



# United Nations Convention on the Rights of the Child

*Alternative Report by  
Action for Children and Youth Aotearoa*



**November 2015**

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## **Introduction**

### ***Mihi***

E nga mana e nga reo e rau rangatira ma

Tena koutou katoa

E nga mate haere, haere, haere atu ra

E nga matawaka o te ao

Nga mihi mahana kia koutou katoa

### **To all authorities, all languages and all chiefly people**

Greetings

**To those who have passed on, farewell**

**To all groups throughout the world**

Warmest greetings to you all.

See Appendix 2 on page 55 for the full text of this Mihi.

### ***Dedication to Dr John Hall Angus***

This report is dedicated to the memory of Dr John Hall Angus, Aotearoa New Zealand (Aotearoa NZ) Commissioner for Children 2009 – 2011.

Kua hinga te totara i te waonui a Tane

E te rangatira a ta John Angus

Ka tawhiti koe

Haere atu ra koe ki o matou tupuna

Maku e ringiringi ki aku roimata te ara e hangu ana ki te kainga

Nei te tangi aroha ki a koe e te rangatira

Moe mai ra

Haere haere haere atu ra.

*A totara tree has fallen in Tane's forest*

*To our Chief, Dr John Angus*

*You have passed away*

*Go to the place of your ancestors*

*We who are left behind*

*Mourn your passing*

*Rest well*

*Farewell, farewell, thrice farewell.*

John Angus served Aotearoa NZ as the Children's Commissioner for a short time making secure the office that serves the children of Aotearoa NZ. In 2009, Dr Angus and his predecessor, Dr Cindy Kiro, advised the Government on the repeal of a legal defence for assault of a child. Although it was made into law in 2007, there was much pressure to have the law changed by the

incoming Government in 2009.

Prior to his appointment as Children's Commissioner, Dr Angus took part in the review of the Children, Young Persons and Their Families Act 1989 that led to legislation increasing the protection of vulnerable children. During the same period, *Puao Te Atu Tu*, a review led by John Te Rangianiwaniwa Rangihau was reported to the same Minister, the Hon Dame Ann Hercus, on Maori concerns about the care and protection of children. This saw change in child welfare policy, introduced the Family Group Conference and with this a formal role for families in the care and protection of children. As a civil servant, Dr Angus would not have accepted individual credit for his role. However, it is here we honour his service to the children of Aotearoa NZ.

### ***Preparation of the Report***

This Report, like its predecessors, was crafted with the help of many organisations and individuals who care about children and young people and their rights in Aotearoa NZ. Without their ongoing commitment, pulling together a comprehensive overview of the current status of children's and young people's lives would be impossible. For many, including the members of the Action for Children and Youth Aotearoa (ACYA) Steering Committee, this work is done voluntarily, but ACYA would like to thank the JR McKenzie Trust for funding the activities we undertake to prepare this independent/alternative report on the status of the children of Aotearoa NZ for the consideration of the United Nations Convention on the Rights of the Child (CRC).

Every effort has been made to ensure the accuracy of the information of this report as at October 2015.

### ***Outline of this Report***

1. This report outlines the current situation of children and young people<sup>1</sup> in Aotearoa NZ.<sup>2</sup> Four overarching themes are identified and an overarching recommendation suggested. The remainder of the report follows the revised reporting guidelines CRC/C/58/rev.3.<sup>3</sup>

### **Children in Aotearoa NZ**

2. Children in Aotearoa NZ live in a variety of households and family configurations. Most are loved but many experience violence and deprivation and have variable life outcomes. If they are lucky they remain healthy and get good quality education from an early age. Often, their situation has everything to do with circumstance rather than luck.
3. Successive governments have not addressed the majority of issues from previous alternative reports and the United Nation's Committee on the Rights of the Child (UN Committee) concluding observations. Children's lives have been and remain harsher as a result.

### ***Overarching Themes and Central Recommendation of this Report***

4. In this report four overarching themes emerge:
  - There is inconsistent and incomplete data about children.
  - Greater cohesion and coordination is needed between legislation, policy and practice as well as across sectors and agencies.
  - Universal and proportionately targeted responses are required to meet all children's needs.
  - Spending is not planned, enacted, implemented and accounted for in a manner that advances children's rights.
5. ACYA therefore recommends, that based on the CRC, Government develops a rights-based framework to guide policy development, public spending and practice that should:
  - be underpinned by the CRC, in particular the general principles of non-discrimination, best interests, life, survival and maximum development and participation;
  - encourage data collection, research and monitoring of indicators to ensure well informed decision-making;
  - give effect to the principles of proportionate universalism; and
  - have a clear focus on prevention and equity.
6. Such a framework would support and be supported by the general measures of implementation.

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<sup>1</sup> ACYA is mindful of the developmental differences and needs that children of different ages and maturation have (including their own perceptions). Wherever possible this is reflected in the content of the report. For the purposes of this report, 'children' is the term used to describe everyone under 18-years.

<sup>2</sup> ACYA is aware the Government had to resubmit its 5<sup>th</sup> Periodic report to comply with the word limit in the reporting guidelines. This Alternative Report was submitted before the Government revision of its own report. However, for ease of comparison, ACYA has re-edited its Alternative Report to align all references to the Government report submitted on 14 December 2015.

<sup>3</sup> The structure of this report differs slightly from that of the Government's report which uses the cluster group set out in the previous guidelines.



## **General Measures of Implementations (Articles 4, 42 and 44 (6))**

### ***Situation Analysis***

7. Aotearoa NZ is not implementing the CRC progressively.<sup>4</sup> There has been minimal alignment of legislation, policy and practice with CRC principles. None of the three reservations has been withdrawn and the lack of action on the UN Committee's previous recommendations demonstrates complacency.
8. There is a structural mismatch between processes required to ensure implementation and the way Aotearoa NZ legislation, policy and practice is developed. There is no overarching strategy for children, or mechanisms to ensure that the public spend on children respects, promotes, protects and fulfils their rights.<sup>5</sup>

### **Children in Canterbury**

9. In September 2010 and February 2011 earthquakes devastated Canterbury. These earthquakes and their aftermath compounded the usual difficulties children face in realising their rights. ACYA is not aware of any priority being given to children during the recovery and rebuild, or mechanisms to ensure their rights, including their participation rights, are factored into decision-making.

### ***New Zealand Government Reservations***

#### **General Reservation - Children Unlawfully in Aotearoa NZ**

10. The general reservation has not been withdrawn and the Government has said it has no plans to change policy to enable withdrawal.<sup>6</sup> Denying some children access to services based on their immigration status is discriminatory and suggests the Government considers its moral, as well as legal, obligations to children extend only to those over which it has jurisdiction. This raises serious concerns about the approach taken to the issues facing Tokelauan children (see p.5) and children impacted by climate change (see p.9) or the globalisation of business (see p.8).
11. ACYA acknowledges that progress has been made in relation to education<sup>7</sup> and healthcare.<sup>8</sup> Approximately 2000 children have enrolled in State-funded education as domestic students<sup>9</sup> which suggests that the number of children affected by the reservation may be significant. The complex rules for accessing education and health services coupled with a reluctance to draw attention to their immigration status may discourage people from seeking publicly funded services or assistance especially in non-emergency situations. The implications for children with a disability are especially concerning.

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<sup>4</sup> UNICEF New Zealand. (2013). *Kids Missing Out*. Wellington:Author.

<sup>5</sup> Committee on the Rights of the Child. *General Comment No.19 (2016) On Public Spending and the Rights of the Child (Article 4) Draft version*. June 11, 2015. CRC/C/GC/19.

<sup>6</sup> Government Report 2015, paragraph 19.

<sup>7</sup> Section 352 of the Immigration Act 2009 means it is no longer an offence for a school to enrol a child who does not have the required immigration status, as long as if they have exercised due diligence to ascertain whether or not a student was entitled to enrol in compulsory education.

<sup>8</sup> The Health and Disability Services Eligibility Direction 2011 can be downloaded here:  
<http://www.health.govt.nz/new-zealand-health-system/eligibility-publicly-funded-health-services/eligibility-direction>

<sup>9</sup> Government Report 2015, paragraph 17.

**Article 32.2 - Minimum Age and Hours and Conditions of Employment**

12. The Government maintains that existing laws adequately protect young workers and it is not in a position to withdraw this reservation.<sup>10</sup> ACYA disputes that existing protections are adequate. Young workers rights and protections are contained in a complex array of statute law, regulations and codes of practice. Their particular vulnerabilities are not recognised and the duty of care<sup>11</sup> owed to them is not clear. The lack of clear principles underpinning the regulation of children's work means standards are inconsistent.

**Article 37(c) - Age-Mixing in Places of Detention**

13. The age-mixing reservation has not been withdrawn. Including 17-year olds in the youth justice system is a likely prerequisite to removal of this reservation. While moving towards withdrawal, conditions for detainees must be improved to meet the standards in CRC and other instruments.<sup>12</sup> ACYA notes<sup>13</sup> that young people can be detained in adult mental health facilities until a place in a youth facility becomes available, when that is in their best interests. This situation would not seem to require the reservation.

**Tokelau**

14. The CRC has still not been extended to Tokelau. ACYA continues to be concerned by the practical implications this has for children residing in Tokelau. While ACYA is cognisant of the wishes of the Tokelau Government, the Aotearoa NZ Government should prioritise its work with Tokelau to extend CRC's application, to ensure that children in Tokelau enjoy the same rights as Tokelau children residing in Aotearoa NZ.
15. An Education Review Office (ERO) review of education in Tokelau in February 2014 highlighted that significant and urgent action is necessary to improve the quality of education in Tokelau.<sup>14</sup> Further information is needed on how the five-year work plan will improve or increase access to quality education for children in Tokelau.

**Harmonising Legislation with the CRC**

16. The Government has not undertaken a comprehensive review of all legislation that affects children.

**Consistency of New Legislation with the CRC**

17. ACYA questions the effectiveness of current mechanisms to assess whether new legislation is consistent with the CRC. Recent Family Court reforms<sup>15</sup> that limit Article 12 rights, and benefit sanctions that undermine<sup>16</sup> Article 27 rights, are two examples of new legislation that are inconsistent with the CRC. In 2011, UNICEF found that there were pockets of knowledge about the CRC in the public service, but many State Service employees had little knowledge of the

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<sup>10</sup> Government Report 2015, paragraph 21.

<sup>11</sup> Many child employees report trusting their employer to the extent that they will do work that they consider unsafe. See Ministry of Business, Innovation and Employment research [http://www.dol.govt.nz/publications/research/schoolchildren-in-paid-employment/youthreport\\_01.asp](http://www.dol.govt.nz/publications/research/schoolchildren-in-paid-employment/youthreport_01.asp)

<sup>12</sup> For example the Optional Protocol to the Convention Against Torture (OPCAT), Beijing rules.

<sup>13</sup> Government Report 2015, paragraph 24.

<sup>14</sup> Government Report 2015, paragraph 27.

<sup>15</sup> See <http://www.justice.govt.nz/policy/justice-system-improvements/family-court-reform>

<sup>16</sup> See the Social Security (Benefit Categories and Work Focus) Amendment Act 2012, which introduced financial sanctions for some parents reliant on welfare, reducing household income and thereby undermining childhood wellbeing.

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Government's obligations and were not using CRC as a framework to guide policy development or to inform practice.<sup>17</sup>

18. Two significant pieces of legislation affecting children are likely to be amended in the coming months: the Education Act 1989 and the Children, Young Persons and Their Families Act (CYPFA) 1989. This provides a unique opportunity to ensure consistency with the CRC. Consistency will depend on public servants' knowledge of the CRC. Conversely, the Building Pools Amendment Bill<sup>18</sup> if passed, substantially increases drowning risk.

### **National Plan of Action**

19. Aotearoa NZ does not have a Plan of Action for all children. It reflects a lack of understanding across government<sup>19</sup> about how to apply and embed a children's rights approach.<sup>20</sup> The Vulnerable Children's Action Plan (CAP) applies only to children classified as 'vulnerable.'<sup>21</sup> The Green Paper on Vulnerable Children (Green Paper) acknowledged that "*approximately 15 per cent of children (163,000) can be considered vulnerable.*"<sup>22</sup> The White Paper on Vulnerable Children, however discussed helping 20,000 to 30,000<sup>23</sup> children and their families. That means roughly 130,000 children initially identified as needing support do not fall within the ambit of the CAP.
20. Many submitters on the Green Paper said the best way to do better for vulnerable children is to do better by all children.<sup>24</sup> Concerns were raised during the Green Paper consultation, and remain, that categorising some children as vulnerable can undermine their sense of belonging and fail to recognise or strengthen their resilience. It also risks missing out children who need assistance because they are not categorised as vulnerable.<sup>25</sup> The CAP's limited coverage means it is unclear which initiatives or services and programmes are available where, and for which children. The CAP is also silent on how the needs, rights and interests of children affected by disability will be responded to.
21. Policies affecting children tend to be piecemeal and ad hoc with little recognition of the interdependent and interrelated nature of children's rights. Not applying a children's rights approach across government,<sup>26</sup> results in inconsistent and, at times, conflicting policy objectives. Welfare reform has resulted in benefits paid to parents being cut by up to 50%; this affects an estimated 2000 children per day.<sup>27</sup> A further example relates to single parents of disabled children receiving benefits being required to return to the workforce while

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<sup>17</sup> UNICEF New Zealand. (September 2011). *Education and training for professionals working with and for children in New Zealand*. Wellington:Author.

<sup>18</sup> In 1981, 17 children drowned in home pools leading to a 1987 law requiring home pools to be fenced and a reduction to 5 children per year drowning in home pools. The proposed changes will repeal the 1987 law.

<sup>19</sup> Above at note 17.

<sup>20</sup> UNICEF New Zealand. (2014). *Children's Rights Education Toolkit: rooting children's rights in early education, primary and secondary schools*. (First edition). Wellington:Author, Chapter 2.

<sup>21</sup> Government Report 2015, paragraph 37.

<sup>22</sup> Ministry of Social Development. (2011). *Every Child Thrives, Belongs, Achieves: the Green Paper for Vulnerable Children*, p.4.

<sup>23</sup> Ministry of Social Development. (2012). *The White Paper for Vulnerable Children, volume 1*, p.5.

<sup>24</sup> UNICEF New Zealand. (2012). *All children thriving, belonging and achieving – what will it take? A community briefing paper*. Wellington:Author.

<sup>25</sup> Ibid.

<sup>26</sup> Above at note 17.

<sup>27</sup> See: <http://www.radionz.co.nz/news/political/286553/about-2000-children-hit-when-parents-lose-benefits>

- education policy failures require them to look after their disabled children who are unable to be at school all day.
22. Aotearoa NZ needs a Plan of Action for all children which identifies those areas where children's rights are not being met and sets out:
- what needs to be done to realise and protect the rights of the child;
  - who will do the work required;
  - timeframes for when the rights will be realised or protected; and
  - how progress will be monitored.<sup>28</sup>
23. This would enable Government to meet the New Zealand Productivity Commission's recommendation that it prioritise an early intervention/investment approach to increase the effectiveness of social services (including those for children and families).<sup>29</sup> It would also help to strengthen Government's leadership and stewardship<sup>30</sup> helping to ensure policies affecting children are cohesive, based on children's rights principles. Mechanisms adopted by Government to monitor the United Nations Committee on the Rights of Persons with Disabilities, which include a Ministerial Committee, a National Plan of Action and a monitoring body, provide a model for improved coordination and monitoring of implementation of CRC.<sup>31</sup>

#### **Article 4 - Budgetary Allocations**

24. The Government's accounting system does not isolate the level of total expenditure on children. Coupled with a lack of disaggregated data, this makes it difficult to determine the level of Government commitment to public spending that respects, promotes, protects and fulfils the CRC and Optional Protocols.<sup>32</sup>
25. It is unclear what criteria Government uses to measure the effectiveness of spending, but ACYA is not aware of any reference to the General Principles. Drawing the Government's attention to *Draft General Comment 19* would be useful.
26. Proportionate universalism,<sup>33</sup> would be more consistent with the CRC than the Government's service continuum model,<sup>34</sup> which encourages a focus on targeting. Universal provision of services is crucial to the optimal development of all children in compliance with Article 4.
27. Due to the economic challenges faced since 2010, most of the new initiatives for children have been fiscally neutral.

#### **Data Collection**

28. Statistics New Zealand's collection of data concerning children is not disaggregated in a way that is compatible with CRC's parameters. Its demographic information on children uses the 0 to 14 and 15 to 19 age parameters.
29. The *Child Poverty Monitor*<sup>35</sup> reports on key indicators of child wellbeing. Along with *Youth 2000* these initiatives provide a means of tracking issues for children over time.<sup>36</sup>

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<sup>28</sup> Above at note 4.

<sup>29</sup> The New Zealand Productivity Commission – Te Kōmihana Whai Hua o Aotearoa. (2015). *More Effective Social Services*. Wellington:Author.

<sup>30</sup> Ibid, recommendation 5.3.

<sup>31</sup> See <https://www.hrc.co.nz/your-rights/people-disabilities/our-work/making-disability-rights-real/>; <http://www.radionz.co.nz/national/programmes/insight/20140223>

<sup>32</sup> Government Report 2015, paragraphs 38-39.

<sup>33</sup> Marmot, M. (2010). *Fair Society, Healthy Lives: The Marmot Review*. UK: University College London.

<sup>34</sup> Government Report 2015, paragraph 5 (Figure 1).

30. *Growing Up in New Zealand* is a longitudinal study of 7,000 children in the Auckland region who were born between 25 April 2009 and 25 March 2010. It is a diverse cohort and the study has already provided information on a wide range of topics such as what economic resources are available to children in their first 1000 days, attitudes towards immunisation and the intergenerational use of te reo Maori.<sup>37</sup>
31. There is a need for a co-ordinated and sustained cross-agency approach to ensure that information on specific groups of children is collected and disaggregated.

### **Children's Rights and the Business Sector**

32. Increased globalisation of economies and businesses, and trends of decentralising, outsourcing and privatising State functions, mean that the business sector increasingly impacts on Aotearoa NZ children and their rights. The need for Government to set parameters for corporate social responsibility is increasingly important.
33. Issues include an increase in for-profit Early Childhood Care and Education (ECEC) services and the importance to the economy of exporting infant formula.<sup>38 39</sup> The Government has signalled it is looking to devolve some social service provisions.
34. Marketing to children is an issue. Codes on advertising to children can be circumvented – for example sponsoring player of the day certificates for sports organisations. A recent study found that sport is often used to promote energy dense nutrient poor foods.<sup>40</sup> One boy commented "...they can get more money and they get more advertising...it's good for them but bad for us."<sup>41</sup>

### **Trans Pacific Partnership (TPP) Trade and Investment Treaty**

35. The Government agreed to the TPP on 5 October 2015 and intends to ratify. Negotiations were secret without participation of children or their advocates and no evidence that their best interests were considered. NGOs are concerned that the TPP will adversely affect Aotearoa NZ's ability to meet CRC obligations; all laws must comply with the TPP. The Investor State Dispute Settlement processes may limit Government's ability to protect children's rights.<sup>42</sup> Medicines will be more costly for the State. The worst impact on children may come from the increased cost of medicines in developing countries.<sup>43</sup>

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<sup>35</sup> <http://www.childpoverty.co.nz>

<sup>36</sup> For more information see <https://www.fmhs.auckland.ac.nz/en/faculty/adolescent-health-research-group.html>

<sup>37</sup> For more information see <http://www.growingup.co.nz/en..html>

<sup>38</sup> Galtry, JA. (2013). "Improving the Dairy Industry's Contribution to Local and Global Wellbeing; The case of infant formula exports." *NZMJ*, 22 November 2013, Volume 1-6, 1386.

