

# **CHILDREN'S RIGHTS ALLIANCE** AOTEAROA NEW ZEALAND

## **Comprehensive Alternative Report on Aotearoa New Zealand: Written Inputs to State Report (SRP)**

Submitted to the United Nations Committee on the  
Rights of the Child for the 93<sup>rd</sup> pre-session  
(September 2022)

15 August 2022

## Dedication

*He manu he kōrero mai ki a tātou, kua hinga he totara ki te wao nui ā Tane.  
Kua mate tētahi he rangatira nui. Kei a koe e te hoa a Tā Ian, haere okioki ki ō  
tīpuna. Haere, haere, haere atu rā. Ko tātou kua mahue ki muri, tino pōuri ō  
mātou ngākau, ka rere ngā roimata.*

*E mihi ana ki a koe e hoa mō tō kaiarahi ki a koutou mō ngā mahi hei hiki ake,  
hei whakahōnore i ngā tamariki kei roto i Aotearoa.*

*E te rangatira a Tā Ian, tō mahi i konei i te mata ō te whenua kua oti. Moe mai,  
moe mai, moe mai rā.*

*A bird told us a Totara in Tane's forest has fallen. A great chief has passed. To  
our friend, Sir Ian, go and be with your ancestors. Go now. We who are left  
behind have heavy hearts and our tears flow.*

*We thank you for your leadership and the work you did to lift up and honour  
children in Aotearoa.*

*Sir Ian, your work here on earth is done. Rest, rest, rest now.*



## Acknowledgements

The Children's Rights Alliance Aotearoa New Zealand (the Alliance, formerly Action for Children and Youth Aotearoa (ACYA)), is a civil society coalition committed to protecting and promoting children's rights in Aotearoa. In submitting this report, we are building on the work of many people, over many years, to advance and uphold children's rights in this country.

This report is dedicated to the memory of Sir Ian Hassall, New Zealand's first Children's Commissioner. Knighted for his services to children, Sir Ian's leadership in, and commitment to, children's rights was inspirational.

We wish to thank all those who have contributed to the development of this report (see Appendix One). We would also like to acknowledge the generous financial support of the JR McKenzie Trust.

There is great diversity in the experiences and circumstances of children in Aotearoa. In this report, we address those issues we believe to be the most critical to ensuring all rights, for all children, are realised in all circumstances. This is not to diminish the importance of other issues, which we have unfortunately been unable to include due to the word limit for this report and the focus of the Simplified Reporting Process. As we move towards our 7<sup>th</sup> reporting cycle under the United Nations Convention on the Rights of the Child (CRC), we will be working together as an Alliance to advance and protect all children's rights in Aotearoa, including those not addressed in this report.

We acknowledge the reports of the Children's Commissioner and Human Rights Commission, as well as the work of those who have submitted Thematic Reports.



## Table of Contents

Dedication .....	2
Acknowledgements .....	3
Table of Contents .....	4
Glossary of Te Reo Māori Kupu (words) .....	7
List of Abbreviations.....	10
Introduction.....	14
The Rights of Pēpē, Tamariki and Rangatahi Māori.....	17
New Developments .....	19
New or revised laws, policies and programmes significant for implementation of the CRC	21
Impact of COVID-19.....	22
General Measures of Implementation .....	26
Reservations, Legislation, Policy and Strategy - LOIPR Question 4 .....	26
Extension of the CRC to Tokelau - LOIPR question 4(a) .....	26
Bringing Domestic Legislation in Line with the CRC – LOIPR 4(b) .....	27
Oranga Tamariki, Ministry for Children (OT) – LOIPR 4(c).....	29
Comprehensive Strategy to implement the Convention – LOIPR 4(d) .....	31
Child Impact Assessment and Allocation of Resources – LOIPR 4(e) and 5 .....	33
Data Collection – LOIPR 6 .....	34
Children’s Commissioner .....	36
Definition of a Child - LOIPR 8 .....	37
General Principles – LOIPR 9-12 .....	39
Non-discrimination – LOIPR 9 .....	39
Best Interests – LOIPR 10.....	44
Life, Survival and Development – LOIPR 11.....	44
Respect for the Views of the Child – LOIPR 12 .....	47
Complaints processes .....	48
Civil Rights and Freedoms – LOIPR 13-15 .....	50
Identity .....	50
Privacy .....	53
Books and stories .....	55
Freedom from Violence – LOIPR 16 .....	56
Te Aorerekura: The National Strategy to Eliminate Family Violence and Sexual Violence .	56
Data – LOIPR 16(e) and (f) .....	59
Violence and Abuse of Children in State Care (16(a)).....	60



Abuse in Care: Royal Commission .....	62
Family and Alternative Care – LOIPR 18-20 .....	63
Family Environment – LOIPR 18 .....	64
Children Deprived of a Family Environment – LOIPR 19 .....	66
Adoption – LOIPR 20 .....	68
Surrogacy law reform .....	70
Disabled Children – LOIPR 21 .....	71
Ministry for Disabled People and Disability System transformation .....	73
Fetal Alcohol Spectrum Disorder (FASD).....	73
Health and Welfare – LOIPR 22 - 24 .....	75
Health, Mental Health and Health Services – LOIPR 22 .....	75
Climate Change – LOIPR 23 .....	83
Standard of Living – LOIPR 24 .....	85
Child Poverty.....	85
Benefit Sanctions .....	88
Housing .....	88
Food Security – LOIPR 24(d) .....	90
Education, Recreation and Culture – LOIPR 25 .....	91
Ongoing impact of COVID lockdowns on education .....	91
School attendance.....	92
Review of the Education Act and Curriculum – LOIPR 25(a) .....	93
Inclusive education .....	94
Disciplinary procedures.....	95
Special Protection Measures – LOIPR 26-29.....	96
Asylum-seeking, Refugee and Migrant Children – LOIPR 26 .....	96
Tamariki Māori – indigenous children – LOIPR 27 .....	97
Children Belonging to Minority Groups – LOIPR 27 .....	97
Children who Work – LOIPR 28 .....	98
Youth Justice – LOIPR 29 .....	101
Minimum age of criminal responsibility and children aged 10-14 years who offend .....	101
Including all 17-year-olds in the youth justice system .....	102
Age-mixing in places of detention.....	103
Disabled children and young people in the youth justice system .....	104
Detention in Police cells .....	105
Use of restraints in custody .....	106



