, with almost 20 per cent of those aged 15 years and under identifying with more than one ethnic group. The proportion of children identifying as European (72 per cent) has declined since 1996, while those identifying as Pacific (12 per cent), Asian (10 per cent) and other ethnic groups (1 per cent) has risen. The proportion of children identifying as Māori remains at approximately 24 per cent.

In 2006, 90,000 children aged under 15 years (10 per cent) were reported to have a disability.²¹ The Disability Survey 2006 reported that an estimated 5 per cent of all children had "special education needs", the most common disability category used in that survey. Chronic conditions or health problems and psychiatric or psychological disabilities were the next most common disability types. More than half of disabled children (52 per cent) had a disability caused by a condition that existed at birth. Almost half, 48 per cent, of disabled children had multiple disabilities.

This section looks at the current status of children's rights, particularly in relation to:

- protection of children's rights in law and policy
- protection from violence and maltreatment
- provision of the rights to health, education and an adequate standard of living
- participation of children and young people.

PROTECTION RIGHTS

Policy for children

Despite being one of the most vulnerable groups in society, and despite obligations to ensure that children's best interests are a primary consideration in actions concerning them, children remain relatively 'invisible' in decision-making and government processes. Their interests are often overlooked or subsumed and their views are seldom sought.

17 UN Committee Against Torture, (2009), *Concluding observations of the Committee against Torture: New Zealand*, CAT/C/NZL/CO/5, 14 May 2009, at para 8

18 United Nations Committee on the Rights of the Child (2003), *Concluding Observations: New Zealand*, UNCROC/C/15/Add.216, 27 October 2003, para 21

19 UN Committee Against Torture, (2009) *Concluding observations of the Committee against Torture: New Zealand*, CAT/C/NZL/CO/5, 14 May 2009

20 Ministry of Youth Development (2008), *Third and Fourth Periodic Reports to the Committee on the Rights of the Child*, UNCROC.C.NZL.3-4, 11 November 2008, p 95. Accessible online at <http://www2.ohchr.org/english/bodies/UNCROC/docs/AdvanceVersions/UNCROC.C.NZL.3-4.doc>

21 Statistics New Zealand (2007), *2006 Disability Survey: Hot off the press*. Accessible online at http://www.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey2006_HOTP06.aspx

At national level, there are a range of policies and strategies aimed at ensuring that children's rights are protected.²² In the absence of a comprehensive strategy or mechanism for incorporating children's rights into policy and legislation, the level of recognition and protection of children's rights can be ad hoc and inconsistent. Lack of coordination and a clearly defined focal point for responsibility within the Government for children's rights has been an issue.

In 2003, the CRC expressed its concern at the insufficient coordination of policies and services for children. It recommended that a permanent mechanism be established to coordinate activities and ensure that obligations under UNCROC are implemented in a coordinated and effective way.²³

The Children's Commissioner has recommended that the Government examine how more weight could be given to children in government decision-making processes.²⁴

Another issue raised by the CRC in 2003 is the lack of available data on budgetary allocations for children. The CRC recommended the collection of disaggregated data on budget allocations for children and the systematic assessment of the impact of economic policy on children.²⁵

While government agencies collect a large amount of data about children, a lack of overall coordination can mean that information is not always easily available or put to best use to inform policy.²⁶ There is a particular lack of data about disabled children.²⁷

Children are citizens. Yet because they do not have the vote, have no form of direct

representation and are not organised into any form of political grouping, their voice on specific issues is largely unheard. In short, they are politically marginalised.

As a consequence, it is almost inevitable that the executive and legislators overlook the impact of all but child-specific legislation on children.²⁸

A recent report on children's health and well-being has once again highlighted the continued need for a comprehensive, coordinated and sustained approach to policies and services for children.²⁹ The report, by the Public Health Advisory Committee, identified lack of coordination and investment in early childhood services as factors in the poor health status of New Zealand children, compared with children in other nations. The report states that "improving child health requires more than merely fixing any one health 'problem'; it requires a change to organisational systems... Changes must be made to the overall investment in and structure of policies and services for children." The report advocates the need for strong leadership and a whole of government approach, with a cross-party agreement for children, sustained investment and identified work programme and accountabilities.

Other suggested measures in recent years have included a national plan of action for children, comprehensive child impact reporting, establishment of a Minister for Children, a cross-party caucus and a parliamentary select committee for children.³⁰

22 These include the *Agenda for Children* and the *Youth Development Strategy Aotearoa*. The Ministry of Youth Development coordinated a five-year UNCROC work programme for implementing the CRC's recommendations. Reported online at <http://www.msd.govt.nz/what-we-can-do/children-young-people/uncroc/how-uncroc-is-improving-the-rights-of-children-and-young-people-in-nz.html>

23 United Nations Committee on the Rights of the Child (2003)

24 Office of the Children's Commissioner (2010)

25 United Nations Committee on the Rights of the Child (2003), at para 14–15

26 Public Health Advisory Committee, (2010), *The Best Start in Life: Achieving effective action on child health and well-being* (Wellington: Ministry of Health)

27 This is discussed further in the chapter on rights of disabled people.

28 'Every Child Counts' (2010), Briefing Sheet for MPs, June

29 Public Health Advisory Committee, (2010)

30 Public Health Advisory Committee, (2010). See also: Mason N and Hanna K (2009), *Undertaking Child Impact Assessments in Aotearoa New Zealand Local Authorities: Evidence, practice, ideas* (Auckland: Office of the Children's Commissioner / UNICEF)

Definition of the child

Article 1 of UNCROC provides that “child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. Since 2004, the Care of Children Act and several other pieces of subsequent legislation have been enacted which reflect this definition. However, several areas remain where age limits in legislation are inconsistent with UNCROC.