<sup>39</sup> Ibid. *Between 1999 and 2009 the value of formula exports increased from Aotearoa NZ \$63 million to \$753 million.*

<sup>40</sup> Smith, M., Signal, L., Edwards, R., & Hoek, J. (September 2015). *Do children have a sporting chance? children's and parents' perspectives on the sport-related food environment*. [Presentation to 4th year Medical students]. Wellington: University of Otago Health Promotion and Policy Research Unit.

<sup>41</sup> Ibid.

<sup>42</sup> For example, regulation of health, education, social services, breast milk substitutes, food safety, working conditions, etc.

<sup>43</sup> Gleeson, D., Neuwelt, P., Monasterio, E., & Lopert, R. "How the transnational pharmaceutical industry pursues its interests through international trade and investment agreements: a case study of the Trans Pacific Partnership." Draft chapter (dated 2 October 2015) in *Handbook of Research on Transnational Corporations* (Forthcoming). Available from: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2668576](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2668576)

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## Climate Change

36. Greater consideration needs to be given to the disproportionate impact of climate change on children— especially those who are Maori, Pacific, poor, and/or experiencing discrimination and disadvantage.<sup>44 45</sup>
37. Many children, including youth-led Generation Zero, are deeply concerned about environmental damage and advocate for climate justice.<sup>46 47</sup> The public consultation on Aotearoa NZ's intended contribution to the UN Framework Convention on Climate Change did not provide specific opportunities for the participation of children. The Government's summary of submissions does not refer to them.<sup>48</sup>

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<sup>44</sup> Tamariki and rangatahi Maori have already been displaced and dispossessed of lands, heritage and resources and have lost their cultural identity. Climate change threatens to compound the impact and severity of these issues for this group. Pacific children in Aotearoa NZ maintain historical, familial, cultural, language and economic connections with those living in the Pacific Islands. Leaders of Pacific Islands including those from the Realm of Aotearoa NZ (Tokelau, Cook Islands and Niue) have repeatedly stated that climate change is a severe threat to the survival of Pacific peoples, territories, culture, security, and well-being unless global warming is kept well below 1.5 degrees.

<sup>45</sup> Fanon-Mendes-France, M., Shaheed, F., de Zayas, A., Raday, F., Devandas Aguilar, C., Knox, J., et al. (2015). *Joint statement by UN Special Procedures on the occasion of World Environment Day (June 2015)*. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E>; Hosking, J., Jones, R., Percival, T., Turner, N., & Ameratunga, S. "Climate change: the implications for child health in Australasia." *J Paediatric Child Health [Internet]*. 2011;47(8):493-6. Available from <http://www.ncbi.nlm.nih.gov/pubmed/20367760>; Gibbons, ED. Climate Change, "Children's Rights, and the Pursuit of Intergenerational Climate." *Justice. Heal Hum Rights J [Internet]*. 2014;16(1):19–31. Available from: <http://www.hhrjournal.org/2014/07/01/climate-change-childrens-rights-and-the-pursuit-of-intergenerational-climate-justice/>; Bennett, H., Jones, R., Keating, G., Woodward, A., Hales, S., & Metcalfe, S. "Health and equity impacts of climate change in Aotearoa-New Zealand and health gains from climate action." *NZ Med J*. 2014;127(1406); New Zealand College of Public Health Medicine. (2015). "Pacific Peoples' Health". *New Zealand College of Public Health Medicine Policy Statement [Internet]*. Wellington; 2015 [cited 2015 Oct 22]. Available from:

[http://www.nzcpmh.org.nz/media/87942/2015\\_08\\_14\\_pacific\\_peoples\\_health\\_policy\\_statement\\_pdf](http://www.nzcpmh.org.nz/media/87942/2015_08_14_pacific_peoples_health_policy_statement_pdf); Leaders of the Pacific Islands Forum. (2013). *Majuro Declaration for Climate Leadership 2013*. Adopted 5 September 2013 [Internet]. 2013. Available from: [http://www.majurodeclaration.org/the\\_declaration](http://www.majurodeclaration.org/the_declaration); *Leaders Ministers and representatives of 15 of the Member States and Territories of the Oceania 21 Initiative. Lifou Declaration*. Adopted 30 April 2015 [Internet]. Available from: [http://www.gouv.nz/portal/page/gouv/oceania\\_21?D%E9claration.pdf](http://www.gouv.nz/portal/page/gouv/oceania_21?D%E9claration.pdf); Polynesian Leaders Group. (2015). *Taputapuatea Declaration on Climate Change*. Adopted 16 July 2015 [Internet]. Smaller Island State Leaders (2015). *Port Moresby Declaration on Climate Change*. Released 7 September 2015 [Internet]. Available from: <http://www.forumsec.org/pages.cfm/newsroom/press-statements/2015-media-releases/smaller-island-states-leaders-port-moresby-declaration-on-climate-change.html>; Leaders of the Pacific Islands Development Forum. (2015). *Suva Declaration on Climate Change*. Adopted 4 September 2015 [Internet]. Available from: <http://pacificidf.org/wp-content/uploads/2013/06/PACIFIC-ISLAND-DEVELOPMENT-FORUM-SUVA-DECLARATION-ON-CLIMATE-CHANGE.v2.pdf>; Heads of State and Government and Representatives of the Coalition of Low Lying Atoll Nations on Climate Change. (2015). *High Level Dialogue on Climate Change Induced Migration and Displacement Outcomes Document*. Signed 10 October 2015 [Internet]. Available from: <http://www.tokelau.org.nz/Bulletin/October+2015/Climate+induced+migration+outcomes+document.html>; Perez, S. (2015). *Ulo O Tokelau Address to High-Level Event on Climate Induced Migration, 10 October 2015*, Tarawa, Kiribati [Internet]. 2015 [cited 2015 Oct 17]. Available from:

<http://www.tokelau.org.nz/Bulletin/October+2015/Tokelauans+prior+relocation+highlighted+in+Kiribati.html>

<sup>46</sup> Hayward, B. (2012). *Children, Citizenship and the Environment: Nurturing a democratic imagination in a changing world*. London: Routledge.

<sup>47</sup> Generation Zero Incorporated. <http://www.generationzero.org> [Internet]. [cited 2015 Oct 22]. Available from <http://www.generationzero.org>

<sup>48</sup> Ministry for Environment. (2015). *New Zealand's Climate Change Target. Our contribution to the new international climate change agreement - summary of consultation responses* [Internet]. Available from: <http://www.mfe.govt.nz/sites/default/files/media/nz-climate-change-target-summary-of-submissions.pdf>

38. Aotearoa NZ's commitment to reduce greenhouse gas emissions to 11% below 1990 levels is non-binding and provisional.<sup>49</sup> If most countries took Aotearoa NZ's approach, global warming would exceed 3-4°C.<sup>50</sup> The Government appears to have not considered the best interests of children, nor the impact of climate change on Pacific Islands or human rights,<sup>51</sup> and missed opportunities to strengthen child rights through co-benefits of well-designed climate action.<sup>52</sup>  
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### **Maintaining the Functions of the Children's Commissioner**

39. The Office of the Children's Commissioner's (OCC) administrative functions are shared with the Superu<sup>56</sup> in order to make cost savings. The Commissioner receives \$2,157,000 per annum from the Crown and \$49,000 of other revenue.<sup>57</sup> There has been no increase in budget during the term of the current Commissioner. The Commissioner is also a National Preventive Mechanism (NPM) under OPCAT,<sup>58</sup> but receives no additional funding for this role.<sup>59</sup> He has had to absorb these costs by combining OPCAT visits with his general monitoring work in residences which limits the extent to which he can: (i) fulfil his detail-oriented NPM functions; (ii) participate in a multi-disciplinary team to review mental health facilities in adult prisons where young people are detained.<sup>60</sup> ACYA considers that the OCC does not receive adequate funding to fulfil its roles.
40. ACYA notes that the current Child, Youth and Family (CYF) modernisation project may provide opportunities to strengthen the Commissioner's independence by having the office report directly to Parliament rather than the Minister of Social Development.

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<sup>49</sup> Ibid.

<sup>50</sup> Rocha, M., Hare, B., Cantzer, J., Parra, P., Fekete, H., Jeffery, L., Alexander, R., Blok, K., van Breevoort, P., et al. (2015). *New Zealand Deploys Creative Accounting to Allow Emissions to Rise. Climate Action Tracker Policy Brief*. [Internet]. Available from:

[http://climateactiontracker.org/assets/publications/briefing\\_papers/NZ\\_INDC\\_Assessment\\_July\\_2015.pdf](http://climateactiontracker.org/assets/publications/briefing_papers/NZ_INDC_Assessment_July_2015.pdf)

<sup>51</sup> Groser, T. (2015). *Cabinet paper (Public release version): New Zealand's intended contribution to the new global climate change agreement*. [Internet]. Wellington: Office of the Minister for Climate Change Issues New Zealand. Available from: <http://www.mfe.govt.nz/sites/default/files/media/Climate>

<sup>52</sup> Above at note 45 (Hosking).

<sup>53</sup> Above at note 45 (Bennett).

<sup>54</sup> Above at note 45 (Jones).

<sup>55</sup> Watts, N., Adger, WN., Agnolucci, P., Blackstock, J., Byass, P., Cai, W., et al. "Health and climate change: policy responses to protect public health." *Lancet* [Internet]. 2015;6736(15):53. Available from: <http://linkinghub.elsevier.com/retrieve/pii/S0140673615608546>

<sup>56</sup> The Families Commission functions have changed in this reporting period. While "Families Commission" remains the legal name for the agency – since December 2014 it has been known as Superu because this better describes its work.

<sup>57</sup> Office of the Children's Commissioner. (2014). *Briefing to the Incoming Minister 2014*. Wellington: Author. Available from <http://www.occ.org.nz/assets/Publications/Final-2014-OCC-BIMver5.pdf>

<sup>58</sup> Optional Protocol to the Convention Against Torture.

<sup>59</sup> CAT/OP/NZL/1/. Sub-Committee on the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment. (2014). *Report on the Visit of the Sub-Committee on OPCAT to NZ, at paragraph 14(b)*, p.4. When the Sub-Committee on the Prevention of Torture visited Aotearoa NZ in 2014 they recommended that as a matter of priority, funding be increased to allow the NPMs to effectively implement their OPCAT mandate throughout the country.

<sup>60</sup> Human Rights Commission. (2014). *Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT) 1 July 2013 to 30 June 2014*. Wellington: Author, p.15.

**Awareness Raising and Training**

41. ACYA is not aware of any active dissemination and awareness raising of the CRC by Government. Although there is information on various government websites, this has to be sought out. There has not been any systematic training for people working with or for children.

**Conclusions and Recommendations**

42. Aotearoa NZ's progress on implementing the CRC has been slow and ad hoc. There is a lack of understanding as to what a child rights approach entails and how it supports children's wellbeing in an integrated manner.
43. ACYA recommends that the Government:
- Ensure the rights of children in Canterbury are prioritised in the rebuild.
  - Withdraw its reservations to the CRC and while working towards withdrawal, take steps to mitigate the negative effects of the reservations on children.
  - Prioritise its work with Tokelau to extend CRC to ensure children in Tokelau enjoy the same rights as Tokelau children in Aotearoa NZ.
  - Undertake a comprehensive review of all legislation that affects children to ensure consistency with the CRC.
  - Develop mechanisms to systematically assess whether proposed legislation is consistent with the CRC.
  - Develop a Plan of Action, which identifies:
    - what needs to be done to realise and protect the rights of the child;
    - who will do the work;
    - timeframes for implementation; and
    - how progress will be monitored.
  - Review processes for planning, enacting, executing and monitoring public spending on children and young people to ensure it is sufficient, effective, efficient and equitable.
  - Develop a comprehensive cross agency approach to data collection, ensuring that information can be disaggregated.
  - Set parameters for corporate social responsibility towards children, both in New Zealand and in other countries.
  - Ensure the rights of children and young people are given due consideration in the negotiation of any treaties, including those related to trade and climate change.
  - Strengthen the independence of the Children's Commissioner.
  - Actively disseminate information about the CRC to raise awareness of children's rights, and provide training for all those who work with and for children.



### **Definition of the Child (Article 1)**

44. Statutory definitions are inconsistent. Under the Children, Young Persons and their Families Act 1989 (CYPFA 1989) a young person is anyone below the age of 17. Under the Care of Children Act 2004 a child is anyone below 18.

### **Upper Age Limits not Consistent with CRC**

45. CYPFA 1989 excludes 17-year olds from the same statutory protections as under-17s. Seventeen-year olds are also excluded from the special youth justice system and the social services support provisions of CYPFA 1989 and the special protection measures (recognising age, maturity and vulnerability) in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 and Criminal Investigation (Bodily Samples) Act 1995 No.55.

### **Lower Age Limits not Consistent with CRC**

46. The age of criminal responsibility remains at the internationally unacceptable age 10. The age of prosecution was lowered in 2010 from 14 to 12 for some offences and 12 and 13-year olds can now be prosecuted in the Youth Court. They previously appeared only in Family Court, where a welfare approach was taken.

### **Not Extending to Children and Young People Protections Enjoyed by Adults**

47. ACYA is aware of a complaint under Part 1A of the Human Rights Act 1993, contending that schools discriminate against disabled children by restricting their access to school more than their non-disabled peers. Under the Minimum Wage Act 1983 young workers under 16-years are not entitled to the minimum adult wage – despite performing the same tasks as older workers. Employers can legally pay 16 and 17-year olds first entering the workforce and 18 and 19-year olds joining the workforce who have previously received a benefit, 80% of the minimum adult wage rate.

### **Limiting Access to Information Based on Age**

48. The Adult Adoption Information Act 1985 and the Human Assisted Reproductive Technology Act 2004 (HART) limit access to information based on age. An adopted person cannot receive information about their birth parent until they reach 20. Under HART, 16 or 17-year olds must apply to Family Court for an order that they be treated as an 18-year old. If granted, they may then access information.

### **Conclusions and Recommendations**

49. ACYA recommends that the Government:
- Prioritise work to raise the upper age limit under CYPFA 1989 to at least 18.
  - Raise the age of criminal responsibility to a minimum of 12.

## **General Principles (Articles 2, 3, 6 and 12)**

### **Children, Young People and Non-Discrimination**

#### ***Maori and Pacific children***

50. There are still marked disparities between the quality of life experiences of many Maori and Pacific children and other children in Aotearoa NZ.<sup>61</sup>
51. Many Maori and Pacific children experience higher rates of disadvantage as evidenced by mortality rates, suicide rates, injury rates, immunisation rates, obesity rates and low birth weights. They have lower participation rates in early childhood education. They experience more frequent disruption to education, leaving with fewer qualifications, resulting in lower workforce participation. They experience inequitable material hardship and deprivation, household crowding, family violence, abuse, neglect and maltreatment. They are disproportionately at risk of being incarcerated themselves and of having a parent in prison.<sup>62</sup>
52. The incidence of rheumatic fever illustrates disparities. Ninety-two percent of rheumatic fever cases affect Maori and Pacific children. (See paragraph 155 below). This preventable childhood disease has causal links to poverty, poor housing and living in overcrowded conditions - all factors that disproportionately impact Maori and Pacific children.

#### ***Ethnic Minority Children***

53. There is an emerging but incomplete picture of disparities experienced by ethnic minority children. They do not have the same opportunities as their peers. For some of these children, living in Aotearoa NZ means a decline in socioeconomic status following immigration, barriers to services and to positive social connections because of language and limited social support systems.<sup>63</sup> The Prime Minister's Chief Science Advisor 2011 report confirmed that *migrant and refugee young people are subjected to various forms of racism, prejudice and discrimination on the basis of ethnic and national origin.*<sup>64</sup>

#### ***Children Living in Isolated or Rural Communities***

54. Children living in isolated or rural communities face challenges in realising and enjoying their rights fully. Geographic isolation means slower mobile phone and Internet connections, sparse public transport that can limit both independence and opportunities to socialise. Recruiting child and youth specialist professionals from the health, education and social services sectors is challenging for these communities.

#### ***Children and Economic Disparities***

55. Within this reporting period Government and NGOs have undertaken significant work to aid understanding and decisions about economic disparities and their impact on children.

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<sup>61</sup> Action for Children and Youth Aotearoa. (2010). *Children and Youth in Aotearoa 2010: New Zealand Non-Governmental Organisations Alternative Periodic Report to the United Nations Committee on the Rights of the Child*. Auckland: Author. Retrieved from <http://www.acya.org.nz/reports-to-the-united-nations.html>, p.11.

<sup>62</sup> Ibid.

<sup>63</sup> Office of the Prime Minister's Science Advisory Committee. (2011). *Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence: A report from the Prime Minister's Chief Science Advisor*. Wellington: Author. Retrieved from <http://www.pmcsa.org.nz/wp-content/uploads/Improving-the-Transition-report.pdf>, p.173.

<sup>64</sup> Ibid.

56. Approximately 20% of children have more difficult lives because of financial hardship and material deprivation. There are signs that things are getting worse for children living in the most vulnerable circumstances.<sup>65</sup>
57. Aotearoa NZ has no coherent system to place children's issues at the centre of Government decision-making. There is no budgetary framework that sets the best interests of children as a criterion for financial decisions and resource allocation. NGOs continue to call for a coherent and comprehensive approach by Government. This could include a senior Minister for Children, a Parliamentary Select Committee, child impact reporting, and incorporation of the Treaty of Waitangi and the CRC into relevant legislation.

### **The Right to Life, Survival and Development**

58. Data indicates that between 2007 and 2011, 220 children under 14-years died from unintentional injury. Aotearoa NZ continues to have higher rates of deaths by non-accidental injury and as a result of youth suicide than most other OECD countries.

### **The Right to Participation**

59. ACYA is reviewing what Government has done to give effect to Article 12. Although the project is not completed, pockets of good practice have been identified. Some agencies have sought the views of children across a range of areas, usually to inform service or practice development and delivery (children as clients) or as part of strategic planning exercises (children as future citizens).
60. None of the agencies that responded to the survey questioned the validity of consulting with children. However, neither do any of the consultations identified so far cite children's rights as a driver for the consultation. Preliminary analysis of responses has identified that seeking views is seldom planned, or budgeted for, from the beginning of a project. Lack of leadership by Government limits children as active participants in their own lives (also see paragraphs 36-38 above regarding the role of children in climate change).

### **Comments on the Government Report**

61. Discrimination is disproportionately and negatively impacting on children's lives. Failure to remove the general reservation means non-resident children are missing out on vital health and social services.<sup>66</sup> ACYA is still concerned by the manner and nature of the Government's Article 12 activities. They are largely unsystematic and marginalise and minimise children's contributions to decisions about them.

### **Conclusions and Recommendations**

62. ACYA recommends the Government adopt a proactive and comprehensive strategy to address the needs and promote the best interests of all children, with particular attention given to:
- eliminating discrimination and redressing disparities; and
  - a systematic approach to ensure children participate at all levels and through all stages of decision-making processes affecting them.

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<sup>65</sup> The Salvation Army Social Policy and Parliamentary Unit. (2015). *A Mountain All Can Climb: A state of the nation report from the Salvation Army*. Auckland: Alan Johnson. Retrieved from <http://www.salvationarmy.org.nz/research-media/social-policy-and-parliamentary-unit/reports>, p.15.