Over-representation of tamariki and rangatahi Māori and Pacific children in the youth justice system .....	107
Optional Protocol on Children in Armed Conflict (OP1).....	109
Optional Protocol on the Sale of Children (OP2) .....	109
Scale and nature of OP2 related issues .....	109
Appendix 1: The process used to develop the Children’s Rights Alliance Aotearoa New Zealand’s 2022 Alternative Report to the United Nations Committee on the Rights of the Child .....	113
Appendix 2: Oversight of Oranga Tamariki System.....	115
and Children and Young People’s Commission Bill 2021 .....	115
Introduction .....	115
The Oversight Bill 2021.....	115
Background to the Bill .....	116
Timing of the Bill and submissions.....	117
Looking Ahead.....	120
Wider Context – Developments within Oranga Tamariki.....	121
Conclusion .....	125



## Glossary of Te Reo Māori Kupu (words)

Aroha	Love, to love
Hapū	Māori subtribe consisting of a number of whānau sharing descent from a common ancestor
Iwi	Māori tribe - often refers to a large group of people descended from a common ancestor and associated with a distinct territory
Kaitiakitanga	Guardianship, stewardship, trusteeship
Kāwanatanga	Government, dominion, rule, authority, governorship
Maatauranga	Knowledge, wisdom, understanding
Mana	A supernatural force in a person, place or object. Mana is enduring, inherited at birth and flows from atua (gods). Mana can also be understood as prestige, authority, control, power, influence, status, spiritual power, charisma. A person's mana can increase and decrease through different events and over time
Mana Whenua	Territorial rights, power from the land, authority over land or territory, jurisdiction over land or territory - power associated with possession and occupation of tribal land
Matariki	A cluster of nine stars with special significance to Māori. The first appearance before sunrise of Matariki in the north-eastern sky indicates the beginning of the Māori year - about mid-June - and is the cause for celebrations, remembrance and planning
Mauri	Life force



Oranga Tamariki	Aotearoa New Zealand’s Ministry for Children – the government agency responsible for the State child care, protection and youth justice system
Pākehā	New Zealander of European descent
Pēpē	Baby, Māori baby
Rangatahi	Younger generation, Māori youth
Rangatira	Chief
Tamariki	Children, Māori children
Tapu	Sacred, prohibited, protected, set apart
Tangata whenua	People of the land or first peoples
Tīpuna	Ancestors, grandparents
Toiora	Wellbeing, welfare
Te ao Māori	The Māori world view
Te Reo Māori	The Māori language
Te Tiriti o Waitangi	Treaty of Waitangi – an agreement between the British Crown and a large number of Māori rangatira (chiefs) signed in 1840. The Treaty is considered to be Aotearoa New Zealand’s founding document, as it confirmed formal British settlement in New Zealand, but its interpretation remains contested.





Tikanga Māori	Māori customary law and practices
Tino Rangitiratanga	Self-determination, sovereignty, autonomy, self-government, domination, rule, control, power
Wairua	Spirit, soul, spritual
Wānanga	To meet and discuss, deliberate, consider
Whakapapa	In relation to a person, means the multigenerational kinship relationships that help to describe who the person is in terms of their mātua (parents), and tūpuna (ancestors), from whom they descend
Whānau	Family group, extended family
Whānaungatanga	In relation to a person, means the purposeful carrying out of responsibilities based on obligations to whakapapa; the kinship that provides the foundations for reciprocal obligations and responsibilities to be met; and the wider kinship ties that need to be protected and maintained to ensure the maintenance and protection of their sense of belonging, identity, and connection
Whenua	Land



## List of Abbreviations

Alliance	Children’s Rights Alliance Aotearoa New Zealand
Aotearoa	Te Reo Māori name for New Zealand
ANZPM	Aotearoa New Zealand Public Media
BSA	Broadcasting Standards Authority
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women
CERD	United Nations Convention on the Elimination of All Forms of Racial Discrimination
CIAT	Child Impact Assessment Tool
CMG	Children’s Convention Monitoring Group
CRC	United Nations Convention on the Rights of the Child
CYMRC	Child and Youth Mortality Review Committee
CYWS	Child and Youth Wellbeing Strategy
DIA	Department of Internal Affairs
ERO	Education Review Office
FASD	Fetal Alcohol Spectrum Disorder
FGC	Family Group Conference



FVDRC	Family Violence Death Review Committee
ICM	Independent Children’s Monitor
IPCA	Independent Police Conduct Authority
LOIPR	List of Issues Prior to Reporting
MSD	Ministry of Social Development
NGOs	Non-Government Organisations
OCC	Office of the Children’s Commissioner
OP3	Optional Protocol 3 to the UN Convention on the Rights of the Child on a communications procedure
ORS	Ongoing Resourcing Scheme
OT	Oranga Tamariki
OTAP	Oranga Tamariki Action Plan
Oversight Bill	Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill
RNZ	Radio New Zealand
RCOI	Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions
SEC	Sexual Exploitation of Children
SOGIESC	Sexual Orientation, Gender Identity, Gender Expression and Sex



Characteristics

SUDI	Sudden Unexpected Death in Infancy
TORs	Police Tactical Options Reports
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WEAG	Welfare Expert Advisory Group



## 2022 Thematic Reports Referred to in this Report

Backbone Collective Thematic Report, submitted by the Backbone Collective (Reports on the situation of children affected by family violence and sexual violence.)