The CRC has previously expressed concern and recommended that these inconsistencies be addressed.³¹ An area specifically highlighted by the CRC was the gap in protection for 17-year-olds under the Children, Young Persons and their Families Act. The committee urged New Zealand to extend the act’s protections to all those under 18 years of age. Proposed legislation to achieve this (the CYPF Amendment (No. 6) Bill) was introduced to Parliament in 2007, public submissions were made and a select committee report was issued in 2008. Since then, following the change of government, the bill has not been progressed.

A lack of consistency in agencies’ definitions of the child, and the resulting variable availability of protections to children and young people, was highlighted by the Ombudsmen in their 2007 investigation into prisoner transport.³² The investigation stemmed from the tragic death of 17-year-old Liam Ashley in 2006 while being transported in a prison van with adult prisoners. The Ombudsmen’s recommendations included the need for alignment of police and department of corrections’ definitions of young prisoners, in order to ensure that protections were consistently provided. A revised memorandum of understanding between the two agencies, signed in December 2009, now clarifies the agreed-on standards to be used.³³

Employment protections

As discussed earlier, the New Zealand Government maintains its exemption to UNCROC and non-acceptance of ILO 138 relating to employment of children. This is on the

basis that New Zealand law and policy provides adequate age thresholds for entry into work and protection for children and young people in employment. For example, the Education Act 1989 prohibits employers from employing children under 16 during school hours or when it would interfere with their attendance at school. The Health and Safety in Employment Act 1992 and Regulations 1995 set out health and safety obligations and contain restrictions on young people under 15 working in certain dangerous workplaces, working at night or undertaking hazardous work (such as working with machines and heavy lifting).

New Zealand has a strong tradition of children and young people being able to undertake ‘light work’ for pocket money, and there is a view that prescribing a minimum working age would undermine this tradition.

However, there are indications that stronger employment protections are required. Increasingly, the available evidence suggests that children are being exposed to more labour intensive work, for example on farms, and for longer working hours than previously. The Human Rights Commission’s National Conversation about Work (2008–10) found a number of situations where young people were working excessive, very early or very late hours, with negative impacts on their schooling. There were also indications of a prevalence of stereotypes and discriminatory attitudes about employing young people. Furthermore, youth unemployment was a serious concern in most regions visited. These issues are also discussed in the chapter on the right to work.

Section 30(2) of the Human Rights Act 1993 provides for an age exemption to the act’s employment discrimination provisions. This allows someone under the age of 20 to be paid at a lower rate than another person employed in the same or substantially similar circumstances.

Children under 16 years of age are excluded from the Human Rights Act’s age discrimination provisions.³⁴ This has attracted criticism from human rights advocates,

31 United Nations Committee on the Rights of the Child (2003), paras 20–21

32 Office of the Ombudsmen (June 2007), *Ombudsmen’s Investigation of the Department of Corrections in relation to the Transport of Prisoners*, Wellington: Office of the Ombudsmen

33 Signed in December 2009: <http://www.corrections.govt.nz/news-and-publications/magazines-and-newsletters/corrections-news/2011/corrections-news-jan-feb-2010/new-understanding-with-police.html>

34 Human Rights Act 1993, s21(1)(i)

and is in contrast to a number of other countries where human rights legislation does not have a lower age limit.³⁵ While the provision applies only to age discrimination, the exception can lead to the misconception that the act does not apply at all to children.

Minimum age of criminal responsibility

In New Zealand, the minimum age of criminal prosecution is 14 for most offences,³⁶ 12 for certain serious offences, and 10 for murder and manslaughter.

UNCROC requires that children who are alleged or proved to have offended must be treated in a manner that takes into account their age and the desirability of promoting their rehabilitation.³⁷ It also requires the establishment of a minimum age of criminal responsibility.³⁸

Although relevant international commentary and case law³⁹ do not stipulate what that age should be, the CRC has commented negatively on the age at which a child can be charged with a serious criminal offence in New Zealand. It has recommended that this be raised to “an internationally acceptable level”.⁴⁰

The New Zealand Government has reviewed the minimum age of criminal responsibility and prosecution on several occasions but has not implemented the CRC’s recommendation to raise the age.

Rather than raising the age of criminal responsibility, there have been further erosions of minimum age provisions. While an attempt to lower the minimum age in 2006 was unsuccessful,⁴¹ the Children, Young Persons and their Families (Youth Court Jurisdiction and Orders) Amendment Act 2010 effectively lowered the age of criminal prosecution by making 12- and 13-year-olds liable to prosecution in respect of certain serious offences other than murder or manslaughter.

Safety and freedom from violence

The abuse and neglect of children continues to be a major issue of concern, despite wide recognition of the problem and wide-ranging efforts to address it.

In OECD rankings, New Zealand rates poorly in terms of child health and safety,⁴² and in the past has had one of the highest rates of child maltreatment deaths.⁴³

The most common form of maltreatment of children in New Zealand is emotional abuse and neglect, and the incidence of these has increased since 2004. Rates of physical abuse have declined in recent years, but rose in 2009.

In 2009, 2855 children were physically abused, 1126 were sexually abused, and 15,615 children were subjected to emotional abuse or neglect.⁴⁴ As a result of abuse,

35 For example, Canada (Canadian Charter of Rights and Freedoms), Australia (Age Discrimination Act 2004), the United Kingdom (Human Rights Act 1998; Age Discrimination Act 2004) and the European Union (European Convention on Human Rights) do not have youth age specificity within their equivalent human rights legislation.