<sup>66</sup> Action for Children & Youth Aotearoa. (2013). *Submission of Action for Children & Youth Aotearoa: 2<sup>nd</sup> UPR Report on Aotearoa NZ's Human Rights Performance*. Auckland: Author. Retrieved from <https://www.hrc.co.nz/files/3514/2406/3059/UPR-ACYA-FINAL-June-17-2013.pdf>, p.1.

## **Civil Rights and Freedoms (Articles 7, 8, 13-17 and 37(a))**

### ***Situation Analysis***

63. Mostly, children enjoy the same civil rights and freedoms as adults,<sup>67</sup> although these are balanced against protection rights. High levels of concern about children's safety can pose a risk to their privacy, freedoms of association and expression, and ability to develop and preserve their identity.
64. The digital age increases potential for civil rights and freedoms to be compromised.

### **Birth Registrations, Name and Nationality (Article 7)**

65. Since 1 January 2006, citizenship by birth is only granted to children who have a parent that is an Aotearoa NZ citizen or permanent resident.<sup>68</sup> This creates uncertainty for Aotearoa NZ-born children of non-citizen/resident parents. Children born to parents unlawfully in Aotearoa NZ are particularly vulnerable because: (a) under the general reservation access to some social services is limited; (b) of stress and uncertainty about their future and the strong possibility of deportation.<sup>69</sup>

### **Preservation of Identity (Article 8)**

66. Despite numerous calls for reform,<sup>70</sup> adoption law<sup>71</sup> has not been updated and the legal fiction that a child's connection with his or her birth family is severed by adoption continues. Other arrangements can be used to provide security of care whilst preserving appropriate family connections. Use of these is variable and the implications for children's identity is not well articulated.
67. Children conceived through artificial reproductive technology have some rights to information about their donor than adopted children have to information about their birth parents. Donor offspring can access information about their donor at 18, or once they turn 16 with Court permission, or when they are younger through their guardians.<sup>72</sup> The pressure to name fathers on birth certificates is driven by the recovery of maintenance rather than concerns about a child's identity.<sup>73</sup>
68. Proposed predictive risk modelling aimed at preventing child abuse and neglect may "label" children. An 'at risk' label "...removes an individual's ability to control their own identity from birth because they and their family have already been judged likely to be deficient."<sup>74</sup>

### **Freedom of Expression and the Right to Seek, Receive and Impart Information (Article 13)**

69. The new Harmful Digital Communications Act 2015 makes communications that disclose personal sensitive facts, threaten or intimidate, denigrate an individual or encourage suicide, offences. The law was developed partly in response to concerns about cyber-bullying. A new

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<sup>67</sup> These are protected by the Bill of Rights Act 1990, the Privacy Act 1993 and the Human Rights Act 1993 (NB: The Human Rights Act 1993 allows for discrimination on the basis of age for those under 16).

<sup>68</sup> s6 Citizenship Act 1977.

<sup>69</sup> See <http://www.radionz.co.nz/news/national/284875/kiribati-family-'terrified'-of-going-home>

<sup>70</sup> Adoption Action Inc. (September 2015). *A chronology of moves to reform adoption laws over the last 35 years*. Retrieved from <http://adoptionaction.co.nz>

<sup>71</sup> Adoption Act 1955.

<sup>72</sup> Sections 47, 50, 580 and 65 of the Human Assisted Reproductive Technology Act 2004.

<sup>73</sup> s70A Social Security Act 1974.

<sup>74</sup> Palmer, O. (31 July 2015). *Predicting risk without turning children into 'lab rats,'* blog post Privacy Commissioner.

agency will investigate harmful communications. The full implications for young people who breach the Act are not clear, however they may face legal action.

**Protection of Privacy (Article 16)**

70. There have been significant developments in relation to sharing children’s personal information. Work is underway on a set of information technology systems for collecting and handling information about vulnerable children<sup>75</sup> for the purposes of the CAP. An Approved Information Sharing Agreement has been adopted to clarify what information about vulnerable children and their families/whanau can be shared, when and with whom. Once a child is defined as vulnerable there is potential for their personal information to be shared inappropriately due to technical or human error.
71. ACYA welcomes the development of a tool by the Privacy Commissioner to guide decision-making and ensure personal information is collected and disclosed only when necessary, and reporting of child maltreatment is not inhibited by privacy concerns.<sup>76</sup>
72. Digital profiling of children needs monitoring.

**Access to information from a Variety of Sources and Protection from Harmful Material (Article 17)**

73. Concerns about children’s access to diverse content, including local content, on all screens (e.g. television, film, internet and games) has led to the establishment of the NZ Children’s Screen Trust<sup>77</sup> which has developed a Media Rights Declaration. ACYA supports the call for a variety of local media content reflecting children’s identity and preventing exploitation.
74. NetSafe provides guidance and support to keep children safe online.<sup>78</sup> Both the BSA<sup>79</sup> Television Code<sup>80</sup> and the ASA<sup>81</sup> Code for Advertising for Children<sup>82</sup> define “children” as persons aged under 14-years, so 14 to 17-year olds are not covered.

**Comments on the Government Report**

75. ACYA is concerned that adoption law reform<sup>83</sup> and the legal parenthood work programme<sup>84</sup> have not been prioritised.
76. Support for LGBTI<sup>85</sup> children and young people is welcome<sup>86</sup> but more needs to be done to ensure these young people can develop positive identities and live free from discrimination.<sup>87</sup>
77. It is unclear whether the new Privacy Act will identify and address specific privacy risks for children.<sup>88</sup>

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<sup>75</sup> Vulnerable Kids Information System (ViKIS).

<sup>76</sup> Privacy Commissioner. (2014). *Sharing Personal Information of Families and Vulnerable Children: a guide for interdisciplinary groups*. Available at: <https://www.privacy.org.nz/assets/InteractiveEscalationLadder/PRCM1000-Escalation-Ladder-Infographic.pdf>

<sup>77</sup> <http://kidsonscreen.co.nz>

<sup>78</sup> <https://www.netsafe.org.nz>

<sup>79</sup> Broadcasting Standards Authority.

<sup>80</sup> Appendix 1, <http://bsa.govt.nz/images/assets/Codes/FTA-TV-Code-May-2011-Edition-English.pdf>

<sup>81</sup> Advertising Standards Authority.

<sup>82</sup> <http://www.asa.co.nz/codes/codes/code-for-advertising-to-children/>

<sup>83</sup> Government Report 2015, paragraph 102.

<sup>84</sup> Government Report 2015, footnote 46.

<sup>85</sup> Lesbian, Bisexual, Gay and Transgender and Intersex.

<sup>86</sup> Government Report 2015, paragraph 56.

<sup>87</sup> See paragraphs under heading *Measuring and Reducing Risks to Children*, paragraphs 177-182.

***Conclusions and Recommendations***

78. To achieve a balance between children's rights to be protected from harm and their civil rights and freedoms, ACYA recommends that:
- The Ministry of Justice be assigned responsibility to ensure children's civil rights and freedoms are considered in the development and passage of legislation.
  - The Privacy Commissioner be asked to monitor and report on children's privacy issues.

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<sup>88</sup> Government Report 2015, paragraph 66.

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## **Violence Against Children (Articles 19 and 39, 24(3), 37(a) and 28(2), 34)**

### ***Situation Analysis***

79. A significant number of children are survivors of family violence, abuse, neglect and maltreatment. They live in homes where they are shown minimal affection, feel largely unloved, and where contact with law enforcement and care and protection services begins at an early age. Each year at least 9 of them will lose their lives to the most extreme forms of violence as the victims of child homicide.

### **Abuse and Neglect, Including Physical and Psychological Recovery and Social Reintegration**

80. The overall number of children coming to CYF attention is decreasing. On the other hand, more children, in the last decade, were found to be suffering from emotional abuse and chronic need.<sup>89</sup>
81. In 2014, six out of every 10 notifications were for children with an extensive history of contact with CYF.<sup>90</sup> In stark contrast, most notifications in 2004 were for children not previously known to CYF.<sup>91</sup> In many cases, two or more notifications of concern about an individual child had been recorded in the same year.<sup>92</sup> This suggests that any emerging trends regarding this data should be treated with caution.
82. The statistics also show that despite increased public awareness of family violence, the lives of some children have not improved demonstrably. This is especially so for those who have a disability and Maori children who are disproportionately affected compared to their peer group.
83. CYF data for the 2014/15 period shows there were 16,472 substantiated abuse findings.<sup>93</sup> Of these, 8318 were for emotional abuse; 3235 for physical abuse; 1275 for sexual abuse; and 3644 for neglect abuse.<sup>94</sup>

### **Measures to Prohibit and Eliminate all Forms of Harmful Traditional Practices, Including, but not Limited to, Female Genital Mutilation and Early and Forced Marriages**

84. Dowry abuse and forced and underage marriages are receiving recognition as serious problems. However, there are inadequate formal mechanisms in place to prevent them.<sup>95</sup>
85. There is no domestic legislation that penalises/criminalises those conducting forced marriages or underage cultural marriages.<sup>96</sup> Our marriage laws, enable underage marriage to occur because children can marry at 16-years with parental consent.<sup>97</sup>

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<sup>89</sup> Modernising Child, Youth and Family Expert Panel (2015). *Interim Report of the Expert Panel: Modernising Child, Youth and Family*. Wellington: Ministry of Social Development. Retrieved from <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/cyf-modernisation/index.html>, p.7.

<sup>90</sup> Ibid.

<sup>91</sup> Above at note 89, p. 31.

<sup>92</sup> Above at note 89.

<sup>93</sup> CYF. (n.d.). *Care and protection reports of concern requiring further action and substantiated abuse*. Retrieved from <http://www.cyf.govt.nz/about-us/key-statistics>

<sup>94</sup> Ibid.

<sup>95</sup> Pacific Women's Watch (NZ). (2014). *Comments and recommendations to the UN Human Rights Pre-session Working Group for the review of the New Zealand Government's 2<sup>nd</sup> Universal Periodic Review, January/February 2014*, p.7.

<sup>96</sup> Ibid, pp.7-8.

<sup>97</sup> In 2012 the UN Committee on the Elimination of All Forms of Discrimination Against Women recommended Aotearoa NZ raise the age of marriage to 18 years to directly address this issue.

86. The Shakti Community Council<sup>98</sup> also confirmed that in “Islamic, Hindu and Sikh [communities], at least one in five young women (some below the legal age of marriage in Aotearoa NZ) have been forced into marriages without their free will or consent.”<sup>99</sup>

**Right not to be Subjected to Torture or other Cruel, Inhuman or Degrading Treatment or Punishment, Including Corporal Punishment**

**Monitoring Places of Detention**

87. The Government is a signatory to OPCAT and its activities are contained in annual reports. In 2014, the OPCAT report said, “... in general, children and young people in detention live in relatively pleasant surroundings, eat well and have access to physical and mental health care and a range of programmes to support their personal development.”<sup>100</sup>
88. The Children’s Commissioner<sup>101</sup> stated, “he has not found any evidence of torture or other cruel treatment”. The Commissioner concluded CYF is compliant with its international obligations.<sup>102</sup>

**Corporal Punishment**

89. The campaign to repeal s59 of the Crimes Act 1961 was a catalyst for robust debate about physical punishment of children.
90. Data released in 2013 by the Police from the 11<sup>th</sup> review (Dec 2011 to June 2012) allayed fears that parents were being unnecessarily persecuted and/or prosecuted.
91. The review indicates that Police attended 355 child assault events.<sup>103</sup>
92. Since the 2007 law change Police used their discretionary powers and only prosecuted 8 parents for physically disciplining children.

**Sexual Exploitation and Sexual Abuse**

93. ECPAT NZ has stated that there are approximately 200 children involved in prostitution.<sup>104</sup>
94. ECPAT has also identified that over a million clicks were made on illegal child sex abuse websites. ECPAT estimates there are approximately 50,000 clicks on child pornography websites from computers in Aotearoa NZ everyday.<sup>105</sup>

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<sup>98</sup> Shakti is a NGO specialised in women’s development, empowerment and domestic/ family violence intervention, prevention and awareness. They are a specialist provider of culturally competent support services for women, children and families of Asian, African and Middle Eastern origin.

<sup>99</sup> Shakti Community Council. (2010). *Submission from Shakti Community Council requesting the examination of the practice of cultural marriage to underage females and to initiate legislation that will effectively intervene in the abuse of human rights arising out of such marriages in New Zealand*.

<sup>100</sup> Human Rights Commission. (2014). *Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT) 1 July 2013 to 30 June 2014*. Wellington: Author. Retrieved from <https://www.hrc.co.nz/your-rights/our-work/opcat/>, p.16.

<sup>101</sup> Who is a National Preventive Mechanism under OPCAT.

<sup>102</sup> Office of the Children’s Commissioner. (2015). *State of Care 2015: What we learnt from monitoring Child, Youth and Family*. Wellington: Author. Retrieved from <http://www.occ.org.nz/state-of-care/>, p.21.

<sup>103</sup> New Zealand Police. (19 April 2013). *Eleventh Review of Crimes (Substituted Section 59) Amendment Act 2007*. Retrieved from <http://www.police.govt.nz/news/release/34849>

<sup>104</sup> Prostitution Law Review Committee. (2008). *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*. Wellington: Ministry of Justice, paragraph 7.4.1.

<sup>105</sup> ECPAT NZ Child Alert (n.d). *Commercial Sexual Exploitation of Children (CSEC) Fact Sheet*. Available from <http://www.ecpat.org.nz>



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***Comments on the Government Report***

95. Two recent reports<sup>106</sup> have provided critical analysis of evidence regarding CYF responsiveness and performance. Both expressed similar concerns and observations:
- children, young people (and their families) receive inconsistent standards of information, advice, service and support from CYF;
  - inadequate systems, services and responses to prevent or protect children from harm;
  - the need for social workers to be trained to respond to children and young people's care and protection and youth justice needs;<sup>107</sup>
  - CYF do not actively engage with or give due weight and consideration to children's views; and
  - CYF's operating model focused on managing immediate crises and therefore has fewer resources to meet the needs of other children requiring CYF services.
96. Following the release of the Expert Panel's Interim Report (July 2015) there was speculation that some/all of CYF functions might be better delivered via the private sector. This concerns ACYA.
97. Without robust information, it would be difficult for ACYA to support any Government decision that results in privatising CYF functions, particularly if this did not include mechanisms for NGOs and civil society to scrutinise and question the accountability and performance of any private sector organisation.
98. The Government's Report had limited information regarding the experiences of children with disabilities in care and protection and youth justice systems. CYF data does not include any analysis of disabled children who come to their notice. The Government does not collect, analyse or disseminate data about the numbers of children who undergo sterilisation procedures or hormone treatment (the latter restricting growth and maturation). Refer to General Measures of Implementation data collection section. (See paragraphs 28-31 above for general comments on data collection).

***Conclusions and Recommendations***

99. Aotearoa NZ is neither preventing nor adequately protecting children from harm. Even more alarming, when agencies intervene, inadequate levels of resources and an inability to understand and meet need results in services that potentially inflict more harm than good. The Government needs to address these issues immediately and work on legislative solutions that "uphold children's rights in tangible and practical ways."<sup>108</sup> The Government must give better consideration to the effects that its policies and sanctions are having on families living in circumstances of vulnerability and withholding government benefits that penalise parents directly and negatively impact on children.
100. ACYA recommends the Government develop and implement a comprehensive, overarching, national strategy to eliminate violence, abuse, maltreatment and neglect of children in Aotearoa NZ. This comprehensive strategy should:

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<sup>106</sup> Above, note 89 and note 102.

<sup>107</sup> There have been ongoing discussions about whether there should be mandatory social worker registration. Consideration has also been given to whether all social workers should be compulsory required to report any care and protection concerns to CYF. These issues and discussions are ongoing.

<sup>108</sup> Above at note 89, p. 81.

- Prioritise investment in all children, because they are all vulnerable, whatever their circumstances or experiences.<sup>109</sup>
- Include prevention, intervention and treatment services that are child and youth-centred, multi-disciplinary and meet their diverse needs.
- Include the allocation of sufficient human and financial resources for the sector (including properly funding the 'rebuild' of CYF).
- Continue to support all parents to meet their responsibilities through access to a wide range of free or affordable support services.<sup>110</sup>

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<sup>109</sup> Above at note 24.

<sup>110</sup> Above at note 24, p.2.

## **Family Environment and Alternative Care (Articles 5, 9, 10, 11, 18, 20, 21, 25 and 27(4))**

### ***Situation Analysis***

101. For children, family means being raised in a home with one or two parents; same-sex parents or blended families. It also means being raised by grandparents/extended family members, or by the State.
102. For other children it means being raised by their grandparents/extended family members, or by the State - with non-family members - because their own homes are not safe for them to live in.

### ***Separation from Parents***

103. Approximately 5000 children are placed in the custody of the Chief Executive of the Ministry of Social Development (MSD).<sup>111</sup> The majority of the children in care are Maori (58%) and more than half are under the age of 10.
104. Between 2011 and 2015 there was only a small change in the numbers of children living in out-of-home placements.<sup>112</sup>

### ***Children with a Parent in Prison***

105. As at 31 December 2014 Aotearoa NZ had 8641 people in prison, which resulted in an estimated 20,000 children being separated from a parent.<sup>113</sup>
106. The 2015 Superu report<sup>114</sup> stated that more than 50% of people in prison are Maori. This means that Maori children are more likely than their peers to have a parent in prison.
107. We know that children with a parent in prison are five times more likely than their peers (who do not have a parent in prison) to be imprisoned themselves. Because they likely come from families with multiple risk factors, they require support from multiple agencies.
108. Children with a parent in prison face significant challenges in their family and personal lives. For some this means not being told the truth about what has happened to their parent. For those who know, it can mean overcoming barriers that make it even more difficult for them to maintain a meaningful relationship with the parent in prison.<sup>115</sup>
109. Phone conversations may be limited because of mobile phone costs, caregivers may act as 'gatekeepers' and face-to-face visits may be constrained (especially if their parent is imprisoned in a different region). Children and young people may also have to endure long waiting periods, frightening security procedures, restrictions on physical contact with their incarcerated parent, and the reality that prisons are generally not child or youth-friendly places to visit.<sup>116</sup>

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<sup>111</sup> 5026 in 2015; similar to the 5020 in 2011.

<sup>112</sup> Child, Youth and Family. (2015). *Children and Young People in Out of Home Placements*. Retrieved from <http://www.cyf.govt.nz/about-us/key-statistics/children-and-young-people-in-out-of-home-placements.html>

<sup>113</sup> Social Policy and Research Unit. (2015). *Improving outcomes for children with a parent in prison*. Wellington: Author. Retrieved from <http://www.superu.govt.nz/publication/what-works-improving-outcomes-children-parent-prison>, p.2.

<sup>114</sup> Ibid, p.3.

<sup>115</sup> Above at note 113.

<sup>116</sup> Above at note 113.

110. During this reporting period the Corrections (Mothers with Babies) Amendment Act 2008 finally came into force in September 2011. This enables young children of female prisoners to be placed with their mother until they turn two years of age, if specific conditions are met.

***Children and Young People Living in Australia on Special Category Visas (SCV)***

111. In September 2015 the media highlighted the predicament of Aotearoa NZ citizens held in Australian detention centres and facing deportation. This situation raises critical questions for the Government, namely:

- what responsibility does the Government have to advocate for and intervene on behalf of Aotearoa NZ-born children (or Australian-born Aotearoa NZ children without permanent residency) whose parent/s are facing deportation?
- what plans does the Government have to respond to this immediate dilemma and to manage this situation in the future?
- what responsibility does the Government have to Aotearoa NZ-born children living in Australia on Special Category Visas (SCV) who cannot access benefits and support they will need if they are separated from parent/s (including because of deportation)?