Basic Health and Welfare Rights of Children 0-5 years of age Thematic Report, submitted by Whānau Āwhina Plunket, Save the Children New Zealand, Child Poverty Action Group and the New Zealand Council of Christian Social Services.

Child Poverty Thematic Report, submitted by Child Poverty Action Group.

Children in State Care Thematic Report, submitted by VOYCE Whakarongo-Mai.

Children's Rights in a Changing Climate Thematic Report, submitted by OraTaiao: NZ Climate and Health Council.

Cooper Legal report, submitted by Cooper Legal.

Intersex Aotearoa Thematic Report, submitted by Intersex Aotearoa (New Zealand).

Optional Protocol for Child Trafficking, Prostitution and Pornography Thematic Report, submitted by ECPAT NZ Child Alert.

Optional Protocol on the Involvement of Children in Armed Conflict and the Convention on the Rights of the Child Thematic Report, submitted by Peace Movement Aotearoa.

Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report, submitted by Te Puna Rangahau o Te Wai Ariki | Aotearoa New Zealand Centre for Indigenous Peoples and the Law.

The sexual and reproductive health and rights of young people in Aotearoa New Zealand Thematic Report, submitted by New Zealand Family Planning.

The Minimum Age of Criminal Responsibility in Aotearoa New Zealand Thematic Paper, submitted by the Children's Rights Alliance Aotearoa New Zealand (Author: Enys Delmage).

## Introduction

1. This report from the Children's Rights Alliance Aotearoa New Zealand (the Alliance) examines what has been done to uphold and promote the rights of children in Aotearoa since 2016.<sup>1</sup>
2. We submit this report as a contribution to building hope and opportunity for all children in Aotearoa as, together, we strive to give effect to the Children's Convention (CRC) during these challenging times, to ensure that, daily, each and every child has what they need, including a sense of belonging and worth, and is treated with dignity and respect.
3. Like their peers globally, children<sup>2</sup> in Aotearoa are deeply affected by the challenges facing the world and this country. Poverty, inequality, violence, racism and the changing climate touch the lives of children in Aotearoa daily. Yet, too often, in Aotearoa, children remain largely invisible in the public policy discussions and developments on key issues. Despite the increased focus on children and their wellbeing in recent years, Aotearoa is yet to reach a point where children as a population, and groups of children, are routinely considered when laws and policies are developed, and their views heard and taken seriously.
4. Greater priority needs to be given to all rights, for all children in Aotearoa, in all circumstances. This requires improved awareness and understanding, particularly amongst decision-makers, as to how children's rights can be applied to improve children's experiences and outcomes, and how children's rights can be woven through the work of government at all levels, to support better experiences and outcomes for children from the very start of life and throughout all stages of childhood.
5. Government's limited capacity to focus attention to children's issues has been demonstrated during the COVID-19 pandemic response.<sup>3</sup> Although Government's public-health-focused and evidence-informed response limited the pandemic's

---

<sup>1</sup> There are approximately 1,124,000 children under 18 in Aotearoa, accounting for 23% of the population. The child population is diverse, and as a result, Aotearoa's children live in diverse circumstances and have diverse childhood and adolescent experiences.

<sup>2</sup> In this Report, we use the term 'children' to refer to all those aged under 18. We recognise this classification encompasses many different ages and diverse circumstances, and that many young people do not regard themselves as children. We also use the Māori words pēpē, tamariki and rangatahi which roughly translate to baby, child and youth. Refer to the Glossary for a fuller explanation of the meaning of these terms.

<sup>3</sup> In 2020, the Tick for Kids coalition wrote to the Government asking for children to be given priority in the COVID-19 crisis and recovery.

<https://www.scoop.co.nz/stories/AK2005/S00043/tick-for-kids-calls-for-greater-visibility-of-children-in-governments-response-to-covid-19-crisis.htm>



impact, COVID-19 has highlighted and exacerbated existing inequities in the realisation of children’s rights.<sup>4 5</sup> The pandemic has also provided a glimpse of how, if children’s rights are taken seriously and systematically implemented, there are opportunities to improve the lives of all children, now and in the future. These opportunities lie in holistic, child and community-led approaches that enable all pēpē, tamariki and rangatahi to belong, to be well cared for, and to be active participants in their own lives and the lives of those around them.

6. Addressing inequities in the realisation and experience of children’s rights in Aotearoa is a strong theme of this report. Significant socio-economic inequalities exist with knock-on effects for all children’s rights, their experiences and outcomes. Unless prevented, climate change will exacerbate these inequities. Aotearoa needs to address discrimination, including racism, and actively work towards the rights of all children being upheld equally; to hold children central in climate change adaptation and mitigation, prioritising their future.
7. In Aotearoa, understanding and respecting the rights of tamariki Māori is critical to meeting CRC obligations. In addition to the rights that tamariki Māori hold with all children under the CRC, **Tamariki Māori** hold unique rights and protections that are especial to them as:
  - The tangata whenua<sup>6</sup> of Aotearoa in accordance with te ao Māori,<sup>7</sup> including, in particular, tikanga Māori.<sup>8</sup>
  - Partners to Te Tiriti o Waitangi,<sup>9</sup> the Māori language version of the Treaty of Waitangi signed between representatives of Māori and the British Crown in 1840.<sup>10</sup>
  - Indigenous children to whom all rights as Indigenous peoples under international law, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), attach.
8. Government has specific duties and obligations to tamariki Māori due to these unique rights and protections, that are additional to the duties and obligations it owes to all children of Aotearoa.<sup>11</sup>

---

<sup>4</sup> Children’s Rights Alliance Aotearoa New Zealand *Supplementary Report on the impact of COVID-19 on children’s rights in Aotearoa New Zealand* (June 2020); *Children’s Convention Monitoring Group Getting it Right: Children’s rights in the COVID-19 response* (March 2021)

<sup>5</sup> See, for example, <https://www.rnz.co.nz/news/national/453509/need-for-food-parcels-doubled-in-level-4-auckland-city-mission>

<sup>6</sup> People of the land or first peoples.