36 Since the passage of the Children, Young Persons and their Families (Youth Court Jurisdictions and Orders) Amendment Act 2010

37 UNCROC, Article 40(1)

38 UNCROC, Article 40(3)(a)

39 *T & V v United Kingdom* (2003) 36 EHRR CD 104

40 The Committee has raised such concerns since New Zealand’s first report in 1997 (Concluding Observations of the Committee, UNCROC/C/15/ADD.71 24/1/97). In 2003, the Committee recommended that New Zealand “raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that it applies to all criminal offences” (Concluding Observations of the Committee, UNCROC/C/15/ADD.216: para 21(a) 3/1/0/03). This recommendation was reiterated by the Committee Against Torture in 2009.

41 The Serious Crimes (Young Offenders) Bill 2006 would have increased the number of offences for which children and young people aged 10 to 14 could be dealt with in the court system. That bill was not passed, with the select committee noting that the likely result would be that New Zealand would face criticism for breaching its obligations under the UNCROC and the ICCPR: Law and Order Committee (2007), Report on Young Offenders (Serious Crimes) Bill 28–1, pp 3–4.

42 Organisation for Economic Co-operation and Development (2009), *Doing Better for Children*, (Paris: OECD). Accessible online at http://www.oecd.org/document/12/0,3343,en_2649_34819_43545036_1_1_1_37419,00.html

43 While recent international comparisons are not available, a 2003 report on child maltreatment deaths showed that in the 1990s, New Zealand had the third highest child maltreatment death rate among the 27 developed nations: UNICEF (2003), *A League Table of Child Maltreatment Deaths in Rich Nations* (Innocenti Report Card, 2003, No. 5)

44 Ministry of Social Development (2009), *Protecting our most vulnerable infants*. Media release, 3 September. Accessed 26 October 2010 from <http://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2009/pr-2009-09-03.html>

248 children were hospitalised; between 2003 and 2008, 36 children under the age of 15 died as the result of assault.⁴⁵

Reporting of cases to Child, Youth and Family (CYF) has risen markedly since 2004, although this is considered to be largely the result of increased reporting and more police referrals of children found in violent situations. The number of substantiated cases of maltreatment has also increased, almost doubling since 2004.⁴⁶

A 2009 report by the Office of the Children's Commissioner highlighted the high rate of death and serious injury suffered by very young children.⁴⁷ The report found that each year, about 45 children under five in New Zealand were seriously injured as a result of assault, and on average about five children under five were killed. The report also found that it is young babies who are most at risk of abuse – their extreme vulnerability means that almost all forms of assault can lead to serious injury and death.

Further research on family violence homicides highlights that the first year of life is the time of highest risk of child death.⁴⁸ Most children who are killed (76 per cent) are killed before they turn five, and almost half (44 per cent) are killed in their first year of life. Key factors in child homicides include drug and alcohol use and abuse, parental separation, and assault intended to punish specific behaviours of the child.

There is considerable government funding for and government and civil society emphasis and cooperation on, addressing the issue of child abuse and maltreatment.

A key development has been the establishment of the cross-sector Taskforce for Action on Violence within Families. Activities of the taskforce include a campaign for action on family violence and a programme of action

focused on prevention of child maltreatment and neglect.

In September 2009, the Government announced measures to reduce abuse of babies and young children, including a public awareness campaign to prevent babies being shaken. Other initiatives announced include multi-agency safety plans to provide monitoring and follow-up of children admitted to hospital as a result of abuse; CYF social workers in hospitals; and a first response trial, involving follow-up by community based services where police have attended family violence incidents.

In 2010, an Independent Experts Forum was established to provide advice to ministers on priority areas for the prevention of child abuse. The forum's recommendations included:

- an integrated and multi-disciplinary approach
- greater data sharing between agencies
- priority mental health services for parents of small children
- a statutory statement of responsibility to clarify the role of health and education systems in preventing child abuse and to require inter-agency cooperation.

Other positive initiatives include the roll out by CYF of a 'differential response' approach. This aims to provide a more collaborative and flexible response to families where there is a potential care or protection concern, including linking families with community based services.

In 2009–10, the Independent Police Conduct Authority carried out a special inquiry into police handling of child abuse cases. The inquiry arose due to a large backlog of cases in Wairarapa, but was extended to cover police case management of child abuse investigations across the country. The authority's first report on the inquiry, released in May 2010, recommended that police improve practices, policies and procedures for investigating child

45 Child and Youth Mortality Review Committee (2009), *Fifth Report to the Minister of Health Reporting Mortality 2002–2008* (Wellington: Child and Youth Mortality Review Committee). Accessible online at <http://www.cymrc.health.govt.nz/moh.nsf/indexcm/cymrc-resources-publications-annualreport5>

46 New Zealand Government response to the list of issues to be taken up in connection with the consideration of The Fifth Periodic Report of New Zealand, CCPR/C/NZL/Q/5/Add.1, 5 January 2010

47 Office of the Children's Commissioner (2009), *Death and serious injury from assault of children under five years in Aotearoa New Zealand: A review of international literature* (Wellington: OCC), June. Accessible online at http://www.occ.org.nz/_data/assets/pdf_file/0016/6343/OCC_Deathand_seriousinjury2009_040609.pdf

48 Martin J and Pritchard R (April 2010), *Learning from Tragedy: Homicide within Families in New Zealand 2002–2006*, working paper prepared for the Centre for Social Research and Development (Wellington: MSD). Accessible online at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/learning-from-tragedy/index.html>

abuse. In response, the police – who deal with 700,000 critical incidents and more than 5000 child abuse reports a year – indicated that a number of recommendations were already being implemented and others would be worked through.