112. This situation requires a timely and considered response from the Government.

***Parents' Common Responsibilities, Assistance to Parents and the Provision of Childcare Services***

113. The majority of children in Aotearoa NZ live in thriving family environments and require little to no further help from the State. However, the Government allocates significant budgetary resources to a large group of children, young people and their families who require additional support and assistance.

***Children Living in Families Dependent on Benefit Entitlements***

114. 184,000 children live in families with no adults in paid work. An additional 64,000 live in families with an adult/s only working part-time.<sup>117</sup>

***Childcare and Out-of-School Care and Recreation Subsidies***

115. In 2013, MSD reported a decrease in childcare subsidies claimed by families (40,686 in 2010 compared with 37,237 in 2012).<sup>118</sup> In contrast, there was an increase in out-of-school care and recreation (OSCAR) subsidies claimed by families (13,015 in 2012 compared with 11,804 in 2011).<sup>119</sup> The statistics indicate that parents and caregivers were more likely to claim an OSCAR subsidy for children aged 5-9 years, than for children aged 10-13.

***Special Needs Grants and Benefit Advances***

116. In addition to receiving a primary benefit, many parents and caregivers also sought special needs and benefit advances for their families. In 2011/12 approximately 34% of recipients of these grants and advances came from families receiving the Domestic Purposes Benefit.<sup>120</sup>

117. Special needs grants and benefit advances are approved for a range of situations and expenses. There are children living in benefit-dependent families who require additional

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<sup>117</sup> Children's Commissioner's Expert Advisory Group on Solutions to Child Poverty. (2012). *Working Paper no.12: Employment and Training Options to Reduce Child Poverty*. Wellington: Author. Retrieved from <http://www.occ.org.nz/>, p.4.

<sup>118</sup> Ministry of Social Development. (2013). *Statistical Report for the Year Ending June 2012*. Wellington: Author. Retrieved from <http://statistical-report-2012.msd.govt.nz/uploads/MSD-Statistical-Report-2012.pdf>, p.88.

<sup>119</sup> Ibid, p.91.

<sup>120</sup> Above at note 118, p.124.

assistance to have their basic rights met. These include for food, health-related assistance, medical and associated costs, school education costs, urgent home repairs and maintenance or to assist parents and caregivers to cover the costs of obtaining a driver licence.

***Challenges Facing Children in Benefit-Dependent Families***

118. Approximately 25% of children under 18 live in families whose primary (or only) source of income is from a benefit. They are likely to experience high levels of disadvantage. Many are coping with the impacts of long-term unemployment and their families have limited money to meet their needs. Many are also being raised by parent/s with poor parenting skills. These factors are important.
119. Firstly, children separated from a parent/s, or living in unstable, unsafe, unhealthy families require an extra-ordinary level of care and support. Current benefit entitlement levels are insufficient because they only recognise basic, not extra-ordinary need.
120. Secondly, many children are being raised by caregivers who, themselves, have limited resources that are stretched beyond capacity by the addition of a new family member. Again, the State provides inadequate financial resources to caregivers. It also discriminates between kinship and non-kinship placements by providing less financial assistance if children are raised by their wider family members.
121. Every child who enters CYFs care undergoes a Gateway Assessment that helps to build a complete picture of their needs. This forms the basis of a care plan. Many (but not all) of the children who are placed in care come from benefit-dependent families. The assessment therefore provides a reasonable picture of the challenges facing this group.
122. Specifically, the assessments reveal that children had mental health, emotional, developmental, learning and dental needs. Some had issues resulting from their parent/s or caregiver/s alcohol and drug addiction.
123. Gateway Assessments confirm an urgent and ethical need for the Government to allocate more resources to meet the needs of children in care and in benefit-dependent families. This could mean initiating a range of strategies to encourage positive actions by parents and to compel change in their behaviour.
124. Benefit sanctions on parents directly and adversely affect the children. The Government should be implementing strategies that stimulate the economy and encourage job and income growth, as well as encouraging employers to adopt child-centred and family-friendly work policies so parents can fulfil their responsibilities to their children.

**Adoption**

125. The number of formal adoptions in New Zealand continues to be low with fewer than 100 approved adoptions taking place per year. Despite this, adoption remains a critical issue for children. (See paragraphs XXX-XXX above on preservation of identity).

**Children and the Recovery of Maintenance**

126. Approximately 65-69% of child support payments are made regularly and on time. However, almost a third of liable parents are not providing child support. The majority of children in the latter category live in households with low incomes.

127. In the year ending 30 June 2011, over 217,000 children were living in 135,700 households eligible to receive child support.<sup>121</sup> More than half of these children rely on a sole-parent receiving a benefit.
128. This is crucial because current Government policy dictates the withholding of child support from families in receipt of a benefit. In 2011, \$159.3 million in child support was therefore withheld to offset the costs of benefits paid to sole-parent families.<sup>122</sup>
129. There is an overlapping relationship between children eligible for child support payments and children living in sole-parent households on a benefit. Current benefit levels are inadequate to meet basic needs. Children living with a single parent on a benefit are experiencing greater levels of hardship and deprivation than their peers living in other households.
130. The policy is unfair and directly impacts on children who have no control or influence over decisions made by either their liable parent or the State. Sole-parents are treated differently to those who re-couple within other beneficiary-dependent households.

### ***Comments on the Government Report***

131. Aotearoa NZ's care and protection services are in a critical state. Children in need of care and protection require certainty, stability and permanency, yet the system is delivering variable outcomes for them.
132. The best interests of children need to be at the forefront of any decisions regarding changes to CYF and the care and protection system. Other principles that ACYA expect to drive any changes include having a care and protection system that:
- values and is responsive to the cultural needs of children (this includes taking into account their language, ethnicity and religious beliefs);
  - equitably and realistically meets the needs of kin and non-kin caregivers (including better financial support) when a placement is made; and
  - is capable of responding to and delivering services that address the multiple needs of children over time.
133. Having a just and fair benefit system is critical to achieving positive outcomes for children separated from their parent/s and family. Children should receive the maximum level of resources available, especially if they are living in benefit-dependent or low-income families.
134. ACYA is concerned by the Government's most recent reforms to the welfare system (as well as its existing policy that enables it to withhold child support from a benefit-dependent family). A recent media item on this issue reported that in 2014/15:<sup>123</sup>
- 23,066 benefit cuts were imposed on parents with dependent children (including some parents who were penalised more than once) leaving an estimated 2,000 children sanctioned; and
  - at least 13 families with six or more children had lost up to half of their benefit.
135. Any loss of income raises concern about the impact on children's immediate wellbeing and access to essential services.

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<sup>121</sup> Children's Commissioner's Expert Advisory Group on Solutions to Child Poverty. (2012). *Working Paper no.11: How the child support system could work to reduce child poverty*. Wellington: Author. Retrieved from <http://www.occ.org.nz>, p.2.

<sup>122</sup> Ibid, p.14.

<sup>123</sup> See <http://www.radionz.co.nz/news/national/279597/thousands-of-children-hit-by-benefit-sanctions>

### ***Conclusions and Recommendations***

136. ACYA recommends that the Government:

- Reverse its policy and enable child support payments to go directly to families, regardless of whether they are receiving a benefit.
- Reverse its policies on sanctions where children are living in benefit-dependent families
- Ensure benefit entitlement levels are sufficient to meet the needs of all family members, but especially children.
- Prioritise a review of the Adoption Act 1955 as part of its law reform programme for the justice sector.

## **Disability, Basic Health and Welfare (Articles 6, 18, 23, 24, 26 and 27)**

### ***Situation Analysis***

137. Over the reporting period there have been increasing immunisation rates, reduced rates of rheumatic fever, extension of free doctors visits and free prescriptions to those under 13.<sup>124</sup>
138. Little has been done to improve the determinants of health and wellbeing. Poverty and inequalities remain the underlying causes of suffering for children. Children's health is inextricably linked to education, housing, employment, welfare services and income,<sup>125</sup> which the Government can influence through its choice of legislative and policy settings.
139. Government responses to issues have been ad hoc and, at times, inconsistent with a children's rights approach under the CRC. Benefit sanctions imposed as a mechanism for encouraging parents to return to work has had a perverse effect on children in beneficiary families.<sup>126</sup> Reduced household income has put material hardship and pressure on parents, both factors undermining the health and wellbeing of children.<sup>127</sup>

### **Disability**

140. Government policy results in discriminatory outcomes for many children with disabilities.<sup>128</sup>
141. Children with disabilities and their families face major issues with little progress being made since 2011. Children with a disability are largely invisible in Aotearoa NZ. The health issues facing these children are complex and rooted in a variety of economic, cultural, social and historical factors that restrict attainable high standards of health
142. The key issues are:
- the adequacy of baseline universal support for children with disabilities to ensure they can live with dignity and actively participate in their communities.
  - the lack of data to assess whether targeted services are adequate, fairly distributed and effective, in terms of ensuring Article 23 rights are met.
143. Of the 95,000 disabled children aged 0-14 years, 15% live in households with income under \$30,000.<sup>129</sup>
144. In 2012 over 13,500 children were supported with a Child Disability Allowance (CDA). They live

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<sup>124</sup> Extension of the free doctors visits and prescriptions took effect on 1 July 2015. It is too soon to assess impact but it is likely that more children will be taken to see a doctor earlier because the cost barrier has been removed. While almost all GPs are enrolled in the scheme anecdotal reports suggest it can be difficult to enrol with, or get an appointment with, a General Practice.

<sup>125</sup> Report of the Health Committee. (2013). *Inquiry into Improving Child Health Outcomes and Preventing Child Abuse, With a Focus From Pre-Conception to 3-Year Olds*. Wellington: NZ House of Representatives, p.14.

<sup>126</sup> Radio New Zealand has reported that 43,000 sanctions have been issued against beneficiaries with children during the last two years, which could mean their payments were cut by as much as half. The figures obtained by Radio New Zealand show 20,363 main benefits involving children were cut back in the year to July 2014, and another 23,066 the following year. Each cut could involve more than one child, and some beneficiaries could have been penalised more than once. For more see: <http://www.radionz.co.nz/news/national/279597/thousands-of-children-hit-by-benefit-sanctions>

<sup>127</sup> Dale, MC., O'Brien, M., & St John, S (Eds). (2014). *Our children, our choice: priorities for policy*. Auckland: Child Poverty Action Group. Retrieved from <http://www.cpag.org.nz/assets/Publications/1410063-0%20Our%20Children%20Our%20Choice%202014.pdf>

<sup>128</sup> Note IHC, which works on behalf of children with an intellectual disability, first lodged a case in 2008 representing a serious lack of access to justice for these children. The case is still to be heard by the Human Rights Review Tribunal.

<sup>129</sup> Child Poverty Action Group. (2015). *'It Shouldn't Be This Hard': Children, Poverty and Disability*. Auckland: Donna Wynd, p.3.



in households receiving a main income support benefit.<sup>130</sup> This suggests that around 14% of disabled children live in benefit-dependent households.<sup>131</sup> (See also paragraph 185 below). In 2014, CDA recipients declined by 20% from 8,723 in 2008 to 6,930.<sup>132 133 134</sup> The decline in CDAs granted is inconsistent with the rising numbers of disabled children (92,000 in 2001 to 95,000 in 2013).<sup>135</sup>

145. Difficulties in accessing adequate disability support services continue to be experienced by many children and families, including children with moderate needs accessing special education services. The transition from paediatric to adult services requires greater attention.<sup>136</sup>
146. Government should be able to demonstrate that disability and health policies and initiatives are designed to counter discrimination, advance children's best interests, maximise children's survival and development and foster their active participation.

### **Survival and Development**

147. Aotearoa NZ's infant mortality rate is declining. However it compares poorly with other high-income countries (4.7 per 1,000, compared with 3 per 1,000 in Australia).<sup>137</sup>
148. Mortality rates for those aged between 28 days and 24 years have reduced (674 in 2009 to 515 in 2013) - influenced by a reduction in the number of deaths due to motor vehicle crashes in young people aged between 15 and 24 years.
149. A salient feature of survival and development rates for our children is increasing mortality rates associated with increasing deprivation.<sup>138</sup> Children in poor families are more likely to get sick and to die.
150. In early 2015 the coroner<sup>139</sup> found that it was entirely possible the condition of the State house a child lived in contributed to respiratory illness that caused the death of a two-year-old girl in Auckland.<sup>140</sup>
151. 2014 was the first year that the leading causes of death were medical conditions (38.9%). Unintentional injury accounted for 28.8% of deaths.<sup>141</sup> Maori children had the highest mortality rate.<sup>142</sup>

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Answer to Parliamentary Question 2771 & 2775: Downloaded from [http://www.parliament.nz/resource/en-nz/QWA\\_02771\\_2015/466d4895aba9e977b301a7bc7e8bd15bc023039f](http://www.parliament.nz/resource/en-nz/QWA_02771_2015/466d4895aba9e977b301a7bc7e8bd15bc023039f)

<sup>133</sup> The CDA is a non-income tested allowance designed to compensate parents for the time and expense of caring for a disabled child.

<sup>134</sup> Factsheet –Overview of Child Disability Allowance. (2010): Downloaded from

[http://www.parliament.nz/resource/en-nz/49SCSS\\_EVI\\_49DBHOH\\_PET3016\\_1\\_A140131/9159489e6d3b7f2f722a49236b1a17758850fac3](http://www.parliament.nz/resource/en-nz/49SCSS_EVI_49DBHOH_PET3016_1_A140131/9159489e6d3b7f2f722a49236b1a17758850fac3)

<sup>135</sup> Ibid.

<sup>136</sup> Personal communication, Dr Rosemary Marks, October 2015.

<sup>137</sup> Downloaded from <http://www.childmortality.org> on November 2015.

<sup>138</sup> NZ Mortality Review Data Group. (2014). *NZ Child and Youth Mortality Review Committee 10th Data Report*, Wellington: University of Otago, p.3.

<sup>139</sup> Miller, C. "Damp house led to toddler's death," *NZ Herald*, 11:31 AM Thursday June 4, 2015. Available: [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11459813](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11459813)

<sup>140</sup> Ibid.

<sup>141</sup> Above at note 139.

<sup>142</sup> Above at note 139.

152. Boys accounted for 65% of all deaths during 2009-2013, with the gender difference particularly marked in unintentional and intentional injury deaths (74% and 71% respectively).<sup>143</sup>
153. The main cause of death in post-neonatal infants is Sudden Unexpected Death in Infancy (SUDI).
154. Immunisation rates met a historical high in June 2015, the Government achieving its aim for 95% coverage for children 12-months of age.<sup>144</sup> This is to be commended and demonstrates what can be achieved for children with well informed, coordinated and sustained effort.

### **Preventable Diseases**

155. The incidence of rheumatic fever has decreased following a public awareness campaign in areas with high rates of the disease.<sup>145</sup> 92% of all cases of rheumatic fever affect Maori and Pacific children. Programmes to reduce rheumatic fever are succeeding, but more effort is required to eradicate this disease.<sup>146</sup> Rheumatic fever is just one of the preventable childhood diseases linked to poverty, poor housing and overcrowding that children in Aotearoa NZ suffer from.
156. There are very high rates of hospitalisations from infectious diseases, especially skin and respiratory diseases.<sup>147</sup> Aotearoa NZ children, especially children under five years of age have a high rate of hospitalisation for infectious diseases. The risk is greatly increased in the most economically deprived populations and in Maori and Pacific populations. More needs to be done to address the underlying causes of the prevalence of preventable disease.
157. The fortification of the food supply with folic acid (in flour or bread) is a safe and effective means of preventing neural tube defects. In a joint agreement with Australia, Aotearoa NZ has introduced a less effective voluntary regime. Local research suggests that there is limited awareness and understanding of folic acid fortification, and that poor labelling of bread makes informed consumer choice difficult.<sup>148</sup>

### **Mental Health and Wellbeing**

158. The numbers of children diagnosed with emotional and behavioural problems has increased. In 2006/07, 1.8% of children aged 2–14 years were diagnosed with depression, anxiety disorder, or behavioural problems (ADHD/ADD). In 2011/12 this rate had increased to 3.2%.<sup>149</sup>
159. In *Youth '12* there was little or no change in the number of young people reporting significant depressive symptoms. (See also paragraph 176 below).
160. The mental health of children living in Christchurch, and their access to services, remains a

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<sup>143</sup> Ibid.

<sup>144</sup> Ministry of Health. (2015). <http://www.health.govt.nz/our-work/preventative-health-wellness/immunisation/immunisation-coverage/national-and-dhb-immunisation-data>

<sup>145</sup> The areas with the highest incidence of rheumatic fever are Northland, Auckland (Counties Manukau and Waitemata), Waikato, Tairāwhiti, Bay of Plenty, Lakes, Hawkes Bay and the wider Wellington region (Hutt Valley and East Porirua). There are relatively few cases in the South Island. Health Promotion Agency. Retrieved from: <http://www.hpa.org.nz/what-we-do/rheumatic-fever>

<sup>146</sup> Ibid.

<sup>147</sup> Simpson, J., Duncanson, M., Oben, G., Wicken, A., Pierson, M. (2015). *Child Poverty Monitor 2015 Technical Report*. Dunedin: NZ Child and Youth Epidemiology Service, University of Otago.

<sup>148</sup> Houghton, J. (2014). "A country left behind: folic acid food fortification policy in New Zealand." *New Zealand Medical Journal*, 127(1399), p.4.

<sup>149</sup> Ministry of Health. (2012). *The Health of New Zealand Children 2011/12: Key findings of the New Zealand Health Survey*. Wellington: Ministry of Health, p.37.

concern.

161. Aotearoa NZ's high rate of youth suicide is a tragedy - definitive action, better nationwide coverage of initiatives, and more investment is required. Provisional figures from the coroner indicate 62 young people under the age of 20 died by suicide in the period July 2014 to June 2015. Ten of those young people were aged 14 and under.<sup>150</sup>
162. In 2012 Aotearoa NZ's youth suicide rates (15-24 years of age) were the highest of OECD countries. Rates of suicide amongst Maori youth are 2.8 times that of non-Maori youth. Explanations for this recognise the effects of colonisation, social and institutional bias and intergenerational disadvantage.<sup>151</sup>
163. Suicide is complex and involves a combination of factors. Suicide prevention therefore requires a multi-level, multi-sectoral, multi-faceted and sustained commitment.<sup>152</sup>
164. A number of developments in recent years are promising. There is a new requirement for the District Health Boards (DHBs) to develop multi-sectoral suicide prevention plans. The Prime Minister's Youth Mental Health Project and the Social Sector Trials will contribute to suicide prevention.
165. The current *New Zealand Suicide Prevention Strategy* and Action Plan ends in 2016. Refreshing this strategy will require resourcing and commitment across Government and community sectors. ACYA recommends a national suicide prevention target (e.g. reduction of 20% in 5 years).

### **Preventive Strategies**

166. 271 babies died from SUDI between 2007 and 2011. Maori and Pacific SUDI rates are higher than other ethnicities.<sup>153 154</sup>
167. Pepi-Pods® and woven wahakura (sleeping devices that enable safe bed-sharing) reduce the number of SUDI deaths, especially for Maori.<sup>155</sup> Using these devices delivers wider health outcomes.<sup>156</sup>
168. The main causes of unintentional injury deaths for children are car crashes, drowning and pedestrian injuries. Each year more than 15 children die in car crashes, half of them are Maori; over 10 children die after a drowning event and more than 50 are hospitalised (those under 4 are most at risk); more than five child pedestrians are killed each year and over 100 hospitalised (children aged between 5 and 9 are most at risk).<sup>157</sup>
169. There is currently a Bill<sup>158</sup> before Parliament that if passed will undermine swimming pool

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<sup>150</sup> <http://www.justice.govt.nz/courts/coroners-court/suicide-in-new-zealand/suicide-statistics-1/2014-2015-annual-provisional-suicide-figures>

<sup>151</sup> Ministry of Health. (2015). *Suicide Prevention Toolkit for District Health Boards*. Wellington: Author, p.21.