<sup>7</sup> The Māori world view.

<sup>8</sup> Māori laws and customs.

<sup>9</sup> Te Tiriti.

<sup>10</sup> Te Tiriti is considered to be Aotearoa’s founding document and a key source of Crown obligations towards Māori.

<sup>11</sup> For detailed analysis and explanation of the rights of tamariki Māori, see the Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report submitted by Te Puna Rangahau o Te Wai Ariki | Aotearoa New Zealand Centre for Indigenous Peoples and the Law.



9. We endorse the Rights of Tamariki Māori Thematic Report and call for greater respect for the unique rights of tamariki Māori across all cluster headings.<sup>12</sup>

10. We have identified the following issues as **priorities for CRC implementation in Aotearoa**:<sup>13</sup>

- Greater efforts to respect and uphold all rights of tamariki Māori, recognising tamariki Māori rights in te ao Māori, under Te Tiriti o Waitangi, the UNDRIP, and the CRC.
- Greater efforts to protect all children from violence and abuse, in all circumstances, including through initiatives to better understand, prevent and respond to violence.
- A supportive environment for families, so that all children can know and, as far as possible, be cared for by their families and whānau. We want to see children's rights advanced and upheld in:
  - Oranga Tamariki changes.
  - Adoption and surrogacy law reform.
- An adequate standard of living and good health for all children, with a priority focus on:
  - children's mental health and wellbeing.
  - timely access to quality health services for all children.
  - warm, safe, affordable housing.
  - nutritious food.
- Mechanisms to ensure that children and their rights are central to climate change policy (mitigation and adaptation) and climate justice initiatives; and that children are listened to and respected as active change agents on climate change.
- Adequate protections for children who work and the removal of Aotearoa's reservation to Article 32(2).
- An immediate increase to the minimum age of criminal responsibility to 14, and to 16 over time; inclusion of all 17-year-olds in the youth justice system; an end to the detention of young people in Police custody and the use of physical restraints in detention; and the removal of Aotearoa's reservation to Article 37(c).

---

<sup>12</sup> Ibid.

<sup>13</sup> CRC/C/NZL/CO/5, para 4.





11. There are numerous non-government organisations (NGOs) and individuals committed to making children’s rights real in Aotearoa, many of whom contributed to this Report. See Appendix One, which sets out the process used to develop this report.
12. We draw the Committee’s attention to the Thematic Reports submitted (see Table of Contents) and have cross-referenced to these in this Report where appropriate.
13. Over the last 30 years, since ratification, there has been slow, piecemeal, positive change for children in Aotearoa, but a stronger focus on children’s rights is still required. We are hopeful that during the next reporting cycle we will see a more constant and concerted effort to advance and uphold all rights of all children in Aotearoa, in all circumstances.

## The Rights of Pēpē, Tamariki and Rangatahi Māori

14. Pēpē, tamariki and rangatahi Māori are the aspirations and dreams of their tīpuna, and hold a wide range of rights and protections afforded to them in te Ao Māori, under Te Tiriti and as children and indigenous peoples under international law.<sup>14</sup> <sup>15</sup> Yet, due to the ongoing impacts of colonisation and systemic discrimination and racism, many experience significant and pervasive inequities.<sup>16</sup> These arise from inequitable access to the determinants of wellbeing, and to services and care, as well as the differential quality of services and care received.<sup>17</sup> This maldistribution is the expression

---

<sup>14</sup> For a comprehensive explanation of their rights, see the Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report, submitted by Te Puna Rangahau o Te Wai Ariki | Aotearoa New Zealand Centre for Indigenous Peoples and the Law.

<sup>15</sup> See also PT King (2021) *Oranga Mokopuna: Ethical co-designing for the pluriverse*, PhD Thesis, University of Otago, New Zealand, p. 209: <http://hdl.handle.net/10523/12111> The Oranga Mokopuna model provides a conceptual frame of reference within Te Ao Māori for the realisation of tamariki Māori rights.

<sup>16</sup> J Simpson, M Duncanson, G Oben, J Adams, A Wicken, M Pierson ... S Gallagher (2017) *Te Ohonga Ake The Health Status of Māori Children and Young People in New Zealand Series Two* (Health Status of Children and Young People), New Zealand Child and Youth Epidemiology Service: <http://hdl.handle.net/10523/7390>

<sup>17</sup> CP Jones (2014) Systems of power, axes of inequity: Parallels, intersections, braiding the strands, *Med Care*, 52(10 Suppl 3), S71-575.

of colonisation,<sup>18</sup> coloniality<sup>19</sup> and racism<sup>20</sup> whereby the determinants of health and wellbeing continue to be differentially distributed in Aotearoa by ethnicity and, specifically, by indigeneity.<sup>21</sup>

15. The inequities that occur for pēpē, tamariki and rangatahi Māori compared with Pākehā<sup>22</sup> in experiencing their basic human rights are an end-result of the failure to honour the guarantees made to Māori under Te Tiriti, and the disproportionate impacts of the socio-political and economic environments that drive poor health and wellbeing outcomes in Aotearoa.<sup>23</sup> The policies which result in these inequities are not just historical. The impacts of colonisation continue to be experienced by Māori through ongoing discriminatory government actions.<sup>24</sup> Experiences of racism and discrimination at all levels is widespread, acted out through explicit and implicit bias.<sup>25</sup>
16. When the CRC, Te Tiriti and UNDRIP are considered together, it is clear Government holds multiple duty-bearer obligations towards tamariki Māori, including taking specific and wide-ranging measures to address system-wide discrimination and inequities impacting them, always ensuring they can maintain strong links with their whānau and culture.<sup>26</sup>

---

<sup>18</sup> B Robson & R Harris (Eds) (2007) *Hauora: Māori Standards of Health IV. A study of the years 2000-2005*, Te Rōpū Rangahau Hauora a Eru Pōmare, University of Otago Wellington.