Repeal of corporal punishment legislation

In 2007, Parliament enacted the Crimes (Substituted Section 59) Amendment Act 2007. The act repealed section 59 of the Crimes Act 1961, which had allowed a parent or caregiver to use reasonable force to correct or discipline a child. It substituted a new section 59, which justified a parent or caregiver using reasonable force towards a child for certain purposes, but not for correction. To ensure that parents were not criminalised for lightly smacking a child, a further provision was added. This conferred on police a discretion not to prosecute where the use of force was so “inconsequential that there is no public interest in proceeding with a prosecution”.⁴⁹

In August 2009, there was a nationwide citizens initiated referendum that asked “Should a smack as part of good parental correction be a criminal offence in New Zealand?” There were serious concerns about the question, which was criticised as confusing. Despite this, the referendum attracted a response of 56 per cent, of whom 87 per cent answered “no”.⁵⁰

Following the referendum, a review was undertaken of police and CYF policies and procedures to identify whether any changes were ‘necessary or desirable’.⁵¹ The review found both the police and CYF had effective guidelines for ensuring that good parents were treated as Parliament intended, though more could be done to reassure parents that they would not be criminalised or

unduly investigated for a light smack. The review recommendations included establishing a new parent support helpline in CYF; immediate publication of guidelines for social workers dealing with child abuse reports that involve smacking; a requirement for police and social workers to provide families with specific information on their rights; and a collection of more specific information on the application of section 59 to gain a clearer picture of how the law is working in practice.

The legal framework protecting the rights of children and young people has been strengthened by the 2007 amendment. There are also a range of initiatives promoting positive, non-violent forms of discipline and there are some indications of attitude change. Surveys undertaken by the Children’s Commissioner show that attitudes towards child discipline have changed since the office first surveyed people in 1993. At that time, 87 per cent of survey respondents thought there were times when it was acceptable to use physical punishment with children. The 2008 survey showed that this had reduced to 58 per cent of respondents.⁵² Research by the Families Commission found that positive parenting strategies, information and support are assisting parents, many of whom are using positive parenting strategies because they think these are the most effective means of discipline.⁵³

PROVISION RIGHTS

Adequate standard of living⁵⁴

Numerous initiatives are contributing to improve child health and welfare. However, while there have been improvements in rates of child poverty and hardship since 2004, children remain over-represented in these categories.⁵⁵

49 Crimes (Substituted Section 59) Amendment Act 1961, section 59(4)

50 In August 2009, a private member’s bill seeking to repeal the law was introduced to Parliament: the Crimes (Reasonable Parental Control and Correction) Amendment Bill. The bill awaits a first reading.

51 CAB Min (09) 30/23

52 Children’s Commissioner (2008), *Omnibus Survey Report – One year on: Public attitudes and New Zealand’s child discipline law* (Wellington: OCC), November

53 Lawrence J and Smith A (2009), *Discipline in context: families’ disciplinary practices for children aged under five*, Families Commission – Blue Skies Report No. 30/09, September

54 See also the chapters on the right to housing and the right to social security.

55 Perry B (December 2009), *Non-income measures of material well-being and hardship: first results from the 2008 New Zealand Living Standards Survey, with international comparisons* (Wellington: MSD), p 22 The report notes that those aged 0–17 make up 37 per cent of all those in hardship, but only 25 per cent of the population overall. See also Perry B (June, 2009). Household incomes in New Zealand: trends in indicators of inequality and hardship 1982 to 2008 (Wellington: MSD)

Over the past two decades, children have consistently been the age group most likely to live in low-income households, crowded households and households experiencing material hardship or deprivation.^{56 57}

In recent years, child poverty rates⁵⁸ have declined, from 26 per cent in 2004 to 22 per cent in 2008.⁵⁹ Levels of hardship suffered by children have also improved, falling from 26 per cent in 2004 to 19 per cent in 2008.

The Working for Families package has had a significant effect on poverty rates for families with an adult in paid work.⁶⁰ This policy has also enabled some parents and caregivers to move into employment. However, benefit-dependent families not entitled to receive the In Work Tax Credit component of Working for Families have not seen the same gains. Poverty rates are higher for children in benefit-dependent households,⁶¹ and beneficiary families with dependent children have a hardship rate more than five times that of working families with children.⁶²

In 2008, the claim brought by the Child Poverty Action Group (CPAG) was heard by the Human Rights Review Tribunal. CPAG argued that the In Work Tax Credit in the Working for Families scheme discriminated against the children of beneficiaries on the grounds of their employment status. The tribunal's decision found a prima facie case of discrimination, but said it was "justified in a free and democratic society".⁶³

Child poverty is unevenly distributed across society, particularly affecting sole-parent families, families with no adult in full-time work, Māori and Pacific peoples and disabled children.⁶⁴ Disparities between different groups are marked. In 2003–04, 16 per cent of Pākehā children lived in poverty, compared with 27 per cent of Māori children and 40 per cent of Pacific and 'Other' children. Ethnicity breakdowns of child poverty data are no longer reported, because low sample sizes raise concern about data quality.⁶⁵ This severely limits the ability to monitor the number and proportion of Māori or Pacific children living in poverty. Māori and Pacific families are also more likely to be living in overcrowded homes (32 per cent and 37 per cent respectively, compared with 10 per cent of the general population).⁶⁶ Children in poor families are more likely to be sick and injured, they are at greater risk of abuse and neglect, and their educational achievement and subsequent employment opportunities are affected as a result.⁶⁷

In 2009, the OECD reported that in recent years⁶⁸ New Zealand spent less than the OECD average on young children in particular, even though spending more on young children is more likely to generate positive changes and make a difference in the long term.⁶⁹ Based on international evidence, the OECD concluded that New Zealand should spend considerably more on younger, disadvantaged children, and should ensure that current rates of spending on older children are more effective in meeting the needs of the disadvantaged among them.