<sup>152</sup> Personal communication. Maria Cotter (October 2015).

<sup>153</sup> There are regional differences with SUDI rate for Northland, Lakes, Whanganui and Hutt Valley DHBs higher than the national SUDI rate between 2009 and 2012.

<sup>154</sup> Above at note 150, Ministry of Health figures.

<sup>155</sup> <http://www.radionz.co.nz/news/te-manu-korihi/282614/high-maori-sudi-rates-sparks-call-for-wahakura>

<sup>156</sup> Abel, S., & Tipene-Leach, D. (2013). "SUDI prevention: a review of Maori safe sleep innovations for infants." *The New Zealand Medical Journal*, Volume 126 Number 1379. Retrieved from: <https://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2013/vol-126-no-1379/view-abel>

<sup>157</sup> Safekids Aotearoa is part of Starship Health. Its mission is to reduce the incidence and severity of unintentional injuries to children. For more information see [www.safekids.nz/safety-topics](http://www.safekids.nz/safety-topics)

<sup>158</sup> Building Pools Amendment Bill. Available from: [http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH\\_BILL64825\\_1/building-pools-amendment-bill](http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL64825_1/building-pools-amendment-bill)

fencing regulation. It is very likely drownings will increase as a result.

### Nutrition and Obesity

170. Eating well to reduce childhood obesity rates is a major issue in Aotearoa NZ.<sup>159</sup> Figures show 1 in 10 children (aged 2–14 years) were obese (10%) and a further 23% of children were overweight but not obese.<sup>160</sup> Maori (15%), Pacific (25%) and children living in the most deprived areas are more likely to be obese.<sup>161</sup>
171. The onus is on individual families to take responsibility for healthy eating and exercise. Creating healthy family food environments is largely community driven and reliant on the support of donors and partner businesses.<sup>162</sup>

### Oral Health

172. Overall, there is very little information that exists about the current oral health of preschool children in Aotearoa NZ.<sup>163</sup> Historic data on hospital admissions showed dental caries were highest for four-year olds between 2006 and 2010.<sup>164</sup> The overall rate of untreated coronal decay in 2009 reported was 15.9% in 2-17 years old.<sup>165</sup> Rates for Maori and Pacific children were higher again.
173. Historically too, there have been clear links between poor oral health and inequalities.<sup>166</sup> In recent times an association has been found between poor oral health and rheumatic fever.<sup>167</sup>

### Breastfeeding

174. The Government's report provides inaccurate breastfeeding data for the 2012/2013 and 2014/2015 periods. Only 9% of Maori women were exclusively breastfeeding at six months in YE 2012/2013, increasing to 10% in 2014-2015 YTD compared with 18% of all women seen by Plunket.<sup>168</sup>
175. Initiatives to support exclusive breastfeeding to six months are welcome. Sustained effort is needed to meet new national breastfeeding targets.<sup>169</sup> The voluntary *Code of Marketing of Breast-Milk Substitutes* is ineffective. ACYA supports the introduction of regulations.<sup>170</sup>

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<sup>159</sup> Increased from 8% in 2006/07 to 10% in 2013/14. See <http://www.health.govt.nz/nz-health-statistics/health-statistics-and-data-sets/obesity-data-and-stats>

<sup>160</sup> Ibid.

<sup>161</sup> Above at note 159.

<sup>162</sup> See, for example the work of the Garden to Table Trust <http://www.gardentotable.org.nz>

<sup>163</sup> Ministry of Health. (2010). *Our Oral Health: Key findings of the 2009 New Zealand Oral Health Survey*. p.12. Available <http://www.health.govt.nz/publication/our-oral-health-key-findings-2009-new-zealand-oral-health-survey>

<sup>164</sup> Smith, M. (2015). *The food environment and children's rights* [2015 presentation to 4th year medical students].

<sup>165</sup> Ministry of Health. (2010). *Oral Health Conditions in Children and Adults*. Available <http://www.health.govt.nz/publication/our-oral-health-key-findings-2009-new-zealand-oral-health-survey>

<sup>166</sup> National Advisory Committee on Health and Disability (National Health Committee). (2003). *Improving Child Oral Health and Reducing Child Oral Health Inequalities: Report to the Minister of Health from the Public Health Advisory Committee*.

<sup>167</sup> Dr Simon Thornley RNZ. Available <http://www.radionz.co.nz/news/national/287027/sugar-'providing-fuel'-for-rheumatic-fever>.

<sup>168</sup> Royal New Zealand Plunket Society. (2012-2013, 2014-2015). Report prepared for Women's Health Action Trust. Retrieved 27 October 2015.

<sup>169</sup> Government Report 2015, paragraph 130.

<sup>170</sup> The Health Select Committee's 2013 report on the Inquiry into improving child health outcomes and preventing child abuse, recommended that "if the voluntary [INC Code] system [was] not working effectively within the next 18 to 24 months regulation should be implemented."

### **Measuring and Reducing Risk to Children**

176. *Youth '12* is the third in a series of surveys on the health and wellbeing of adolescents (2000, 2007 and 2012). In 2012, 8,500 school students took part and the results indicate improvements in aspects of school life compared with earlier surveys. Fewer students reported participating in potential harmful activities.
177. In other areas little or no change was reported, including being overweight or obese and significant depressive symptoms. Some areas have significantly worsened over time with students recalling being less able to participate in part-time employment and parents who worry about having enough money for food.
178. There are big gaps in the availability of youth-appropriate health care. Cost is a major barrier to young people as is the level of “friendliness” when accessing primary health care.
179. Other gaps are created by young people falling between child and adult service provision. For example chronic pain services in Auckland are available for children up to 14, and adults from 18 years of age, thereby excluding 14 to 18-year olds. Similarly, most hospitals admit young people aged 15 and older to adult wards.
180. One of the main issues currently is the availability of services for transgender children and young people. There is no national plan or strategy for services for transgender youth.
181. Children outside of mainstream education, miss out on resources and information about health and social services available through schools.

### **Substance Abuse**

#### **Children and Alcohol**

182. The health and development of children in Aotearoa NZ are damaged by unsafe alcohol consumption throughout their life course, from Foetal Alcohol Spectrum Disorder (FASD), their own early initiation and volume of drinking, and the acceptability of unsafe drinking by role models.<sup>171</sup>
183. There is a need to implement policies consistent with the World Health Organisation’s (WHO) *Global Alcohol Policy* and *Action Plan on Non-Communicable Diseases* in the areas of marketing, availability and price. Additional recommended interventions suitable for the Aotearoa NZ environment are found in the reports of the 2014 Ministerial Forum on Alcohol Advertising and Sponsorship<sup>172</sup> following the 2010 review of liquor laws by the NZ Law Commission.

#### **Children and Tobacco Smoking – Smokefree Cars**

184. Children continue to be exposed to second-hand smoke (SHS), a proven cause of a range of conditions including lower respiratory tract infections, wheeze, otitis media and meningitis.<sup>173</sup> Twenty-two percent of students reported being exposed to smoking in a car in the previous week and over half (53%) reported exposure in the home.<sup>174</sup> Exposure was more frequent

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<sup>171</sup> New Zealand Law Commission. (2010). *Alcohol in our lives: An issues paper on the reform of New Zealand’s liquor laws*. Wellington: New Zealand Law Commission, p.284.

<sup>172</sup> Ministerial Forum on Alcohol Advertising and Sponsorship. (2014). Wellington:Ministry of Health. Available: <http://www.health.govt.nz/publication/ministerial-forum-alcohol-advertising>

<sup>173</sup> Royal College of Physicians. (2010). *Passive smoking and children. A report by the Tobacco Advisory Group*. London: Royal College of Physicians.

<sup>174</sup> Healey, B., Edwards, R., Wilson, N., Thomson, G., Hoek, J., & Taylor, S. “The important persisting problem of smoking in cars with children: new data from a multi-year national survey of young people.” *N. Z. Med. J.* 2013;126(1369):86-89.

among Maori and Pacific students. Exposure to SHS in cars is particularly intense.<sup>175</sup> The Government has ruled out introducing interventions despite a recommendation from the New Zealand National Smokefree Working Group. However fewer children are smoking.<sup>176</sup>

## ***Social Security and Childcare Services and Facilities***

### **Benefit Sanctions**

185. The Government Report<sup>177</sup> noted that the 2013 welfare reforms placed obligations on parents in receipt of social security payments relating to their child's education and health care. If these obligations are not met, up to 50% of a parent's benefit may be cut despite 51% of children in benefit dependent households already suffering severe or significant hardship.<sup>178</sup> Almost 43,000 sanctions have been issued against beneficiaries with children.<sup>179</sup>

### **Young Carers**

186. An emerging issue in Aotearoa NZ is the need to support young carers. An online community is developing to provide recognition, information, learning and support for young carers.<sup>180</sup> Young carers access to education, health, peer relationships and leisure is often compromised by their caring responsibilities to family members.

## ***Inequalities and the Standard of Living***

187. Poverty, unhealthy housing and inadequate access to basic health care impact on children's health and wellbeing. To live within their budgets families are forced to bed share, including several to a bedroom; eat less nutritious foods; live in cold damp mouldy homes; postpone doctor's visits and cannot get prescriptions because of costs.<sup>181</sup> (See also paragraphs 191-193). Household crowding also increases the risk of infectious diseases. (See also paragraphs 155-156).

188. Deprived children have high rates of skin infections, asthma, rheumatic fever, road traffic crashes, meningitis, unintentional injuries, burns, overall mortality, and mortality from injury (both road and non-road traffic injury) and SUDI.<sup>182</sup>

189. The health effects of poverty have lifelong implications for children. Economic hardship and stress during childhood can adversely affect a person's nervous, immune and endocrine or metabolic systems, thereby contributing to lower levels of wellbeing and poorer health outcomes, all of which can impact negatively on educational achievement.<sup>183</sup>

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<sup>175</sup> Edwards, R., Wilson, N., & Pierse, N. "Highly hazardous air quality associated with smoking in cars: New Zealand pilot study." *N. Z. Med. J.* 2006;119(1244):U2294.

<sup>176</sup> ASH New Zealand. (2015). *2014 Factsheet 1. ASH Year 10 Snapshot Survey: Topline Results*. Auckland: ASH New Zealand, Health Promotion Agency and Ministry of Health.

<sup>177</sup> Government Report 2015, paragraph 155.

<sup>178</sup> Child Poverty Action Group. (2013). *Benefit Sanctions: Creating an Invisible Underclass of Children*. Auckland: Wnyd, D.

<sup>179</sup> Information obtained by Radio New Zealand <http://www.radionz.co.nz/news/national/279597/thousands-of-children-hit-by-benefit-sanctions>

<sup>180</sup> See [https://www.facebook.com/youngcarersnz/info/?tab=page\\_info](https://www.facebook.com/youngcarersnz/info/?tab=page_info)

<sup>181</sup> D'Souza, A., et al. (2012). *Every child to thrive, belong and achieve? Time to reflect and act in New Zealand*. NZMJ 30 March 2012, Vol 125 No 1352; p.73.

<sup>182</sup> Above at note 148.

<sup>183</sup> Children's Commissioner's Expert Advisory Group on Solutions to Child Poverty. (2012). *Solutions to Child Poverty in New Zealand evidence for action*. Wellington: Author, p.14.

### **Housing**

190. There is concern about children living in substandard housing.<sup>184</sup> There is pressure on the housing market in post-earthquake Canterbury and Auckland.
191. Most children in poverty are in government or private rentals, and the quality of rental housing appears to be substandard and deteriorating. Research estimates more than 50% of under 25's and half again of under 15-year olds make up the housing deprived population.<sup>185</sup>
192. The highest concentrations of poor children live in government housing, so its social housing policy is highly relevant to the wellbeing of these children.<sup>186</sup>
193. Inadequate housing can adversely affect children who seem to be particularly vulnerable to prolonged exposure to damp housing and resulting respiratory conditions. Mould has been shown to have a small, but significant respiratory effect on children. Poorly constructed housing also contributes to the inability to heat the indoor environment to healthy levels.<sup>187</sup>

### **Homelessness**

194. Homeless children are excluded from official large-scale surveys, hampering current awareness and understanding of their situation.<sup>188</sup> In 2006, Statistics New Zealand commissioned a study<sup>189</sup> for measuring homelessness (severe housing deprivation) based on characteristics that described people who were living:
- with others in severely crowded permanent private dwellings (usually with friends or other family members)
  - in commercial accommodation (such as boarding houses or camping grounds) or marae
  - on the street or in improvised or mobile dwellings
  - in emergency accommodation (e.g. night shelters and women's refuges).
195. 2006 Census data revealed 34,000 people in Aotearoa NZ were experiencing homelessness.<sup>190</sup> Ethnic minorities were over-represented<sup>191</sup> and new migrants were also vulnerable.<sup>192</sup>
196. It is clear that children are experiencing homelessness by being:
- separated from parent/s and family
  - a member of a family facing challenging living circumstances.
197. There is limited information on why a child is motivated to separate from their family which make it difficult to quantify how many children are directly (and independently of their families) affected. Maori are overrepresented and research suggests that Maori ... *most likely*

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<sup>184</sup> See <http://www.radionz.co.nz/news/national/275385/state-house-conditions-shocking,-says-neighbour>

<sup>185</sup> Amore, K., Viggers, H., Baker, MG., & Howden-Chapman, P. (2013). *Severe housing deprivation: The problem and its measurement*, Official Statistics Research Series, 6. Available from [www.statisphere.govt.nz](http://www.statisphere.govt.nz)

<sup>186</sup> Child Poverty Action Group. (2014). "Part 4: Housing market changes and their impact on children" in *Our children, our choice: priorities for policy series*. Auckland: Alan Johnson.

<sup>187</sup> Ibid.

<sup>188</sup> These include the Census, Household Economic Survey, Household Labour Force Survey, New Zealand Health Survey and Living Standards Research.

<sup>189</sup> Above at note 186, p.41.

<sup>190</sup> Above at note 186, p.7.

<sup>191</sup> Above at note 186, p.42.

<sup>192</sup> Above at note 186.

*had their first experience of homelessness as young teenagers.*<sup>193</sup>

198. ACYA has also received anecdotal evidence that there are high numbers of young people who are homeless in Christchurch.<sup>194</sup> At a recent community meeting it was estimated that up to 600 young people were without a bed at any one time.

### **Comments on the Government Report**

199. ACYA questions the assertion (paragraph 117 of the Government Report) that "where appropriate" children with disabilities can access government-funded, medical and social services. There are serious concerns about how eligibility decisions are made for all children who need them.

200. The development of trilingual New Zealand Sign Language resources is welcome. More information would be appreciated on what else is being done to meet the stated objective of the *Disability Strategy*<sup>195</sup> of involving disabled children and youth in decision-making and MSD guidelines on involving children with a disability.<sup>196</sup>

201. There has been a move to a single provider of Behaviour Support Services. Evaluation is needed to determine the benefit of the changes. It is reported that waiting lists remain long with sub-optimal cooperation between agencies.

### **Conclusions and Recommendations**

202. Improving children's health and wellbeing depends on inequalities being reduced, delivering health services based on proportionate universalism and a respect for children's rights.

203. ACYA believes the absence of transparency for the benefit sanction regime affecting children is contrary to the rights of children, a breach of the CRC, and the regulations should be repealed.

204. ACYA recommends the Government:

- Integrate a child rights approach into the health system at all levels - structurally, in policy development, and service delivery.
- Ensure adequate information, resources, and support are available and accessible for all children with disabilities and their caregivers so that they are able to live lives of dignity and actively participate in their communities.
- Improve the collection of data on children with a disability to assess whether targeted support services are adequate, fairly distributed and effective in terms of ensuring Article 23 rights are met.
- Take urgent steps to address the determinants of child and youth health and wellbeing including:
  - as a matter of priority, by reducing rates of deprivation through improved income

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<sup>193</sup> Children's Commissioner's Expert Advisory Group on Solutions to Child Poverty. (2012). *Working Paper no.14: Reducing Child Poverty in Maori*. Wellington: Author. Retrieved from [http://www.occ.org.nz/page-not-found/SearchForm?Search=working+papers&action\\_results](http://www.occ.org.nz/page-not-found/SearchForm?Search=working+papers&action_results), p.13.

<sup>194</sup> Personal communication. Penny Prescott (October 2015).

<sup>195</sup> Ministry of Health. (2001). *The New Zealand Disability Strategy Making a world of difference Whakanui oranga*, Wellington: Author, p.27.

<sup>196</sup> Ministry of Social Development. (2003). *Involving children: a guide to engaging children in decision-making*. Wellington: Author. Retrieved from <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/2003-involving-children.pdf>



and repeal of the benefit sanction regime.

- by taking measures to establish health promoting environments for children.
- Develop a child policy framework for housing.
- Improve legislative and policy settings to protect children from the marketing of and exposure to hazardous products such as tobacco, alcohol, junk food, and sugar-sweetened beverages.
- Ensure that primary health care services are free for all children from maternity through to age 18, including general practice services, prescriptions, dental and optometry care.
- Implement a mandatory folic acid fortification programme.
- Implement or broaden evidence-based measures to address specific child and youth health issues including measures to:
  - reduce rates of unintentional injury and infectious disease;
  - improve child and youth mental health;
  - reduce suicide rates;
  - reduce SUDI;
  - improve child nutrition and reduce obesity;
  - improve oral health;
  - increase breastfeeding rates;
  - improve youth health services; and
  - reduce the incidence and effects of alcohol and tobacco use.

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## **Education, Leisure and Cultural Activities (Articles 28-31)**

### ***Situation Analysis***

205. There have been significant changes in education policies since 2010, mainly focused on increasing participation and rates of achievement. These changes have led to concerns about quality, inclusiveness, cultural responsiveness and, in general the ability of Aotearoa NZ to provide education services that meet the Article 28 and 29 standards.
206. Significant problems remain for disabled children in equitable access to education.
207. The resourcing framework creates barriers for schools in implementing government inclusive education policy objectives. Children in poverty or from disadvantaged backgrounds have been shown to be at particular risk of not receiving an education to enable them to fulfil their potential.<sup>197</sup>

### **Early Childhood Care and Education (ECEC)**

208. The Government has recognised the importance of ECEC. The current policy focus has been on increasing participation of children. This has given rise to concerns about the quality of services.<sup>198</sup> For example, there has been a rapid increase in parents enrolling their children in home-based care or playgroup services that have minimal contact with qualified teachers.<sup>199</sup>
209. Inequitable delivery of culturally appropriate, responsive ECEC services to Maori and Pacific families<sup>200 201</sup> is an issue of concern that has been compounded by recent welfare reforms.
210. Disabled children have their access to ECEC restricted if they do not have specialist support workers funded and in place.
211. The hours under 1-year-olds spend in childcare has increased significantly from an average of 15 hours in 2000 to 20 hours a week in 2014.<sup>202</sup> Less than half the infant and toddler services recently reviewed were engaging with the early childhood curriculum *Te Whariki* adequately.<sup>203</sup>
212. For-profit services have increased giving rise to tension between the profit motive and the quality of children's education.<sup>204</sup> There has been a significant increase in Government spending in ECEC which is still lower than the recommended 1% of GDP<sup>205</sup> and there have been cuts to professional development programmes; reductions in training incentive grants;

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<sup>197</sup> Child Poverty Action Group. (2014) *Our children, our choice: priorities for policy series*. Part 3: Compulsory schooling and child poverty ISBN: 978-0-9941105-2-7.