<sup>19</sup> R Grosfoguel (2011) Decolonizing Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity, Decolonial Thinking, and Global Coloniality, *TRANSMODERNITY: Journal of Peripheral Cultural Production of the Luso-Hispanic World*, 1(1), 1-38.

<sup>20</sup> RB Harris, J Stanley & DM Cormack (2018) Racism and health in New Zealand: Prevalence over time and associations between recent experience of racism and health and wellbeing measures using national survey data, *PLOS ONE*, 13(5), e0196476.

<sup>21</sup> P Reid & B Robson (2007) Understanding health inequities, In B Robson & R Harris (Eds) *Hauora Māori Standards of Health IV: A study of the years 2000-2005* (pp. 3-10), Te Rōpū Rangahau Hauora a Eru Pōmare, University of Otago Wellington.

<sup>22</sup> Foreign.

<sup>23</sup> J Simpson, J Adams, G Oben, A Wicken & M Duncanson (2016) *The Determinants of Health for Māori Children and Young People in New Zealand* (Determinants of Health for Children and Young People No. 2), New Zealand Child and Youth Epidemiology Service: <http://hdl.handle.net/10523/6384>

<sup>24</sup> Waitangi Tribunal (2021) *He Pāharakeke, He Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry*, Wai 2915: <https://waitangitribunal.govt.nz/news/tribunal-releases-report-on-oranga-tamariki/>

<sup>25</sup> For example, in the context of care and protection, where unwarranted surveillance and Māori racial profiling has been seen to occur and which can be interpreted as interpersonal racism due to unwarranted and inherited child surveillance (see A M Barnes, K Taiapa, B Borell, T McCreanor – (2013) [Maori experiences and responses to racism in Aotearoa New Zealand](#) *Mai Journal*).

<sup>26</sup> See P King, D Cormack & M Kōpua (2017) [Oranga Mokopuna: A tāngata whenua rights-based approach to health and wellbeing](#).

17. The rights of Māori to decide what is best for Māori, including tamariki Māori, are enshrined in Te Tiriti and UNDRIP and are recognised by the Committee in General Comment No. 11 on Indigenous children and their rights under the CRC.<sup>27</sup> Tamariki Māori have the right to services and solutions designed by Māori, for Māori and with Māori.<sup>28</sup>
18. See the Rights of Tamariki Māori Thematic Report for a comprehensive explanation of the rights and protections afforded to tamariki Māori in te Ao Māori, under Te Tiriti and as children and indigenous peoples under international law.

## New Developments

### Opportunities, challenges and obstacles

19. Political leadership and some positive structural change has occurred within the mechanisms of Government over the reporting period, as illustrated by the establishment of the Child Wellbeing and Poverty Reduction Group within the Department of Prime Minister and Cabinet. However, the absence of robust foundations for implementing the CRC remains a significant challenge. There continues to be a lack of accessible data and information about the situation for children and groups of children (including over time), patchy coordination across government, and low levels of awareness about children's rights, which can result in an inconsistent and inadequate focus on children and their rights across government policy and practice. Examples include:
  - The slow pace of change (for example, response to the recommendations of the Welfare Expert Advisory Group).<sup>29</sup>
  - Not taking children's rights into account in wider public policy developments, (such as the Joint Venture on Eliminating Family Violence and Sexual Violence, health sector reforms, the Disability Action Plan, and responses to the housing and cost of living crises) or ensuring they are able to contribute and provide feedback on their experiences.

---

<sup>27</sup> UN Committee on the Rights of the Child (2009) [General Comment No. 11: Indigenous children and their rights under the Convention](#).

<sup>28</sup> As recommended in the Maori-led Inquiry into Oranga Tamariki in relation to the care and protection of tamariki Māori in state care: see <https://whanauora.nz/assets/62879b6bdf/OT-REVIEW-REPORT.pdf>

<sup>29</sup> See the Child Poverty Thematic Report, submitted by Child Poverty Action Group; Welfare Expert Advisory Group (2019) [Whakamana Tāngata – Restoring Dignity to Social Security in New Zealand](#).

20. In addition to the COVID-19 pandemic, many significant events and developments have impacted on children in Aotearoa over the reporting period:

- Natural disasters, including the Kaikoura earthquake,<sup>30</sup> White Island volcanic eruption<sup>31</sup> and serious weather events.
- Christchurch Terror Attack, March 15, 2019.<sup>32</sup>
- Black Lives Matter movement and increasing recognition of historical and ongoing racism in Aotearoa.<sup>33 34</sup>
- Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (RCOI), which is revealing the extent, and pervasive effects, of trauma associated with childhood abuse in care.<sup>35</sup>
- Increased rates of removal of predominantly Māori infants into State care which, due to strong public outcry, led to five inquiries and ongoing developments within the Oranga Tamariki (OT) care, protection and youth justice systems (see Appendix Two).<sup>36</sup>
- Transphobic public and political debates surrounding the ban on conversion practices and birth certificate law reform, and a rise in extremist anti-transgender and anti-rainbow rhetoric linked with international conservative movements.<sup>37</sup>