56 Ministry of Social Development (2009), *Social Report 2009* (Wellington: MSD), pp 63–66

57 Perry B (December 2009)

58 Using the measure of 60 per cent of median income, before housing costs.

59 Perry B (December 2009)

60 Perry B (June 2009)

61 *ibid.* p 98

62 Perry B (December 2009), p 53

63 *Child Poverty Action Group v Attorney General* [2008] NZHRRT 31

64 Fletcher M and Dwyer M (2001), *A Fair Go for all Children: Actions to address child poverty in New Zealand*, A Report for the Children's Commissioner (Wellington: OCC)

65 *ibid.* p 25; Ministry of Social Development (2009), *Social Report 2009*, p 161

66 Ministry of Social Development (2009), *Social Report 2009*, p 67

67 Fletcher M and Dwyer M (2001)

68 The OECD report does not fully reflect the impact of the Working For Families package

69 Organisation for Economic Co-operation and Development (2009)

The OECD report highlighted comparatively poor outcomes for New Zealand children in several key areas. It found that material conditions for children are relatively poor. Average family incomes are low by OECD standards, and child poverty rates are above the OECD average.^{70 71} The proportion of New Zealand children who lack a key set of educational possessions is above the OECD median.

A comprehensive 2008 report on child poverty, prepared for the Office of the Children's Commissioner, recommended that actions were needed in the health, education, employment, housing, social security and tax sectors. Even more fundamentally, it called for a cross-government commitment to eliminate child poverty, with intermediate milestones and clear measurable targets for key indicators in the areas of education, housing and health.⁷²

A number of similar recommendations were raised at a summit on children and the recession, convened in September 2009 by the group Every Child Counts. This produced 42 recommendations for action.

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.⁷³

Poor health... Sick easily... High risk of getting sick or disease... Can't afford doctor's fees...

Can't afford to go to the doctor or dentist...

Unpaid doctor's fees.⁷⁴

Long working hours for parents can also impact on children. The Children's Commissioner has noted that children's time with their parents seems to have been

significantly reduced, primarily as a result of the increased number of hours worked by their parents. Use of childcare has also substantially increased, with the fastest area of growth being for children under 2 years of age. Feedback from community groups such as churches and recreation centres notes that they are increasingly taking on the role of 'surrogate parent' to children with parents working shift work, long hours or multiple jobs.

The provision of paid parental leave is a means of supporting parents in the early care of their children. This is discussed in the chapter on the rights of women. There continues to be debate about eligibility criteria, and also about the duration of leave and level of pay.

Health

The Ministry of Social Development reported in 2008 that there had been improvements in health outcomes for children and young people in a number of areas, such as infant mortality, immunisation and youth smoking rates.⁷⁵ The introduction of B4 School Checks and strengthening of the Well Child Programme have been positive developments.

In some areas, however, poor health outcomes remain a concern. New Zealand has high rates of injury morbidity and mortality, youth suicide, sudden unexplained death in infancy and communicable diseases, compared with similar countries. New Zealand also has the highest rate of male youth suicide in the OECD.⁷⁶ Overall, child mortality is higher than the OECD average.

There are marked inequalities in outcomes for rich and poor children and young people. Of particular concern is the persistence of large disparities across a range of risk factors and health outcomes for Māori and Pacific children and young people. Infant mortality rates are higher for Māori and Pacific children and those living in

70 ibid

71 Organisation for Economic Co-operation and Development (2008), *Growing Unequal? : Income Distribution and Poverty in OECD Countries* (Paris: OECD).

72 Fletcher M and Dwyer M (2001).

73 Office of the Children's Commissioner (January 2010), *This is how I see it: Children, young people and young adults' views and experiences of poverty* (Wellington: OCC), p 15

74 ibid p 13

75 Ministry of Social Development (2008), *Children and Young People: Indicators of Well-being in New Zealand 2008* (Wellington: MSD).

76 Organisation for Economic Co-operation and Development (2009)

the most deprived areas.⁷⁷ Disparities are also evident in risk factors such as obesity and smoking, and access to preventative measures such as immunisation.⁷⁸

Recent research by the Public Health Advisory Committee (PHAC) identifies factors in the poor health status of New Zealand children, including:⁷⁹

- increasing pressures on families/whānau (including financial and time pressures)
- widening socio-economic disparities
- comparatively low government investment in early childhood
- lack of coordination of services and of information collection and sharing.

The PHAC report highlights the particular vulnerability of children and the crucial importance of the early years, “as the positive and negative effects of young children’s health can last a lifetime”. The committee stresses the need for a holistic, comprehensive approach to improving child health, requiring a whole of government commitment, effective coordination and sustained investment.

Mental health services

In recent years, concerns have been raised regarding gaps in provision of essential mental health services for children and young people.⁸⁰ These gaps include a lack or shortage of:

- forensic, residential placements⁸¹

- mental health professionals who specialise in working with children and young people (although there have been attempts to address this, and the workforce has more than doubled over the last decade)⁸²
- addiction services for young people and those with parenting responsibilities
- adequate coordination among the multiple agencies involved in the care and treatment of young people with very high needs (although this is being addressed through a variety of programmes with other government agencies).⁸³

Recent research notes improvements in funding, staffing and access to mental health services. Despite progress, there is a continued need to broaden the range of services and support available, and to reduce inequalities and improve access to services for Māori and Pacific peoples.⁸⁴

Education

I believe everyone has the right to an education. In New Zealand, we are very grateful to have opportunities to be educated.⁸⁵

Poverty is ... not getting proper opportunities like going on school trips, hard to take part in things like sports and other activities.⁸⁶

New Zealand’s education system generally performs well, but inequalities in access, participation and achievement indicate that the right to education is not fully realised for all students. These issues are discussed in further detail in the chapter on the right to education.