<sup>198</sup> Ibid.

<sup>199</sup> Ritchie, J. et al. (2014) *Early childhood care and education and child poverty*. Paper 2 - Our children, our choice: Priorities for policy series. CPAG: <http://www.cpag.org.nz/resources-publications/our-children-our-choice-priorities-for-policy-7/part-2-early-childhood-care-and-education/>; Dalli, C. (2015, Aug 6) *Early childhood report very sobering*. (m.nzherald.co.nz/news/article.cfm?c\_id=1&objectid=11493068).

<sup>200</sup> <http://www.ero.govt.nz/National-Reports/Partnership-with-Whanau-Maori-in-Early-Childhood-Services-Feb-2012>

<sup>201</sup> ERO. (June 2015). <http://www.ero.govt.nz/National-Reports/Infants-and-toddlers-competent-and-confident-communicators-and-explorers-June-2015/Conclusion-improving-outcomes-for-infants-and-toddlers>

<sup>202</sup> Above at note 200.

<sup>203</sup> ERO (June 2015). <http://www.ero.govt.nz/National-Reports/Infants-and-toddlers-competent-and-confident-communicators-and-explorers-June-2015/Conclusion-improving-outcomes-for-infants-and-toddlers>

<sup>204</sup> [http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11358879](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11358879);  
<http://www.smh.com.au/comment/the-shaky-business-of-childcare-and-past-lessons-20140312-34mfs.html>

<sup>205</sup> NZEI Te Riu Roa. (2014). *Productivity Commission Inquiry. More effective social services. A case study on the provision of early childhood education*. Wellington:Author.

cancelling of the Centres of Innovation research programme; reductions in the goal of 100% registered early childhood teachers to 80%, and to 50% in the provision for under-tuos; and increased teacher to child ratios.<sup>206</sup>

### **Compulsory Sector**

213. Research reports that the Government's key education indicators at the beginning and end of compulsory schooling show Aotearoa NZ's present schooling system does not enable all students to overcome the effects of poverty and socio-economic disadvantage.<sup>207</sup>
214. The US\$8,192 per student spend by Aotearoa NZ is below the OECD average of US\$9,313 per student in 2010.<sup>208</sup> Increasing school costs could be a contributing factor in the relationship between low socio-economic status (SES) background and student underachievement.<sup>209</sup>
215. Children from low decile schools experience compounded disadvantages. Funding is inadequate to counter SES and the consequent educational disadvantages.<sup>210</sup> "On average, schools request [donations] between \$160 (decile 1-5 primary) and \$1614 (decile 9-10 secondary) per child outside what schools can legally require parents to pay."<sup>211</sup> Activities like school trips and team sports, with associated costs exclude some students.<sup>212</sup> Schools in low decile areas engage in more pastoral care for children.<sup>213</sup>
216. Data about the achievement and participation of disabled children in compulsory education is not collected in any systematic way despite them being identified as one of the three Ministry of Education (MOE) priority learners.
217. Children with long-term illnesses or medical disabilities have variable access to public education. Regional Hospital Schools provide lessons to children likely to miss more than 40 school days, but students can only stay on this programme for 15 weeks. Students are not well catered for outside main centres. To access public education parents must know to push for dual enrolment. Many children in these circumstances are missing out.
218. Many hospitals have no formal play programmes let alone qualified hospital play specialists. Children living in lower-socio environments and who do not participate in ECEC have more regular admissions to hospital. Access to these services depends on geography and hospital size.

### **The Rights of Indigenous Children to Education that Respects their Culture and Language**

219. The protection and promotion of cultural identity is critical for every child and especially so for Maori children. Respect for te reo Maori (language) and tikanga (culture) enhances learning and development, engagement and achievement in education.<sup>214</sup> The Government's own

<sup>206</sup> Smith, A.B. (2015). "Early childhood education in New Zealand: Progress and challenges in achieving children's rights." in *Enhancing children's rights* Connecting research, policy and practice. Basingstoke, UK: Palgrave MacMillan, pp 80-94.

<sup>207</sup> Child Poverty Action Group. (2014). *Our Children, Our Choice: Priorities for Policy Series. Part 3; Compulsory Schooling and Child Poverty*. Auckland: O'Neill, John. Available from <http://www.cpag.org.nz/assets/Publications/>

<sup>208</sup> OECD. (2013). *Education at a Glance 2013*, p.2.

<sup>209</sup> See Davison, I. (5 December 2013). "Gap Widens Between NZ Students". Retrieved from [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11167148](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11167148)

<sup>210</sup> PPTA. (2014). *A needs-based model of resourcing (Annual Conference Paper)*.

<sup>211</sup> Gasson, R., et al. (2015, unpublished paper). *The impact of cost on children's participation in school-based experiences: Parents' perceptions*.

<sup>212</sup> Ibid.

<sup>213</sup> See CPAG policy papers, for example, "Our children: our choice" Nos 2 and 3.

<sup>214</sup> Te Kotahitanga project research; <https://www.educationcounts.govt.nz/publications/series/9977>

figures show the lack of significant investment in either education delivered in te reo or in cultural settings appropriate for Maori children. As at 1 July 2014, only 2.3% of the school population was enrolled in education in te reo Maori.<sup>215 216</sup>

### **Achievement Gaps**

220. Achievement gaps persist between Pakeha, Pacific and Maori.<sup>217 218</sup> When considering the delivery of CRC rights, the Maori population is young, in comparison with the rest of the population of Aotearoa NZ. The NEET (Not Engaged in Education or Training) figures indicate the scale of the issue: 17.6% Maori males, 27.5% Maori females, compared with 11.5% and 14.6% for non-Maori children.

221. Addressing inequalities and improving cultural responsiveness is the key. An education system founded on the rights and principles in the CRC would help to achieve this.

### **National Standards**

222. In 2010, National Standards were introduced into primary and intermediate schools.<sup>219</sup> Few principals and teachers think they are a robust record of student learning.<sup>220</sup> Some schools fix data to ensure reputation. The student experience of National Standards is not adequately represented.

### **Review of the Education Act (2015)**

223. An MOE Report<sup>221</sup> concluded that the current Education Act 1989 is not fit for purpose and recommended a review of regulations. Consultations on the review have begun. ACYA is concerned at the narrow focus on outcomes in the context of the Minister's recent comments about student performance as a basis for school funding.<sup>222</sup> There are no clear processes for consulting with children about the implications of the review yet.

### **School Closures**

224. Fourteen schools closed in the period January 2015 to January 2016 - three by the Minister of Education, three were voluntary, and six due to mergers. Many closures are in low decile and rural areas raising issues of access and availability. In at least two cases concerns were raised about the process, student involvement in that process and whether the closures were in the best interests of the children affected.<sup>223</sup>

### **Christchurch**

225. Unfortunately the Canterbury earthquakes meant many children were dislocated from their school communities. Some schools had to rebuild or relocate campuses and some children

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<sup>215</sup> <http://www.educationcounts.govt.nz>

<sup>216</sup> The number of students (17,713) was unchanged from 2013. 19.2% of the school population was involved in Maori language learning in English, the vast majority of whom received less than three hours in total.

<sup>217</sup> Ministry of Education. (2014) *Aspiration and achievement. Briefing to incoming Minister 2014*. Available from <http://www.education.govt.nz/assets/Documents/Ministry/Publications/Briefings-to-Incoming-Ministers/AspirationAndAchievementEducationSystem.pdf>

<sup>218</sup> Ibid.

<sup>219</sup> Thrupp, M. (2013) National Standards for student achievement: Is New Zealand's idiosyncratic approach any better? *Australian Journal of Language and Literacy*, 36(2), 99-110.

<sup>220</sup> Wylie, C., & Berg, M. (2013). *National Standards: What difference are they making?* Retrieved from <http://www.nzcer.org.nz/research/publications/national-standards-what-difference-are-they-making>

<sup>221</sup> Wylie, C. (2013). "Schools and inequality" in M. Rashbrooke (Ed.) *Inequality, a New Zealand crisis*. Wellington: Bridget Williams Books. pp.134-247.

<sup>222</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11522717](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11522717)

<sup>223</sup> <http://www.radionz.co.nz/news/te-manu-korihi/284614/kura-closure-traumatizes-local-community>

had to live in different parts of town, or shift to new localities, and move schools. In some instances ensuring children in Canterbury could benefit from the stability offered by the education system was managed well.<sup>224</sup> There are many lessons to be learned from the experiences of children in Canterbury post-earthquakes. The importance of taking children's views into account is one of them.<sup>225</sup>

### **Partnership Schools**

226. A contentious education policy introducing Partnership Schools has been implemented since the last report.<sup>226</sup> Of particular concern is the fact these schools can set their own curriculum, employ untrained, unregistered teachers, and determine their own rules for including and excluding students.<sup>227 228</sup> There is concern that disabled children may be disadvantaged by charter school practices which prioritise academic achievement as sole measures of education success.

### **Inclusive Education**

227. The emphasis in legislation and policy on parents' rights to choose the education settings for their child compromises and overrides the child's right to a quality inclusive education.
228. Special education support services remain extremely difficult for children with disabilities or learning difficulties to access and are grossly inadequate. The MOE provides On-going Resource Scheme (ORS) funding to 1.1% of the school population; 8252 students as at 1 July 2014. Schools report taking money from other parts of their budget to meet funding shortfalls.
229. The Education and Science Select Committee is currently conducting an inquiry about students with dyslexia, dyspraxia, and autism spectrum disorders in primary and secondary schools.<sup>229</sup> Submissions to that Inquiry raise major issues regarding the cost of diagnosis and the levels of support available to students.
230. Transitioning between ECEC and primary school, and then intermediate school and college, is fraught with bureaucratic difficulties.<sup>230</sup> Competitive, contestable policy disguises funding shortfalls. Teachers, psychologists and parents know that a successful application can mean another child with special needs misses out.<sup>231</sup> Teacher capacity is a significant problem with limited compulsory curricula on inclusive education in initial teacher education and a lack of ongoing professional development.

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<sup>224</sup> This was the case for Phillipstown School in Christchurch. <http://growing-greens.blogspot.co.nz/2013/05/we-are-phillipstown-why-i-am-walking-to.html>

<sup>225</sup> Freeman, C., Nairn, K., & Gollop, M. (2015). Disaster impact and recovery: What children and young people can tell us. *Koutuitui: New Zealand Journal of Social Sciences Online*, special edition: Contested meanings of recovery: A critical exploration of the Canterbury earthquakes, voices from the social sciences.

<sup>226</sup> <http://www.education.govt.nz/ministry-of-education/specific-initiatives/partnership-schools-kura-hourua/>

<sup>227</sup> <http://www.standupforkids.org.nz/charter-schools/>

<sup>228</sup> Child Poverty Action Group. (2013) *Submission on Charter Schools Bill*.

<sup>229</sup> [http://www.parliament.nz/en-nz/pb/sc/details/education-science/OODBHOH\\_BBSC-SCES-1/business-before-the-education-and-science-committee](http://www.parliament.nz/en-nz/pb/sc/details/education-science/OODBHOH_BBSC-SCES-1/business-before-the-education-and-science-committee)

<sup>230</sup> ACYA is aware that funding to support students with special needs to sit NCEA exams is disproportionately accessed by high-decile schools (Why do inequities persist in accessing exam help? Nine To Noon, 14 May 2015). Time, access to specialist reports (both medical and psychological), and the costs of submitting an application are barriers to rectifying this funding equitably.

<sup>231</sup> <http://www.psychology.org.nz/wp-content/uploads/Submission-on-the-Ministry-of-Education-Special-Education-Review-June-2015.pdf>

### **Education in Residences**

231. Education for children in residences could be improved by extending the number of weeks providers offer education to children in custody; developing links with tertiary providers; ensuring equality of IT provision across providers; implementing national behaviour management practice; improved collaboration between MOE and MSD staff such as joint/parallel training; and finding ways to attract and retain quality staff.<sup>232</sup>

### **Suspensions and Exclusions**

232. The current disciplinary regime under s14 of the Education Act affords students and parents very few opportunities for recourse. There is a high incidence of schools advising parents to informally remove their child. There is no ability to challenge this once the student has been removed from the school.

233. A decision by a Board of Trustees to exclude or expel is effectively final with no direct right of appeal or challenge. Students themselves are not empowered to challenge the decisions and rely on parents or other adults in their lives to support them once removed from the school environment.

234. Disabled children are overrepresented in disciplinary statistics. Rates of exclusions and expulsions for Maori and Pacific students are between 2-3 times the national average. Males are 2.7 times more likely to be excluded from school than females and 4.3 times more likely to be expelled. Students from decile 1 and 2 schools are nearly five times more likely to be excluded and over twice as likely to be expelled.<sup>233</sup>

235. ACYA and YouthLaw Aotearoa<sup>234</sup> have consistently advocated for the establishment of an independent tribunal to appeal adverse decisions given the current lack of effective remedies.<sup>235</sup>

### **Elimination of Violence and Bullying**

236. Increasingly, the impact of technology and social media has expanded the reach of school jurisdiction over student activities beyond the school gates and has imposed significant obligations to provide a safe learning environment.

237. Teens using Barnardos' 0800 *What's Up* line consistently rate bullying as their top issue.<sup>236</sup>

238. The *Census at School*<sup>237</sup> confirmed that the scale and prevalence of bullying was widespread and included verbal, online social and physical abuse. Thirty-six percent of students thought that verbal abuse was a problem at school. 31% considered cyber-bullying to be an issue at school, 25% felt that social bullying was an issue and one in five considered that psychological bullying was an issue.

239. Guidelines to assist schools in preventing and responding to bullying have been developed.<sup>238</sup> These need to be widely disseminated and implemented. School policies need to be

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<sup>232</sup> St Thomas of Canterbury College. (2015). Christchurch The Edmund Rice Youth Custody Index.

<sup>233</sup> YouthLaw. (2012). *Out of School, Out of Mind: The Need for an Independent Education Tribunal*. Available from <http://www.youthlaw.co.nz/wp-content/uploads/Out-of-School-Out-of-Mind-web1.pdf>

<sup>234</sup> YouthLaw is a community law centre for children and children.

<sup>235</sup> Action for Children & Youth Aotearoa. (2014). *Submission on Education Amendment Bill (no.2)*. Auckland: Author. Available from [http://www.acya.org.nz/uploads/2/9/4/8/29482613/20140429\\_submission\\_education\\_amendment\\_bill\\_sto.pdf](http://www.acya.org.nz/uploads/2/9/4/8/29482613/20140429_submission_education_amendment_bill_sto.pdf)

<sup>236</sup> See <http://www.barnardos.org.nz/service/0800-whats-helpline>

<sup>237</sup> See <http://new.censusatschool.org.nz/2015/06/12/verbal-abuse/>

<sup>238</sup> Ministry of Education. (2014). *Bullying Prevention and response: a guide for schools*.

comprehensive and include clear detail of processes and disciplinary procedures that may result.

240. Cyber-bullying<sup>239</sup> appears to be an extremely common and regular occurrence in schools nationwide.

### After-School and Holiday Programmes

241. Government policy for the funding of Out of School Care and Recreation (OSCAR) services is primarily aimed at support for working parents (or parents on pathways back into employment). Access to enriching, diverse recreation opportunities, outside of school hours remain inequitable. In particular, children with a disability and those in lower-income communities are unlikely to find appropriate services funded under the OSCAR model.
242. Parents are not supported adequately to fulfil their child-rearing responsibilities because there is a shortage of services to care for children while their parents are at work.
243. ACYA is concerned there is no data on the number of 'latch-key' children in Aotearoa NZ. Equally concerning is the effect of long working hours and shift work on family life and children's access to parents after school and during holiday periods.
244. A study of social services provision in Auckland<sup>240</sup> identified OSCAR Services (10-14 years) as a high priority for the city. While there has been some progress in the recreation sector, provision of services remains erratic.
245. ACYA is concerned that the restructured (reduced funding) OSCAR funding model announced in the 2013 budget has had adverse impacts.

### Play

246. Some children miss out on traditional Kiwi experiences because the costs of accessing Aotearoa NZ's outdoor environment is beyond their family's budget.<sup>241</sup> There is ongoing concern at children's lack of engagement with the natural world, even in local neighbourhoods.<sup>242</sup> Not all families can afford to pay for children to participate in regular team games or extra-curricula activities.
247. Drowning is an issue for children in Aotearoa NZ (see paragraphs 169-170 above). Around 156 school pools have closed in the past six years and a further 130 nationwide are at risk of being shut down permanently.<sup>243</sup> Many schools are closing their swimming pools as operational grants, particularly in low decile communities, are insufficient to cover the costs of maintenance.
248. For information about the right to play for children who are unwell. (See paragraphs 217-218).

<sup>239</sup> The Harmful Digital Publications Act 2015 aims to mitigate the harm caused by cyber-bullying.

<sup>240</sup> Ministry of Social Development. (2008). *Auckland City Community Report 2008*. Auckland: Family and Community Services as part of Local Services Mapping.

<sup>241</sup> Te One, S. (2012). *Every child thrives, belongs achieves (Primary school children)*. Available from [http://www.occ.org.nz/data/assets/pdf\\_file/0019/9334/Primary\\_school\\_voices.pdf](http://www.occ.org.nz/data/assets/pdf_file/0019/9334/Primary_school_voices.pdf)

<sup>242</sup> Freeman, C., van Heezik, Y., Stein, A., & Hand, K. (2015). *Natural neighbourhoods for city children*. Available from [http://www.geography.otago.ac.nz/data/assets/pdf\\_file/0018/12906/Report\\_Natural\\_Neighbourhoods\\_for\\_City\\_children.pdf](http://www.geography.otago.ac.nz/data/assets/pdf_file/0018/12906/Report_Natural_Neighbourhoods_for_City_children.pdf)

<sup>243</sup> <http://www.watersafety.org.nz/media/our-campaigns/save-our-school-pools/>

***Comments on the Government Report***

249. There are serious concerns about the ongoing difficulties related to lack of an integrated response to children with disabilities in circumstances with persistent difficulties in accessing quality, flexible and timely support services.
250. The Government claims, “targeted early childhood education initiatives are addressing multiple barriers to participation.”<sup>244</sup> However, its own evaluations found previously identified barriers to participation still exist for priority families.<sup>245</sup> The Government’s report provides no evidence of the impact of the initiatives, the numbers of children involved, or their ethnicity.
251. The Government’s report refers to policies that claim to promote inclusiveness.<sup>246</sup> But Government’s claims regarding an increase in inclusive practice are questionable.<sup>247</sup> The *Maori Education Strategy* and the *Pasifika Education Plan* are referred to, but there is no information about the resources put into their implementation or monitoring.
252. The Government report<sup>248</sup> also refers to the *Maori Education Strategy*. However, no information is provided regarding the resources invested in this, the numbers of kura kaupapa and immersion schools that exist and are supported by the Government, and the numbers and levels of pupils (both Maori and non-Maori) in Aotearoa NZ who have the opportunity to learn te reo Maori at primary and secondary school levels.