## Cost of living

21. The cost of living is increasing rapidly in Aotearoa due to such factors as the war in Ukraine, the ongoing impact of the pandemic on supply chains, and the largest increase in inflation since 1990 (7.3% for the June 2022 quarter).<sup>38</sup> The cost of housing, transport and food all rose over the June 2022 quarter, compared with the June 2021 quarter.<sup>39</sup>

---

<sup>30</sup> <https://teara.govt.nz/en/historic-earthquakes/page-15>

<sup>31</sup> <https://nzhistory.govt.nz/page/whakaari-white-island-eruption-kills-22>

<sup>32</sup> <https://nzhistory.govt.nz/page/51-killed-mosque-shootings>

<sup>33</sup> <https://www.rnz.co.nz/news/national/418971/thousands-of-nz-ers-march-for-black-lives-matter>

<sup>34</sup> <https://www.rnz.co.nz/news/national/433499/racism-is-well-and-alive-in-new-zealand-race-relations-commissioner>

<sup>35</sup> <https://www.abuseincare.org.nz>

<sup>36</sup> <https://www.orangatamariki.govt.nz/about-us/information-releases/cabinet-papers/oranga-tamariki-ministerial-advisory-board/>; see also paras 41-43 of this Report and Appendix Two.

<sup>37</sup> <https://www.tengakaukahukura.nz/banning-conversion-practices> ;

<https://www.tengakaukahukura.nz/birth-certificate-law-reform>

<sup>38</sup> <https://www.stats.govt.nz/news/annual-inflation-reaches-30-year-high-of-6-9-percent>

<sup>39</sup> <https://www.stats.govt.nz/information-releases/consumers-price-index-june-2022-quarter/>



## New or revised laws, policies and programmes significant for implementation of the CRC

22. Developments significant for implementation of the CRC over the reporting period include:
- The Oranga Tamariki Act 1989 now requires that decision-makers under the Act respect and uphold children’s rights, including those under the CRC.<sup>40</sup>
  - Legislation has been passed to reduce rates of child poverty and improve children’s wellbeing. Child Poverty and Wellbeing Units have been established within the Department of Prime Minister and Cabinet.
  - In 2019, Aotearoa legislatively mandated a Child and Youth Wellbeing Strategy (CYWS), which has as one of its underpinning principles “Children and young people’s rights need to be respected and upheld.” This Strategy is intended to help Aotearoa meet its international obligations with regard to children, including those under the CRC.
  - To mark the 30th anniversary of the CRC in 2019, the Government pledged to implement the CYWS to highlight its commitment to the promotion, protection and realisation of the rights of the child.<sup>41</sup>
  - The Pae Ora Healthy Futures Act 2022, the legislation underpinning health-system reform, established the Maori Health Authority and Health New Zealand entities to share stewardship and support a focus on reducing poor health outcomes for Māori.<sup>42</sup>
23. Many system-level reviews and changes pertinent to implementation of the CRC are underway, providing both opportunities and challenges for advancing and protecting children’s rights. These include:
- Government has agreed to ratify the Optional Protocol on a Communications Procedure (OP3).
  - Changes to the Children’s Commissioner (see Appendix Two).<sup>43</sup>
  - Changes to the care and protection system and oversight arrangements for OT (see Appendix Two).<sup>44</sup>
  - Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions.<sup>45</sup>

---

<sup>40</sup> Oranga Tamariki Act 1989, s 5.

<sup>41</sup> <https://www.ohchr.org/Documents/HRBodies/CRC/30Anniversary/Pledges/NewZealand.pdf>

<sup>42</sup> This includes investing in services that are tikanga and kaupapa Māori led. Funding is provided through a commissioning function that supports pēpe, tamariki (child, youth and maternity) and covers all services that impact on the first 2000 days of life for children, and the health and wellbeing of māmā. See <https://www.tewhātuora.govt.nz/assets/Uploads/Update-on-the-National-Operating-Model-and-High-Level-Structure.pdf>

<sup>43</sup> See paras 56 to 60 below.

<sup>44</sup> See paras 41 to 43 below.

<sup>45</sup> See paras 134 to 137 below.

- Adoption and surrogacy law reform.<sup>46</sup>
- Relationship property division and succession law reform.<sup>47</sup>
- Government response to the Report of the Welfare Expert Advisory Group.<sup>48</sup>
- Housing crisis impact on children and the consideration given to children in response.<sup>49</sup>
- Pressures within, and changes to, the health system, including a deepening child mental health crisis.<sup>50</sup>
- Changes in the disability system.<sup>51</sup>
- A statutory framework to guide reduction of carbon emissions and establish a Climate Commission.<sup>52</sup>
- Changes to public media.<sup>53</sup>
- Changes in Education.<sup>54</sup>
- Family Court review.<sup>55</sup>
- Review of electoral law, including proposals to lower the voting age.<sup>56</sup>
- New civil and criminal pathways to ban conversion practices.<sup>57</sup>

## Impact of COVID-19

*I will remember how bored I got in the lockdown, not playing with friends is the thing I will remember the most.*<sup>58</sup>

24. We refer the Committee to the Alliance’s supplementary information on COVID-19 (available [here](#)) and the CMG report “[Children’s Rights in the Covid-19 response.](#)”

---

<sup>46</sup> See paras 149 to 154 below.

<sup>47</sup> Te Aka Matua o te Ture | Law Commission (June 2019) *Review of the Property (Relationships) Act 1976*, Report | Pūrongo 143:

[https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20-%20PRA%20Review%20Project%20-%20Final%20Report%20R143\\_0.pdf](https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20-%20PRA%20Review%20Project%20-%20Final%20Report%20R143_0.pdf); Te Aka Matua o te Ture | Law

Commission (November 2021) *Review of succession law: rights to a person’s property on death*, Report | Pūrongo 145:

<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-SUL-FinalReport145.pdf>

<sup>48</sup> See para 195 below.