77 NZ Child and Youth Epidemiology Service (2009), *The Children’s Health Social Monitor New Zealand* (2009). Accessible online at http://www.nzchildren.co.nz/infant_mortality.php

78 *ibid.* See also: Ministry of Social Development (2008), *Children and Young People: Indicators of Well-being in New Zealand 2008* (Wellington: MSD)

79 Public Health Advisory Committee, (2010)

80 Office of the Children’s Commissioner (2008)

81 The Ministry has prepared a youth forensic guidance document for DHBs in preparation for further development when funding is available.

82 The shortage of trained professionals in this area is not limited to New Zealand but presents as an international problem.

83 For example, the Ministry of Health is working with the Ministries of Social Development and Education on health and education assessments for children coming into the care of CYFs and improving information sharing mechanisms between agencies working with children and their families.

84 The Werry Centre for Child and Adolescent Mental Health Workforce Development, the University of Auckland (2009), *The 2008 Stocktake of Child and Adolescent Mental Health Services in New Zealand* (Auckland: The Werry Centre)

85 Beals F and Zam A (2010), *Opportunities for Kids*, one of the digital stories available at: <http://a12aotearoa.ning.com/video>

86 Office of the Children’s Commissioner (January 2010), p 15

New Zealand's rates of educational achievement are the fourth best in the OECD. However, the gap that separates under-achieving students from others is large compared with other OECD countries.⁸⁷ The overall number of children participating in early childhood education services has increased. There has been an improvement in achievement rates for Māori and Pacific students and those from low-decile schools.

Although progress has been made since 2004, there continue to be inequalities in educational access, participation and achievement, particularly for students who are Māori, Pacific, disabled or from low-decile schools. While rates of participation in early childhood education have improved, they remain lower for Māori and Pacific peoples.⁸⁸ Higher suspension, exclusion, and expulsion rates also remain an issue for Māori, males and students from low-decile schools. Truancy rates are substantially higher among Māori and Pacific students.⁸⁹

While there is limited disaggregated data on the engagement and participation of disabled students in education, disabled students with high or very high support needs have a significantly lower achievement rate than the general population.⁹⁰

Revised curriculum

The New Zealand Curriculum for Schools was reviewed in 2006–07, with wide consultation. The revised curriculum, for the first time, makes an explicit policy statement that “community participation for the common good” and “respect for self, others and human rights” are values to be “encouraged, modelled and explored” and “evident in the school’s philosophy, structures, curriculum, classrooms and relationships”.

Immigration Act

Some children have experienced discrimination in accessing education because of their immigration status. New Zealand’s reservation to UNCROC applies in this situation.

The revised Immigration Act 2009 ensures that education providers are not committing an offence by allowing children not entitled to study in New Zealand to undertake compulsory education.⁹¹ Additional funding has been allocated in Budget 2010 to enable access to State schools.

Early childhood education

Access to early childhood education (ECE) has improved, particularly with the introduction of a 20-hours subsidy in 2007. However, participation rates are lower for Pacific and Māori children and those in low-decile areas. Budget 2010 retained the 20 hours scheme, with additional support for community-led ECE initiatives. However, it lowered the additional funding tagged to providers with 100 per cent fully qualified and registered teachers. Current providers with more than 80 per cent qualified staff have their government funding reduced. Fees paid by parents are likely to rise, and services may lose incentive to employ 100 per cent qualified teachers.

Bullying

Recent research has found that a significant proportion of young people experience various forms of violence and bullying:⁹²

- A high 41 per cent of students reported being hit or harmed in the previous 12 months, and around a quarter of those students reported the violence as severe

87 Organisation for Economic Co-operation and Development (2009)

88 Ministry of Education (2010), *Prior participation in early childhood education: new entrants*. Accessible online at http://www.educationcounts.govt.nz/indicators/student_participation/early_childhood_education/1931

Ministry of Social Development (2009), *MSD Social Report 2009*. Accessible online at <http://www.socialreport.msd.govt.nz/knowledge-skills/participation-early-childhood-education.html>

89 Ministry of Education (2009), *Student Participation Indicators*. Accessible online at http://www.educationcounts.govt.nz/indicators/student_participation

90 Issues relating to disabled students’ right to education are discussed further in the chapters on the right to education and the rights of disabled people.

91 Immigration Act 2009, section 315(3)

92 Clark T C, Robinson E, Crengle S, Grant S, Galbreath R A and Sykora J (2009). *Youth’07: The Health and Wellbeing of Secondary School Students in New Zealand. Findings on Young People and Violence*. (Auckland: The University of Auckland). Accessible online at <http://www.youth2000.ac.nz/publications/reports-1142.htm>

- Among secondary students, 6 per cent reported that they were bullied at school on a weekly basis or more often.

Particularly vulnerable groups include disabled; ethnic minorities; and same-sex-attracted, trans and intersex children and young people.

The incidence of violence in schools has prompted inquiries into the issue by the Human Rights Commission, the Ombudsmen and the Children's Commissioner.