***Conclusions and Recommendations***

253. Not all children in Aotearoa NZ are able to fully enjoy their education rights. While the curriculum in both the early childhood and compulsory sector is consistent with the CRC’s principles, implementation of it and access to it varies depending on where a child lives and their particular circumstances - whether they are disabled, unwell, in care, in the justice system, or living in a home lacking resources.
254. The review of the Education Act offers a significant opportunity to transform the education system and make it truly child-centred and flexible enough to enable all children, no matter their circumstances, to have equal opportunity for a quality education that maximises their personality, talents and abilities to their fullest potential.
255. Not enough attention is paid to the opportunities children, and different groups of them, have to rest and play, enjoy leisure time and recreation or take part in cultural or artistic activities.
256. ACYA recommends that the Government:
- Takes a child rights approach to reviewing the Education Act, with particular emphasis on the general principles, to ensure the education system is truly inclusive and that all children and young people, including those with disabilities, have equitable access to, within and through education.
  - Reviews education resourcing with a view to ensuring per pupil funding to all schools at least matches the OECD average and to ensure resources are equitably distributed;

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<sup>244</sup> Government Report 2015, paragraph 9.

<sup>245</sup> Mitchell, L, et al. (2014) *ECE Participation Programme Evaluation: Delivery of ECE Participation Initiatives Stage 2*. <https://www.educationcounts.govt.nz/publications/ECE/148513>

<sup>246</sup> Government Report 2015, paragraph 172.

<sup>247</sup> See <http://www.ero.govt.nz/National-Reports/Inclusive-practices-for-students-with-special-education-needs-in-schools-March-2015/Appendix-1-ERO-s-recent-reports-on-students-with-special-education-needs>

<sup>248</sup> See paragraph 51 above.



- Continues to develop processes to foster a culture of respect for the active participation of all children and young people within their education, including Maori, Pacific and children with a disability.
- Enables children and young people's views to be heard at all levels - policy and practice development, school governance, and within the classroom.
- Continue efforts to prevent and respond to bullying.
- Establishes an independent tribunal to hear appeals on school discipline.
- Takes steps to identify how the rights of all children and young people to rest and play, enjoy leisure time and recreation, and to take part in cultural or artistic activities, can be enabled and supported, and remove any barriers to enjoyment of these rights.

## **Special Protection Measures (Articles 22, 30, 38, 39, 40, 37(b-d), 32 – 36)**

### ***Situation Analysis***

257. The difficulties in ensuring access to comprehensive education, health, welfare, housing, justice and social services which have been a challenge over the reporting period<sup>249</sup> due in large part to the impact of the Global Financial Crisis and the Canterbury earthquakes, have tended to exacerbate the vulnerability of those children entitled to special protection measures.
258. The nature and quality of attention given to children in response to crises, and in the recovery period following a disaster, is an issue that warrants further attention and planning, especially as climate change means that the number of weather related natural disasters are likely to increase.

### **Article 22 – Refugee, Asylum-Seeking and Migrant Children and Young People**

259. The diversity of Aotearoa NZ is increasing and refugee, asylum seekers and migrant peoples have become a more significant proportion of the population.<sup>250</sup> In a general sense this diversity is celebrated through cultural and religious festivals attended by a broad cross-section of Aotearoa NZ's population.
260. It is therefore disappointing that these groups continue to experience discrimination.<sup>251</sup> This includes being subjected to persistent negative attitudes, including racism, xenophobia, prejudice, intolerance and closed-mindedness.<sup>252</sup> It demonstrates that refugee, asylum seekers and migrant peoples are still struggling to be accepted and valued by other people in Aotearoa NZ.
261. Refugee, asylum-seekers and migrant peoples face challenges that are different from other New Zealanders and specific to their life experiences. Refugee and asylum seekers may be suffering from trauma (mental and physical) resulting from conflict in their country of origin. In addition, moving to a new host country increases the likelihood of language barriers and requires navigation of systems and processes (e.g. enrolling children in ECE, primary and secondary education, accessing primary and secondary health services, or complying with laws regarding car restraints and booster seats for younger children) that are unfamiliar and sometimes confusing.
262. Previous bad experiences and fears of conflict if they assert themselves can also mean refugee, asylum-seeking and migrant peoples sometimes lack confidence to engage with other people.<sup>253</sup> This is compounded by a wider range of communication problems, including people from the host country being intolerant of other languages and accents, talking too fast, cultural insensitivity and a lack of cultural awareness and confidence in engaging with others from different cultural backgrounds than their own.<sup>254</sup>

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<sup>249</sup> Government Report 2015, paragraph 4.

<sup>250</sup> At the 2013 Census, Asian peoples comprised 11.8% of Aotearoa NZ's total population.

<sup>251</sup> This includes on the grounds of the colour of their skin, their language, religion, accent, dress and national or ethnic origin. They are also subjected to mocking, labels and stereotypes.

<sup>252</sup> New Zealand Federation of Multicultural Councils. (2015). *Our Multicultural Future: New Zealanders talk about multiculturalism*. Wellington: Author. Retrieved from <http://cdn-flightdec.userfirst.co.nz/>

<sup>253</sup> Ibid, p.12.

<sup>254</sup> Ibid.

263. Significant barriers and challenges must be addressed if refugee, asylum-seekers and migrant children are to enjoy their rights and have a valued place in Aotearoa NZ. This includes the need for specialist services (and a culturally competent and stable workforce) to meet the specific needs of refugee, asylum-seeker and migrant peoples.
264. In 2013 the Government passed the Immigration (Mass Arrivals) Amendment Act. The legislation acts as a deterrent and means of managing groups of refugee and asylum-seekers who arrive en masse<sup>255</sup> in Aotearoa NZ. The legislation is discriminatory because it treats refugee and asylum-seekers arriving in a group differently from those who arrive in smaller groups or as individuals.<sup>256</sup>
265. In addition, the legislation restricts the right of successful asylum-seekers from reuniting with their family members, including children. This is likely to have a significant negative impact on the ability of these people to successfully resettle in Aotearoa NZ.<sup>257</sup>
266. The Government also announced policy changes alongside this legislation. It delays the granting of permanent residence for people who are genuine refugees simply because of their mode of arrival and the number of people who accompanied them. Again, this is discriminatory and severely impacts on any children's ability to access much needed health, education and other services and support.

#### **Article 30 – Children and Young People from Indigenous and Minority Groups**

267. Aotearoa NZ's continued failure to take sufficient action to protect, respect and fulfil the rights of tamariki and rangatahi Maori and children from minority ethnic groups is a major and constant theme throughout this report.

#### **Article 31 – Child Employment**

268. Aotearoa NZ has always maintained that the rights of the child provided for in Article 32(2) are adequately protected by its existing law. While acknowledging that children who want to work should be able to, ACYA questions whether existing protections for young workers are adequate. There is a need for better information on young workers and greater recognition of their particular vulnerabilities within the workforce so that they are properly protected from harm and exploitation.
269. There is little information on the reality of children's work experience but what is available indicates that child workers are typically found in family run businesses, in the primary sector (agriculture and horticulture) as well as the retail and hospitality industries. They tend to work in the informal labour market, which means many young workers are overlooked in statistical reporting and analysis, and are not covered by the protections that do exist.<sup>258 259</sup>

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<sup>255</sup> Section 9A of the Immigration (Mass Arrivals) Amendment Act 2013 defines mass group arrival as a group of more than 30 people.

<sup>256</sup> ChangeMakers (n.d). *Submission for the UN Universal Periodic Review 18<sup>th</sup> Session of the UPR Working Group, January-February 2014*. Retrieved from <https://www.hrc.co.nz/your-rights/human-rights/our-work/universal-periodic-review/civil-society-and-ngo-submissions/>

<sup>257</sup> Ibid, p.2.

<sup>258</sup> Anderson, D. (2010). *Safe enough? The working lives of New Zealand Children*. Auckland: NZ Work and Labour Market Institute, Auckland University of Technology, p.3.

<sup>259</sup> For more detail see the concerns raised by the Council of Trade unions in its submission on the Government's draft 5th periodic CRC report. Available from <http://union.org.nz/sites/union.org.nz/files/NZCTU%20Response%20Govt%20Report%20on%20UNCROC%202015.pdf>

270. Research<sup>260</sup> has shown that some young people work to contribute to the family income, for some their work interferes with their education, and many are harmed at work. A miner killed in the Pike River mine disaster 2010 was 17.
271. Apart from a few exceptions, young people's work is governed by the same legislative protections as other workers. The specific protections for young workers that do exist are contained in a fragmented, relatively complex, array of statute law, regulations and codes of practice. For example, the Education Act 1989 prevents the employment of those under 16 during school hours or when it would interfere with their schooling (such as night work).<sup>261</sup> It is an offence to use someone under 18 years of age in prostitution.<sup>262</sup> Those aged under 18 cannot sell liquor.<sup>263</sup>
272. Over the last five years labour market policy has been to facilitate employment and thereby encourage economic growth. "Freeing up" of the labour market has seen a rise in so called "zero hours"<sup>264</sup> and casual contracts with fewer protections for workers. Young people are particularly vulnerable to these kinds of arrangements.
273. The "My First Job" website<sup>265</sup> has been a positive development. However, in practice, young workers often need support to exercise their rights and invoke the protections available to them. YouthLaw,<sup>266</sup> report that they receive 300 to 500 employment law related enquiries annually, indicating work related issues are a concern.<sup>267</sup>
274. During 2012 and early 2013 an Independent Taskforce on Workplace Health and Safety found that Aotearoa NZ's workplace health and safety system had a number of significant weaknesses. It identified young people as one of the groups particularly vulnerable to injury and harm.<sup>268</sup>
275. The new Health and Safety at Work Act 2015 comes into force in April 2016. It will establish a new framework for worker health and safety. The legislation will be supported by industry or hazard specific regulations. The new framework does not appear to recognise the inherent vulnerability of young workers or set out any overarching duty of care towards them.
276. Existing protections for young workers will be transferred over into these new regulations.<sup>269</sup> So, for example, existing law allows children over 12 to drive tractors on a farm, if certain training and supervision conditions are met. It is unclear whether there is any process for assessing or strengthening the existing protections as they are transferred into the new regulatory framework.

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<sup>260</sup> [http://www.dol.govt.nz/publications/research/schoolchildren-in-paidemployment/youthreport\\_01.asp](http://www.dol.govt.nz/publications/research/schoolchildren-in-paidemployment/youthreport_01.asp)

<sup>261</sup> s30 Education Act 1989.

<sup>262</sup> Prostitution Reform Act 2003.

<sup>263</sup> Sale of Liquor Act 1989.

<sup>264</sup> <http://union.org.nz/news/2015/young-workers-tell-mps-zero-hour-contracts-must-go>

<sup>265</sup> <http://employment.govt.nz/about/careers/my-first-job.asp>

<sup>266</sup> YouthLaw is a national community law centre for young people.

<sup>267</sup> Personal communication. Vanushi Walters, October 2015.

<sup>268</sup> Independent Taskforce of Workplace Health and Safety. (2013). *The Report of the Independent Taskforce on Workplace Safety and Health: He Korowai Whakaruruhau*. Wellington:Author, p.13.

<sup>269</sup> s61 Health and Safety at Work Act 2015.

277. A proposed regulation (number 54)<sup>270</sup> will establish new protection for young workers handling hazardous substances. But, as drafted, it will only apply to those under 15 years of age and does not specify any education or supervision requirements.
278. The Starting Out Wage<sup>271</sup> was designed to encourage employment of young people. Under this policy, after 6 months continuous employment or if they are involved in training or supervising other staff, young people must be paid at least the adult minimum wage. ACYA welcomes this move towards a degree of wage equity for young people, but the policy does discriminate against young people on the basis of age and does not address the lack of minimum wage protection for workers aged under 16.

**Article 33 – Use of Children and Young People in Production and Trafficking of Drugs, as well as use of Illicit Drugs and other Substances by Children and Young People**

279. There is limited information, so it is difficult to ascertain the extent to which children are being used in the production and trafficking of drugs in Aotearoa NZ.

**Article 35 – Sale Trafficking and Abduction of Children and Young People**

280. There is a disturbing lack of information available about human trafficking in Aotearoa NZ. What is available is often anecdotal and refers almost exclusively to adults who have been trafficked for exploitation (including for sex and labour). To date, there have been no prosecutions for trafficking in or out of Aotearoa NZ. However, stories of abuse and exploitation are becoming more commonplace and ECPAT New Zealand has commented specifically on sex workers being trafficked both across the border and internally.<sup>272</sup>
281. The Government's approach to this issue is set out in the 2009 *New Zealand Plan of Action to Prevent People Trafficking*. That document is 6-years old now and should be reviewed and updated. Specifically because it neither mentions nor addresses trafficking of children. Nor does it recognise the special risks pertaining to children within the three-pronged approach (prevention, protection and prosecution) adopted in this plan.<sup>273</sup>
282. ACYA is concerned both by this issue and the significant gaps in information about the coercion and impact of trafficking on children and young people. At this point it is almost impossible to quantify the scale of this issue. However, circumstantial evidence (however adult-focused) suggests we are only seeing the tip of the iceberg. Moreover, it suggests it is time for the Government to employ a more proactive (including child and youth focused) approach to human trafficking and exploitation in Aotearoa NZ.

**Article 39 – Physical and Psychological Recovery and Social Reintegration**

283. Children require specialist services to assist their recovery and successful reintegration back into their lives. The Accident Compensation Corporation (ACC) funds therapy and counselling for physical and mental injuries resulting from trauma. Unfortunately, in addition to the trauma, children face a range of barriers regarding access to ACC funding and access to the services.
284. In the past ACC has had a narrow focus on mental injuries caused by sexual abuse of children. The Government's intensive work on family violence has highlighted the trauma that children who are abused (other than by sexual abuse) and maltreated suffer. These children have

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<sup>270</sup> Retrieved from <http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform>

<sup>271</sup> Government Report 2015, paragraph 199.

<sup>272</sup> ECPAT NZ Child Alert (n.d). *Resources: Learn the Facts*. Available from <http://www.ecpat.org.nz/Resources/Learn-the-facts.aspx>

<sup>273</sup> ACYA previously raised this issue with the UN Committee in its 2010 alternative periodic report.

fewer opportunities to access services and supports relative to those who have experienced sexual abuse. In addition it is a struggle for all these children to receive age-appropriate services from counsellors, therapists and other health professionals that address their specific needs (see Mental Health services in the Youth Justice System, paragraph 292 below).

285. ACYA is also aware that there are gaps in the availability of secondary and tertiary health services for children across the country. For children with disabilities, refugee, asylum-seeking and migrant children and those living outside cities or main centres, services are almost non-existent. Better assessment of these children's needs is required, as is a greater deployment of resources.

#### **Article 40 – Children in Conflict with the Law**

##### ***Ages – Criminal Responsibility and the Upper Age of the CYPFA 1989***

286. At 10, the minimum age of criminal responsibility in Aotearoa NZ is low. At this age a child charged with the serious offences of murder or manslaughter will have his or her case heard in the High Court. Until 2010, fourteen was the age at which young people could be charged with any other offence. Since 2010 children aged 12 and 13 can be prosecuted in the youth court for serious or repeat offending. At that time, Police information indicated there had been 80 apprehensions relating to serious and persistent offending by 12 and 13-year olds.<sup>274</sup> The law change directly contradicts the UN Committee's previous recommendations that consideration be given to raising the age of criminal responsibility.
287. The law has a contradictory approach to children aged 12 and 13 who are accused of committing offences. These children ordinarily appear in the Family Court and are dealt with in a "welfare" way where the law's primary concern is to promote the child's best interests rather than respond to the offending. For 12 and 13-year olds accused of serious offending, the nature of their offending now sees them brought within the jurisdiction of the Youth Court.
288. At 14-years, young people who offend are prosecuted in the Youth Court but 16-year olds who are married or in a civil union are treated as adults and must be charged and dealt with in the adult system. This is discriminatory.
289. All young people 17-years and over are treated as adults and dealt with in the adult courts. This is a fundamental breach of Article 1 of the CRC. Some young people who offend before the age of 17, but are charged after they turn 18, are also dealt with in the adult courts.<sup>275</sup> The Court of Appeal recently described this as unfair.<sup>276</sup>
290. When Aotearoa NZ last reported on the CRC a Bill<sup>277</sup> was before the House, which, if passed, would have brought 17-year olds within the Youth Justice system. Following the change of Government in 2008 the Bill was discharged in 2012.

##### ***Mental Health Services in the Youth Justice System***

291. Since 2011 some funding for mental health workers in all Youth Courts has allowed for initial mental health screening and assessment, and referral to youth mental health services and facilities for treatment for young offenders beyond this initial assessment. In cases where young people have been found to suffer from serious mental health conditions, there is often

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<sup>274</sup> See Hansard, 18 February 2009.

<sup>275</sup> Section 2(2) CYPFA 1989.

<sup>276</sup> *Latimer v R* [2013] NZCA 562, 14 November 2013.

<sup>277</sup> The Children Young Persons and Their Families Amendment Bill (No 6) 2007.

no secure facility available for them. Youth Court judges have consistently expressed concern at the lack of appropriate facilities for this group of young people.<sup>278</sup>

292. ACYA welcomes plans to improve youth forensic mental health and expand drug and alcohol service available to Youth Courts.<sup>279</sup>
293. More research into the prevalence or incidence of neurodisability, mental health disorders and intellectual disabilities in young people in conflict with the law is required.

### **Detention of Young People**

#### **Adult Prisons**

294. Some under-18s are held in adult prisons. All female prisoners under the age of 18 are held in women's prisons where they are mixed with adult offenders. For the calendar year 2014, the number of sentences of imprisonment for those aged 17 to 19 was 599.<sup>280</sup>
295. The Ombudsman has serious concerns for young people detained in prisons. In Mount Eden Correctional Facility, an adult prison, since September 2013 there have been between 5 and 19 young people under 18-years were detained at any one time. In April 2014 the average unlock or time out of cell period for young people was 5 hours a day. In October 2014 and January 2015 it had reduced to between 1 and 2 hours a day, access to programmes and facilities was minimal and young people were housed in various units around the prison, including the management unit (not on segregation).<sup>281</sup>
296. Up until July 2015 Mount Eden prison was run by SERCO, a private company, under contract to the Department of Corrections.

#### **Youth Units in Adult Prisons**

297. There are specialist Youth Offender Units within the grounds of the Hawkes Bay and Christchurch prisons. The youth unit at Waikeria Prison has closed.
298. Youth units are not restricted to offenders under age 18 and some units contain young adult male prisoners aged 18 and 19. Figures for the year to 31 March 2012 show there were 17 adult prisoners held in youth units. The Department of Corrections justifies this age-mixing by stating that it will take place only where it is in the best interests of "inmates". This is not a permitted consideration under CRC.

#### **Police Cells**

299. Young people are detained in police cells when there are no suitable alternative places of detention available or while waiting to appear before the court. While young people will often be held in a single cell, they will mix with adult prisoners during movement from cell to showering and washing facilities, or during transport to and from court.

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<sup>278</sup> See for example *Police v W*, 3 December 2007, FC, Manukau, CYPF 200550925001000, FAM 200550925 002310, Judge Adams; and *Police v RT*, 15 March 2010, YC, Auckland, CR15200952045398, Judge Fitzgerald.

<sup>279</sup> Youth Forensic Services Development – Guidance for the health and disability sector on the development of specialist forensic mental health, alcohol and other drug, and intellectual disability services for young people involved in Aotearoa NZ's youth justice system. See Ministry of Health (2011). Available at <http://www.health.govt.nz>

<sup>280</sup> Statistics NZ. *Adults convicted in Court by Sentence Type, calendar year 2014*. <http://nzdotstat.stats.govt.nz>

<sup>281</sup> Office of the Ombudsman. (2015). *Annual Report 2014/2015*. Wellington:Author, p.32.