<sup>49</sup> See paras 200 to 204 below.

<sup>50</sup> See paras 166 to 182 below.

<sup>51</sup> See paras 160 to 162 below.

<sup>52</sup> See paras 183 to 188 below.

<sup>53</sup> See paras 111 to 113 below.

<sup>54</sup> See paras 217 to 221 below.

<sup>55</sup> See <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/family-justice-reform/>

<sup>56</sup> See paras 63 to 65 below.

<sup>57</sup> <https://www.tengakaukahukura.nz/banning-conversion-practices>

<sup>58</sup> 12-year-old boy quoted in Children’s Commissioner (2020) *Life in Lockdown: Children and young people’s views on the nationwide COVID-19 level 3 and 4 lockdown between March and May 2020*, at p. 10: <https://www.occ.org.nz/publications/reports/life-in-lockdown/>





25. The impact of COVID-19 on children has varied, reflecting the diversity of childhood experiences in Aotearoa. The pandemic has highlighted and exacerbated some pre-existing inequities. For example, children in care reported feeling especially isolated, with face-to-face visits with family and social workers replaced by phone contact. As Shakira, a care-experienced young person shared about lockdown in 2020: "Well, isolation for me felt like being on home detention."<sup>59</sup> Lockdowns limited family and whānau contact with social service and child protection supports, including for children in family harm situations.<sup>60</sup> Economic shocks due to employment loss during the nationwide lockdowns impacted most significantly on low-income households.<sup>61</sup> The pandemic also highlighted digital inequities impacting on children.<sup>62</sup>
26. More broadly, for some children, the pandemic and multiple stresses of lockdowns created new impacts on their rights, such as disconnection from education<sup>63</sup> and poor mental health (including anxiety, self-harm and eating disorders).<sup>64</sup> What's Up, a national children's helpline, reported many children facing barriers to reaching out for help during lockdown, including children saying they were experiencing a loss of privacy from being at home with family all day.<sup>65</sup> Webchats to the helpline regarding family relationships

<sup>59</sup> Quote provided by VOYCE-Whakarongo Mai.

<sup>60</sup> See, for example, <https://www.stuff.co.nz/national/300583894/ghosts-in-the-system-the-price-of-lockdown-for-vulnerable-children-and-families>

<sup>61</sup> KC Prickett, M Fletcher, Schapple, et al. (2020) *Life in Lockdown: The economic and social effect of lockdown during Alert Level 4 in New Zealand*, Institute for Governance and Policy Studies Working Paper 20/03, at p. 7.

<https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/9022/WP-20-03-covid-19-life-in-lockdown.pdf?sequence=1>

<sup>62</sup> This has had knock-on effects on rights such as the right to education. See, for example, <https://www.nzherald.co.nz/nz/covid-19-delta-outbreak-digital-divide-sees-thousands-of-kids-still-without-laptops-internet/5XZKFA63V7VGO5JATBHZMCW2QU/>

<sup>63</sup> See, for example, <https://www.nzherald.co.nz/nz/covid-19-omicron-school-attendance-rates-plummet-below-50-per-cent/IKDM6GBTMBLKXXAW2WA6X4DSPY/> and <https://www.nzherald.co.nz/northern-advocate/news/high-employment-covid-19-see-high-rates-of-teens-leave-school-early-principals/INIRW2NZBHI3DHTOVVBCETE22Q/>

<sup>64</sup> See, for example, commentary from Dr Hiran Thabrew, Child psychiatrist, paediatrician and child mental health researcher, University of Auckland and Auckland District Health Board: <https://www.sciencemediacentre.co.nz/2022/03/21/two-years-since-nz-first-locked-down-expert-reaction/#child>. Dr Thabrew noted the anxiety experienced by many children about the virus and the higher likelihood of children developing clinical levels of anxiety; the particular challenges for those with neurodevelopmental issues due to rapid changes to their routines; increased rates of emotional dysregulation and hospital presentations following self-harm; and increases in rates of children with eating disorders.

<sup>65</sup> Barnardos 0800 What's Up experienced a significant dip in the number of children calling and a significant rise in the number of children engaging via chat during the initial nationwide lockdown in March-May 2020. Usually (outside of the 2020 lockdown) many children called from outside home, from school or after school, sharing phones or on a pay phone. The service noted that many children do not have their own phones or access to a

increased 65% from February to March 2020<sup>66</sup> (the initial nationwide lockdown period), indicating that family stresses were a significant part of the lockdown experience for many children.

27. Although the full impacts are ongoing and not yet fully understood, it is clear children were, and remain, in certain respects, active participants in Aotearoa's pandemic response. This included children's contributions to nationally stamping out the virus in 2020:

*In short, the children we spoke with revealed to us their natural ability to survive and thrive. They reinforced our view that children can and do learn capably and with agency in their childhood worlds. Alone and with the support of family and whānau, children can and do create the necessary conditions for learning in challenging times.*<sup>67</sup>

28. The Children's Commissioner asked children how they had experienced lockdowns and noted both positive and negative impacts:<sup>68</sup>

- Relationships are critical: the impact of lockdown on relationships with friends and family, both positive and negative, were significant.
- Children enjoyed having control over their time, having more free time, and having opportunities for new activities.
- The changing nature of education during lockdown was unsettling for some and regarded as an opportunity for independence by others.
- Improvements in wellbeing varied across the children the Commissioner heard from.

29. Children in Auckland experienced more lockdown time than children in other parts Aotearoa. For them, this meant:

- Lack of access to daycare: for some children, more than 100 days of no access, strain on parents and lack of access to play with other children and ECE development.<sup>69</sup>

---

landline at home, and that the loss of privacy during lockdown likely resulted in many children not calling because they did not have their own space or did not want to be overheard. For some children, home is also not a safe space, meaning they will have felt scared to reach out.