The Children's Commissioner's inquiry found the incidence of bullying in New Zealand schools to be high compared with other countries, with rates more than 50 per cent above the international average in 2008.⁹³ The report found bullying to be a threat to student well-being, contributing to a significant number of school suspensions and to higher absentee and drop-out rates for victims of bullying. Effective practices identified through the inquiry were those that focused on the school environment, rather than dealing only with individual bullies or victims. The inquiry highlighted the importance of a 'whole-school approach' to addressing violence and bullying. It suggested clear policies and procedures, ongoing review and professional development, and collaboration among the school, students, parents and community.⁹⁴

The Human Rights Commission's review of legislation, regulations and policy found significant gaps in relation to consideration of the impact on victims, their right to education and providing for their right to be heard. The report emphasised the need for clear policies and guidelines that explicitly deal with the rights to security,

education and natural justice.⁹⁵ Other recommendations related to the role of the Human Rights in Education initiative in supporting schools to become human rights communities, and the explicit inclusion of human rights in the National Education Guidelines.

Gay, lesbian and bisexual students are among those likely to feel unsafe at school.⁹⁶ A recent survey found that over half of same-sex-attracted students had been hit or physically harmed in the previous 12 months. Of those who had been bullied, a third had been bullied because they were gay and one in five continued to be scared that someone would hurt or bother them at school.⁹⁷

I need a place where I belong. A place to connect.

Participant, NZ Diversity Forum – Youth Forum (2009)

The Commission's 2007 Inquiry into Discrimination Experienced by Transgender People⁹⁸ highlighted issues for trans children and young people. These included barriers within schools, at work, playing sport, accessing health services and actively participating in their community. A key recommendation to address discrimination in education is that schools share best practice about supporting trans children and young people.

Research on the experiences of disabled children in schools has also highlighted bullying suffered by this group of students.⁹⁹

We asked ourselves, 'What needs to happen for diversity to really flourish in Aotearoa New Zealand?'. We believe it's about education, representation and kotahitanga."¹⁰⁰

93 Carroll-Lind J (2009), *School Safety: an inquiry into the safety of students at school* (Wellington: OCC). Accessible online at http://www.occ.org.nz/__data/assets/pdf_file/0016/6028/OCC_SchoolSafetyReport_160309.pdf

94 Carroll-Lind J (2010), *Responsive Schools* (Wellington: OCC). Accessible online at http://www.occ.org.nz/__data/assets/pdf_file/0006/7269/OCC_Responsive_01.04.10.pdf

95 Human Rights Commission (2009), *School Violence, Bullying and Abuse: A human rights analysis* (Auckland: HRC). Accessible online at http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/01-Sep-2009_14-08-40_Human_Rights_School_Violence_FINAL.pdf

96 Nairn K and Smith A (2003), 'Taking students seriously: the right to be safe at school', *Gender & Education*, 15, 2, pp 133–147

97 Rossen F V, Lucassen M F G, Denny S and Robinson E (2009), *Youth '07 The health and wellbeing of secondary school students in New Zealand: Results for young people attracted to the same sex or both sexes*. Auckland: The University of Auckland. Accessible online at <http://www.youth2000.ac.nz/publications/reports-1142.htm>

98 Human Rights Commission (2007), *To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People* (Wellington: HRC)

99 MacArthur J, Sharp S, Kelly B and Gaffney M (2007), 'Disabled Children Negotiating School Life: Agency, Difference and Teaching Practice', *International Journal of Children's Rights* 15, 1, pp 99–120

100 The Story of the Youth Forum, video created by participants in the NZ Diversity Forum – Youth Forum (2009). Accessible online at <http://www.facebook.com/pages/Youth-Human-rights-NZ/355635249587>

Participation rights

Article 12(1) of UNCROC provides that, in accordance with the evolving capacities of the child, due weight should be given to their views on matters affecting them. Other articles, such as 15 on the right to associate with others, and 23 on the right to special care and involvement in society by disabled children, also make

provision for the participation of children and young people.

The CRC has highlighted the need to ensure that the right of young people to have their views taken into account in administrative or judicial processes that affect them is systematically included in legislation and regulations.¹⁰¹

FINDINGS OF HEAR OUR VOICES WE ENTREAT: CHILD PARTICIPATION REPORT TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD, SAVE THE CHILDREN NEW ZEALAND, 2010

What's hot (good) about children's and young people's rights in Aotearoa NZ:

- We have families, schools and community groups that care about young people.
- We have health care for children and young people.
- We have good food.
- We have opportunities to learn and be educated.
- We have great things to do outdoors in our green environment.
- We have lots of fun things that we can do with our friends and families.
- We are nuclear free and protected from war.

What needs to be addressed and improved on:

- We need to teach New Zealanders about UNCROC.
- We need to respect the rights of and listen to the opinions of Māori people, leaders and activists.
- We need to include young people in discussions about climate change.
- We need to address bullying by teaching others how to accept everyone (despite their differences).
- We need to make sure that everyone can access public transport in the cities and towns that have buses and trains.

- We need to look at the connections between gangs, drugs, alcohol and child abuse and look at programmes that can address the effects of gang culture on young people.
- We need to give young people a better voice in national and local government, and include and listen to their opinions.
- We need to ask whether our education meets the needs of different groups of young people (particularly if alternative schools and activity centres are closing).
- We need to talk to children and young people when making changes to education.
- We need to look at teaching about diversity and sexuality in New Zealand schools.
- We need to celebrate our families.
- We need to look at the effects of domestic violence on children and address these.
- We need to investigate the relationship between front-line police and young people and focus our job on encouraging police to prevent young people from becoming criminals.
- We need to ensure that young people have rights in the workplace which protect them from discrimination.

101 United Nations Committee on the Rights of the Child (2003)

Recent and pending pieces of legislation (such as the Care of Children Act 2004, the Evidence Act 2006 and the Children, Young Persons and their Families Amendment Bill (No. 6)) provide for improved recognition and opportunities for children and young people to express their views and for these to be taken into account.¹⁰² In some areas, however (notably adoption legislation) provision for children's participation in decisions remains limited.