300. A review of young people in Police detention in 2012<sup>282</sup> documented the sorts of issues faced by young detainees:
- having cell lights on 24 hours a day (to allow suicide monitoring)
  - it being difficult for family to visit
  - a lack of ventilation and natural light
  - cells being unclean
  - a lack of showering facilities/privacy
  - inadequate food
  - a lack of access to exercise, recreation and education.<sup>283</sup>
301. The young people detained reported:
- being treated as an adult, not a young person (i.e. not having their special need, as a young person, taken into account)
  - being treated unfairly
  - the use of force
  - feeling discriminated against
  - not having their medical and/or mental health needs met.<sup>284</sup>
302. The review made a number of recommendations to reduce the numbers of young people detained in Police custody, improve the treatment of those who are detained and address systemic issues to ensure best practice.

### **Court Cells**

303. Children appearing in the adult court often spend hours in court cells where adult detainees are also held. Children as young as 10 and a potentially increasing number of 12 and 13-year olds fall within the Youth Court jurisdiction. (See paragraphs 286 to 290 above for changes to the youth justice jurisdiction).

### **OPCAT**

304. Aotearoa NZ has ratified OPCAT and is required to monitor places where young people are detained. The Children's Commissioner is an NPM under OPCAT but receives no additional funding for this task. (See paragraphs 39-40 above).

### **Young Maori in the Justice System**

305. In 2014, young Maori were twice as likely as Europeans to be charged with criminal offending. The proportion of youth charged in court who are Maori has increased from 41% in 2005 to 57% in 2014.<sup>285</sup>
306. New Zealand's Nga Kooti Rangatahi ('Rangatahi courts') adopt Maori protocol, involvement of marae communities, and a holistic approach to the wellbeing of Maori young people and their whanau. The findings of a 2012 evaluation were positive, including that Maori youth and their families were more likely to attend the hearings and enjoyed increased levels of support and

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<sup>282</sup> Independent Police Conduct Authority, Children's Commissioner, Human Rights Commission. (2012). *Joint Thematic Review of Young Persons in Police Detention*. Wellington: Authors.

<sup>283</sup> Ibid, p.8.

<sup>284</sup> Ibid.

<sup>285</sup> Ministry of Justice. "Trends in Child and Youth Prosecution." available from <http://www.justice.govt.nz/justice-sector/documents/trends-in-child-and-youth-prosecutions.pdf>



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engagement with youth justice professionals.<sup>286</sup> Similar Pasifika Youth Courts are now in operation in certain centres. This culturally appropriate approach is welcomed by ACYA.

**Comments on the Government Report**

307. Since 1997 the UN Committee has encouraged the Government to treat refugee and asylum-seeking children the same as those entering Aotearoa NZ so they did not have lesser entitlements and access to support and services.
308. In 2003 the UN Committee recommended that Aotearoa NZ continue its efforts to integrate refugee children into society. Feedback from organisations working with migrant, refugee and asylum-seekers confirm there are barriers and difficulties hindering integration and preventing these groups from obtaining the services and support they require.
309. For example, disability services can be *profoundly difficult to navigate, particularly for people from refugee backgrounds who may have a complex array of health, disability and resettlement needs.*<sup>287</sup> Research points to, amongst other things, the ad hoc provision of disability services; lack of information provided so that people from refugee backgrounds were aware of their entitlements or services available; and a lack of interagency coordination and service provision across refugee, health and disability agencies.<sup>288</sup>
310. ACYA notes that an evaluation of the “Starting Out” wage policy will be conducted at the end of 2015<sup>289</sup> and trusts this will include an assessment of whether the wage discrimination against young people is justified, and by what evidence. This review should also assess how many young people have their employment terminated within the 6-month period.
311. As at 30 June 2013, there had been 34 cases involving 12 and 13-year olds. Of these only 5 had received a formal Youth Court order.<sup>290</sup> This number is far lower than the estimated 80 cases of serious and repeat offending the Government relied on to lower the age of criminal responsibility. It does not justify such a flagrant breach of international youth justice principles.
312. ACYA is very concerned that no consideration is being given to raising the age of criminal majority to 18 because of the likely costs.<sup>291</sup> Having 17 as the age of criminal majority is a breach of the CRC, inconsistent with international youth justice provisions and out of step with domestic legislation, particularly the Vulnerable Children’s Act 2014 and the Care of Children Act 2004.<sup>292</sup> The current overhaul of CYF provides the Government with an opportunity to reassess its position.
313. ACYA notes<sup>293</sup> there is no information on what support was provided specifically to children following the Canterbury earthquakes or how their participation in the rebuild has been facilitated.

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<sup>286</sup> Ministry of Justice. (December 2012.) ‘Evaluation of the Early Outcomes of Ngā Kooti Rangatahi’, <http://www.justice.govt.nz/publications/global-publications/r/rangatahi-court-evaluation-of-the-early-outcomes-of-te-kooti-rangatahi>

<sup>287</sup> ChangeMakers (n.d). *Submission for the UN Universal Periodic Review 18<sup>th</sup> Session of the UPR Working Group, January-February 2014*. Retrieved from <https://www.hrc.co.nz/your-rights/human-rights/our-work/universal-periodic-review/civil-society-and-ngo-submissions/>

<sup>288</sup> Ibid.

<sup>289</sup> Government Report 2015, paragraph 199.

<sup>290</sup> Government Report 2015, paragraph 212.

<sup>291</sup> Government Report 2015, paragraph 213.

<sup>292</sup> Both of these statutes cover young people up to the age of 18.

<sup>293</sup> Government Report 2015, paragraphs 192 to 196.

314. ACYA disputes the Government's assertion that existing legislation and policies provide effective age thresholds for entry into work in general, and for safe work. More detail on how current arrangements are monitored is needed.

### **Conclusions and Recommendations**

315. Aotearoa NZ has not paid the necessary attention to the rights of children entitled to special protection. A litany of neglect by successive governments means that opportunities to improve the wellbeing of these vulnerable groups have been missed. ACYA recommends that Government:

- Strengthen efforts to integrate refugee children into society in culturally responsive ways, paying particular attention to the rights and needs of disabled refugee children.
- Strengthen efforts to prevent, identify and address direct and indirect discrimination, including systemic discrimination against Maori children and those from minority groups.
- Work with young workers to determine the adequacy of existing protections and to develop a rights-based, comprehensive scheme of legislation and policy to facilitate safe work and protect them from exploitation.
- Review the 2009 *New Zealand Plan of Action to Prevent People Trafficking* to employ a more proactive, child and youth focused approach to human trafficking and exploitation in Aotearoa NZ.
- Do a stocktake of therapy, counselling and mental health services for children to identify any gaps and assess the level of need, paying particular attention to:
  - age-appropriateness
  - geographical spread
  - the needs of, and services for, children with a disability, asylum seeking and migrant children.
- Raise the age of criminal majority to 18.
- Raise the minimum age of criminal responsibility to at least 12.
- Repeal the provisions of the CYPFA 1989 that allow prosecution of 12 and 13-year olds for repeat and serious offending.
- As a matter of urgency, improve the availability of appropriate youth mental health services, and drug and alcohol services, for young people in the youth justice system.
- Research the prevalence or incidence of neurodisability, mental health disorders and intellectual disabilities in young people in the legal system to make a genuine finding as to the extent of this vulnerable population group's needs.
- Develop and apply a best interests test to the detention of children with adults until the reservation to art 37(c) is withdrawn.
- Strengthen efforts to:
  - prevent the detention of children
  - improve the conditions for those that are detained to meet the standards outlined in the CRC and other instruments.<sup>294</sup>

Ensure the NPM under OPCAT is adequately funded to monitor places of detention for young people in order to prevent breach of their rights while in custody.

<sup>294</sup> OPCAT, Beijing rules.

**Appendix 1**

***Glossary***

The following acronyms and abbreviations are used in this document

ACYA	Action for Children and Youth Aotearoa Incorporated
AISA	Approved Information Sharing Agreement
Aotearoa NZ	Aotearoa New Zealand
ASA	Advertising Standards Authority
BSA	Broadcasting Standards Authority
CAP	Children’s Action Plan
Children	This is a reference to children and young people
CRC	United Nations Convention on the Rights of the Child
CYF	Child, Youth and Family
CYPFA 1989	Children, Young Persons and Their Families Act 1989
DHBs	District Health Boards
ECEC	Early Childhood Care and Education
ERO	Education Review Office
Government Report	5 <sup>th</sup> Periodic Report lodged by Aotearoa NZ Government on UNCROC
MOE	Ministry of Education
MSD	Ministry of Social Development
OPCAT	Optional Protocol to the Convention Against Torture
ORS	Ongoing Resource Scheme
OSCAR	Out of School Care and Recreation
Rangatahi	Maori young person
SES	Socio-economic status
Superu	Previously Families Commission responsible for coordinating social research
Tamariki Maori	Maori children
TPP	Trans Pacific Partnership Trade and Investment Treaty
ViKIS	Vulnerable Kids Information System

## Appendix 2

This is the full text of the Mihi

### Mihi

Tēnā rā koe i raro i ngā manaakitanga o te Ātua. Ānei rā tā mātau ripoata, ko te *United Nations Convention on the Rights of the Child: Alternative Report by Action for Children and Youth Aotearoa November 2015*. Ko te ripoata e whai ake nei ko te hua o tō whakahautanga i a mātau kia whakatakatoria ki mua i to aroaro o ngā ahuatanga i kitea e mātau e tukino nei i ngā rōpū kaiāwhi ngā tamariki i raro i ngā tikanga a te kawenatanga toko i te ora. Ko te mea nui ko te whakatutuki i te whakaaro a ngā rōpū kāore te Kawana e ki nei - *Nāu te rourou, naku te rourou ka ora te iwi*. Kua oho rātau. No reira tenei ra toku ripoata mo tou whakaarohanga o te kaupapa kei roto i te ripoata. Tēnā ra koe e te komiti te kai whakatakāpōkai i te ao hou a tō tamariki ki te tau rua mano rua tekau, ā, ki tua atu.

Abide with the grace of god. We submit for your perusal our report, the *United Nations Convention on the Rights of the Child: Alternative Report by Action for Children and Youth Aotearoa November 2015*. The enclosed report is the result of your request to us to produce for you our opinions on aspects of the rights of children that are detrimental to the people of Aotearoa New Zealand. It is imperative that the wishes of the people who promote a philosophy of working together for the betterment of all – when we share our resources we thrive. We are now ready. Therefore, this is our report for your consideration of this matter. We offer you our sincere greetings for you act as the helmsperson, the navigator and the guide for the children of the world in a new age through and beyond the year 2020.

## **Appendix 3**

### ***Recommendations by Action for Children and Youth Aotearoa***

#### **General Measures of Implementation (Articles 4, 42, and 44 (6))**

316. Aotearoa NZ's progress on implementing the CRC has been slow and ad hoc. There is a lack of understanding as to what a child rights approach entails and how it supports children's wellbeing in an integrated manner.

317. ACYA recommends that the Government:

- Ensure the rights of children in Canterbury are prioritised in the rebuild.
- Withdraw its reservations to the CRC and while working towards withdrawal, take steps to mitigate the negative effects of the reservations on children.
- Prioritise its work with Tokelau to extend CRC to ensure children in Tokelau enjoy the same rights as Tokelau children in Aotearoa NZ.
- Undertake a comprehensive review of all legislation that affects children to ensure consistency with the CRC.
- Develop mechanisms to systematically assess whether proposed legislation is consistent with the CRC.
- Develop an Plan of Action which identifies:
  - what needs to be done to realise and protect the rights of the child;
  - who will do the work;
  - timeframes for implementation; and
  - how progress will be monitored.
- Review processes for planning, enacting, executing and monitoring public spending on children and young people to ensure it is sufficient, effective, efficient and equitable.
- Develop a comprehensive cross agency approach to data collection, ensuring that information can be disaggregated.
- Set parameters for corporate social responsibility towards children, both in New Zealand and in other countries.
- Ensure the rights of children and young people are given due consideration in the negotiation of any treaties, including those related to trade and climate change.
- Strengthen the independence of the Children's Commissioner.
- Actively disseminate information about the CRC to raise awareness of children's rights, and provide training for all those who work with and for children.

#### **Definition of the Child (Article 1)**

318. ACYA recommends that the Government:

- Prioritise work to raise the upper age limit under CYPFA 1989 to at least 18.
- Raise the age of criminal responsibility to a minimum of 12.

#### **General Principles (Articles 2,3,6 and 12)**

319. ACYA recommends that the Government adopt a proactive and comprehensive strategy to address the needs and promote the best interests of all children, with particular attention given to:

- eliminating discrimination and redressing disparities; and

- a systematic approach to ensure children participate at all levels and through all stages of decision-making processes affecting them.

**Civil Rights and Freedoms (Articles 7, 8, 13-27 and 37(a))**

320. To achieve a balance between children's rights to be protected from harm and their civil rights and freedoms, ACYA recommends that:

- The Ministry of Justice be assigned responsibility to ensure children's civil rights and freedoms are considered in the development and passage of legislation.
- The Privacy Commissioner be asked to monitor and report on children's privacy issues.

**Violence Against Children (Articles 19 and 39, 24(3), 37(a) and 28(2) and 34)**

321. ACYA recommends the Government develop and implement a comprehensive, overarching, national strategy to eliminate violence, abuse, maltreatment and neglect of children in Aotearoa NZ. This comprehensive strategy should:

- prioritise investment in all children, because they are all vulnerable, whatever their circumstances or experiences;<sup>295</sup>
- include prevention, intervention and treatment services that are child- and youth-centred, multi-disciplinary and meet their diverse needs;
- include the allocation of sufficient human and financial resources for the sector (including properly funding the 'rebuild' of CYF); and
- continue to support all parents to meet their responsibilities through access to a wide range of free or affordable support services.<sup>296</sup>

**Family Environment and Alternative Care (Articles 5, 9, 10, 11, 18, 20, 21, 25 and 27(4))**

322. ACYA recommends that the Government:

- Reverse its policy and enable child support payments to go directly to families, regardless of whether they are receiving a benefit.
- Reverse its policies on sanctions where children are living in benefit-dependent families.
- Ensure benefit entitlement levels are sufficient to meet the needs of all family members, but especially children.
- Prioritise a review of the Adoption Act 1955 as part of its law reform programme for the justice sector.

**Disability, Basic Health and Welfare (Articles 6, 18, 23, 24, 26 and 27)**

323. Improving children's health and wellbeing depends on inequalities being reduced, delivering health services based on proportionate universalism and a respect for children's rights.

324. ACYA believes the absence of transparency for the benefit sanction regime affecting children is contrary to their rights, a breach of the CRC, and the regulations should be repealed.

325. ACYA recommends the Government:

- Integrate a child rights approach into the health system at all levels - structurally, in policy development, and service delivery.

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<sup>295</sup> Above at note 24.

<sup>296</sup> Ibid, p.2.

- Ensure adequate information, resources, and support are available and accessible for all children with disabilities and their caregivers so that they are able to live lives of dignity and actively participate in their communities.
- Improve the collection of data on children with a disability to assess whether targeted support services are adequate, fairly distributed and effective in terms of ensuring Article 23 rights are met.
- Take urgent steps to address the determinants of child and youth health and wellbeing including:
  - as a matter of priority, by reducing rates of deprivation through improved income and repeal of the benefit sanction regime;
  - by taking measures to establish health promoting environments for children.
- Develop a child policy framework for housing.
- Improve legislative and policy settings to protect children from the marketing of and exposure to hazardous products such as tobacco, alcohol, junk food, and sugar-sweetened beverages.
- Ensure that primary health care services are free for all children from maternity through to age 18, including general practice services, prescriptions, dental and optometry care.
- Implement a mandatory folic acid fortification programme.
- Implement or broaden evidence-based measures to address specific child and youth health issues including measures to:
  - reduce rates of unintentional injury and infectious disease;
  - improve child and youth mental health;
  - reduce suicide rates;
  - reduce SUDI;
  - improve child and health nutrition and reduce obesity;
  - improve oral health;
  - increase breastfeeding rates;
  - improve youth health services; and
  - reduce the incidence and effects of alcohol and tobacco use.

**Education, Leisure and Cultural Activities (Articles 28-31)**

326. Not all children in Aotearoa NZ are able to fully enjoy their education rights. While the curriculum in both the early childhood and compulsory sector is consistent with the CRC's principles, implementation of it and access to it varies depending on where a child lives and their particular circumstances - whether they are disabled, unwell, in care, in the justice system, or living in a home lacking resources.
327. The review of the Education Act offers a significant opportunity to transform the education system and make it truly child-centred and flexible enough to enable all children, no matter their circumstances, to have equal opportunity for a quality education that maximises their personality, talents and abilities to their fullest potential.
328. Not enough attention is paid to the opportunities children, and different groups of them, have to rest and play, enjoy leisure time and recreation or take part in cultural or artistic activities.
329. ACYA recommends that the Government:

- Take a child rights approach to reviewing the Education Act, with particular emphasis on the general principles, to ensure the education system is truly inclusive and that all children and young people, including those with disabilities, have equitable access to, within and through education;
- Review education resourcing with a view to ensuring per pupil funding to all schools at least matches the OECD average and to ensure resources are equitably distributed;
- Continue to develop processes to foster a culture of respect for the active participation of all children and young people within their education, including Maori, Pacific and children with a disability;
- Enable children and young people's views to be heard at all levels - policy and practice development, school governance, and within the classroom;
- Continue efforts to prevent and respond to bullying;
- Establish an independent tribunal to hear appeals on school discipline; and
- Take steps to identify how the rights of all children and young people to rest and play, enjoy leisure time and recreation, and to take part in cultural or artistic activities, can be enabled and supported, and remove any barriers to enjoyment of these rights.

**Special Protection Measures (Articles 22, 30, 38, 39, 40, 37(b-d) and 32-36)**

330. Aotearoa NZ has not paid the necessary attention to the rights of children entitled to special protection. A litany of neglect by successive governments means that opportunities to improve the wellbeing of these vulnerable groups have been missed. ACYA recommends that Government:

- Strengthen efforts to integrate refugee children into society in culturally responsive ways, paying particular attention to the rights and needs of disabled refugee children.
- Strengthen efforts to prevent, identify and address direct and indirect discrimination, including systemic discrimination against Maori children and those from minority groups.
- Work with young workers to determine the adequacy of existing protections and to develop a rights-based, comprehensive scheme of legislation and policy to facilitate safe work and protect them from exploitation.
- Review the 2009 *New Zealand Plan of Action to Prevent People Trafficking* to employ a more proactive, child and youth focused approach to human trafficking and exploitation in Aotearoa NZ.
- Do a stocktake of therapy, counselling and mental health services for children to identify any gaps and assess the level of need, paying particular attention to:
  - age-appropriateness
  - geographical spread
  - the needs of, and services for, children with a disability, asylum seeking and migrant children.
- Raise the age of criminal majority to 18.
- Raise the minimum age of criminal responsibility to at least 12.
- Repeal the provisions of the CYPFA 1989 that allow prosecution of 12 and 13-year olds for repeat and serious offending.
- As a matter of urgency, improve the availability of appropriate youth mental health services, and drug and alcohol services, for young people in the youth justice system.



- Research the prevalence or incidence of neurodisability, mental health disorders and intellectual disabilities in young people in the legal system to make a genuine finding as to the extent of this vulnerable population group's needs.
- Develop and apply a best interests test to the detention of children with adults until the reservation to art 37(c) is withdrawn.
- Strengthen efforts to:
  - prevent the detention of children
  - improve the conditions for those that are detained to meet the standards outlined in the CRC and other instruments.<sup>297</sup>
- Ensure the NPM under OPCAT is adequately funded to monitor places of detention for young people in order to prevent breach of their rights while in custody.

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<sup>297</sup> OPCAT, Beijing rules.