Examples of initiatives to facilitate and enhance children's participation include:

- forums and events, such as Youth Parliament, Youth in Local Government Conference, Youth Week and Kids Voting 2008
- tools and resources that encourage and assist agencies to obtain and incorporate children's views, such as those developed by the Ministry of Youth Development (MYD)
- advisory groups, such as the Children's Commissioner's Young People's Reference Group, the MYD Activate group and Aotearoa Youth Voices Network, and local government youth councils.

At local government level, many local authorities have youth councils, reference groups and/or youth policies. The long-term community council plans process under the Local Government Act 2002 increasingly sees young people as a population to consult specifically. Such measures are particularly important, given the impact that local government decisions have on the lives of children. However, provision for children's views to be heard is still not consistent or automatic. In the recent major reforms of Auckland local government, there is a lack of provision in the draft legislation for mechanisms to ensure that children's perspectives are heard and taken into account in decision-making processes in the new Auckland Council.¹⁰³

Online social networks, content sharing sites and devices such as iPods and mobile phones are now fixtures of youth culture.¹⁰⁴ New media forms have altered how young people socialise, learn, participate, organise and take action. The growth in use of electronic communication media such as social networking sites offers new means of involving children and young people and enabling them to express their views on issues. These forms are increasingly being used by agencies and organisations for this purpose.

Digital stories created by young people, as part of a youth shadow report to the CRC, illustrate that children and young people have powerful stories and valuable perspectives to share on a wide range of issues. Examples of issues of concern to these young people include awareness of rights; discrimination and racism; violence and gangs; education; being listened to by decision-makers; environmental issues; and the importance of caring families and communities.¹⁰⁵

I believe I have a voice. I know more than you think. I hate it when they don't ask for my opinion.¹⁰⁶

Conclusion Whakamutunga

The situation for most children and young people in New Zealand is generally positive. Most children are able to enjoy their human rights and are protected and cared for, with opportunities to learn, develop and have fun. Since 2004, there have been some significant developments in the key areas of health, education, justice and material well-being that have impacted positively on the lives of children.

However, children remain relatively invisible. Their rights and interests are not routinely considered, nor

102 For example, both the Care of Children Act 2004 (e.g. section 6) and the Children, Young Persons and their Families Amendment (No. 6) Bill provide that a child or young person must be given reasonable opportunities to express their views and their views must be taken into account. The Evidence Act 2006 makes it mandatory for the court to hear an application on how a child applicant is to give their evidence. Options include evidence being presented from behind a screen, from an appropriate place outside the court, and by video recording.

103 Office of the Children's Commissioner (2010), *Making Auckland a Great Place for Children* (Wellington: OCC), March

104 Ito M et al (2008), *Living and Learning with New Media: Summary of Findings from the Digital Youth Project*. Accessible online at: <http://digitalyouth.ischool.berkeley.edu/files/report/digitalyouth-TwoPageSummary.pdf>

105 Information on the project and digital stories accessible online at <http://a12aotearoa.ning.com/> See also Beals F and Zam A (2010), *Hear our voices we entreat: Save The Children NZ Child Participation Report to the UN Committee on the Rights of the Child* (Wellington: Save The Children NZ)

106 Beals F and Zam A (2010) Decisions get made without our opinions, one of the digital stories available at <http://a12aotearoa.ning.com/video>

are their views sought or listened to. Without effective mechanisms that enable children to participate in decisions that affect them, their voice is largely unheard and their interests can be ignored or subsumed.

While a range of policies for children exist, there is little coordination of these. There is a need for a better understanding – through systematic data collation and analysis – of the level of investment being made for children, how and where spending is targeted and the impact it is having.

Despite improvements for children, significant numbers are being left behind and too many children experience violence and neglect, poverty and poor health, and barriers to the full enjoyment of their right to education. Enduring inequalities remain, with Māori and Pacific children disproportionately experiencing poor outcomes. These disparities represent a failure to meet all children's rights to development.

Children are the age group most likely to be affected by poverty and material hardship, and this distinction has persisted through good economic times and bad. Child poverty directly impacts on health and education outcomes, with the effects of poor outcomes in early childhood reaching into later childhood, adulthood and often into the next generation of children. Addressing these complex issues poses significant challenges and requires sustained commitment and careful targeting of those most vulnerable.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to progress the rights of children and young people:

Reservations to UNCROC

Removing the remaining reservations to the Convention on the Rights of the Child, with clear steps and timetable for action identified.

Legislative recognition

Establishing a mechanism to ensure children's rights and views are systematically considered and incorporated in legislation and policy development.

UNCROC obligations

Ensuring that legislation reflects New Zealand's obligations under the Convention on the Rights of the Child, including:

- ensuring that the best interests of the child are a primary consideration
- raising the age of criminal responsibility
- extending the Children, Young Persons and Their Families Act protections to include all persons under the age of 18
- extending age discrimination protections to include all children
- reviewing adoption legislation.

Younger children

Prioritising resourcing for programmes and services for younger children and their families (from conception to age six).

Child poverty and inequality

Prioritising eliminating child poverty and addressing inequalities affecting Māori and Pacific and disabled children.

Data collection

Improving coordination, collation and analysis of data to support and inform policy making and budgetary allocations and to monitor their impacts on children.

Positive environments

Developing and maintaining initiatives that support families, schools and communities to build positive, rights-respecting environments for children and to prevent violence and bullying.

Participation

Increasing avenues for children to participate and have their views listened to, including by supporting and expanding existing initiatives that effectively enable child participation.

Awareness

Improving knowledge and awareness of human rights, including the Convention on the Rights of the Child.