<sup>66</sup> An increase of 137% from the same time in 2019, as reported by Barnardos 0800 What's Up.

<sup>67</sup> <https://www.nzcer.org.nz/research/publications/learning-during-lockdown>, Summary Report, at p. 4.

<sup>68</sup> <https://www.occ.org.nz/publications/reports/life-in-lockdown/>

<sup>69</sup> See, for example, <https://ero.govt.nz/sites/default/files/2021-04/Learning%20in%20a%20Covid-19%20World%20The%20Impact%20of%20Covid->



- More time learning from home with risks of disconnection from education,<sup>70</sup> friends, sports and cultural activities.
  - Young people leaving school to work to help support their families, or disappearing from the education system long-term, for unexplained reasons.<sup>71</sup>
  - Higher levels of material hardship, resulting in increased use of foodbanks and other supports.<sup>72</sup>
30. The full impact of the pandemic on Aotearoa's children is still being realised, and is ongoing, which raises several issues:
- The importance of communities (with supports and food supplies being delivered locally) to children's rights and wellbeing.<sup>73</sup> Children connected to wider whānau during lockdowns fared better than those limited to single family bubbles.
  - Reports of increased levels of violence.<sup>74</sup>
  - Increases in the numbers of students not attending or missing from school.<sup>75</sup>
  - The ongoing long-tail mental health impacts on children.<sup>76</sup>
  - Potential long-COVID impacts on children.<sup>77</sup>
31. We hope this overview of the situation for children in Aotearoa is helpful to the Committee, and now turn to the thematic cluster headings.

---

[19%20on%20Early%20Childhood%20Education.pdf](#), which discusses the impact of COVID-19 on Early Childhood Education.

<sup>70</sup> See, for example, <https://www.rnz.co.nz/news/national/453549/auckland-lockdown-more-than-half-of-students-drop-off-radar-at-some-schools>

<sup>71</sup> See, for example, <https://www.theguardian.com/world/2022/jul/06/new-zealand-principals-voice-alarm-as-students-fail-return-to-school-after-covid-lockdowns> See also paras 215 to 216 below.

<sup>72</sup> See, for example, <https://www.rnz.co.nz/news/national/453878/digital-divide-food-costs-hit-hard-for-some-families-after-long-lockdown>

<sup>73</sup> See, for example, the Kōkiri Marae case study on p. 29 of *Getting it right: Children's rights in the COVID-19 response*; <https://www.occ.org.nz/publications/reports/childrens-rights-in-covid19/>

<sup>74</sup> [https://www.hrc.co.nz/files/5515/9468/2462/FINAL\\_HRC\\_Submission\\_to\\_the\\_Special\\_Rapporteur\\_on\\_womens\\_rights.pdf](https://www.hrc.co.nz/files/5515/9468/2462/FINAL_HRC_Submission_to_the_Special_Rapporteur_on_womens_rights.pdf)

<sup>75</sup> <https://www.stuff.co.nz/national/education/300631038/number-of-students-missing-from-school-has-almost-doubled-in-past-nine-months>. See also paras 214 to 215 below.

<sup>76</sup> See, for example, commentary from Dr Hiran Thabrew: <https://www.sciencemediacentre.co.nz/2022/03/21/two-years-since-nz-first-locked-down-expert-reaction/#child>.

<sup>77</sup> See, for example, <https://www.rnz.co.nz/news/national/471864/experts-warn-teachers-and-parents-to-look-out-for-long-covid-in-children>. To date, there are no studies focusing on long-COVID in children in Aotearoa.



## General Measures of Implementation

32. Aotearoa needs a much stronger foundation for implementing the CRC. Important steps have been taken, and changes underway are promising, but there remains a long way to go before, as a matter of course, all children are respected and all their rights upheld, in all circumstances.

## Reservations, Legislation, Policy and Strategy - LOIPR Question 4

### Reservations - LOIPR question 4(a)

33. In 2020, the incoming Labour Government made a manifesto commitment to remove Aotearoa's CRC reservations. However, the following reservations currently remain in place:
- The general reservation, which allows some children to be discriminated against, based on their immigration status, limiting their rights and creating confusion about their entitlements.<sup>78 79</sup>
  - The reservation to Article 32(2) regarding the adequacy of protections for child workers.<sup>80</sup>
  - The reservation to Article 37 regarding age-mixing in places of detention.<sup>81</sup>

### Extension of the CRC to Tokelau - LOIPR question 4(a)

34. The CRC has not been extended to Tokelau.<sup>82</sup> We note Government's support to Tokelau as a non-self-governing territory,<sup>83</sup> but remain concerned about the practical implications of this situation for Tokelauan children. Comprehensive and sustained, child-focused supports are required, to ensure

---

<sup>78</sup> <https://www.tvnz.co.nz/one-news/new-zealand/pasifika-in-bay-plenty-forced-present-passports-get-covid-jobs>

<sup>79</sup> For example, recently, during the COVID-19 vaccination campaign, Pacific families in Tauranga were told they could not be vaccinated unless they presented their passports. <https://www.1news.co.nz/2021/08/29/pasifika-in-bay-of-plenty-forced-to-present-passports-to-get-covid-jobs/> A similar incident occurred in 2019 when a Samoan baby was refused the measles vaccine despite being eligible. <https://www.nzherald.co.nz/nz/pm-jacinda-ardern-upset-over-child-refused-vaccination-before-going-to-samoa/ZFDEYCUSEJ3CQCUIKXGTFKNY4M/>

<sup>80</sup> See paras 237-244 below.

<sup>81</sup> See paras 254-258 below.

<sup>82</sup> Government Report, para 9.

<sup>83</sup> Government Report, paras 13-15.

that children in Tokelau enjoy all their rights on an equal basis with Tokelauan children residing in Aotearoa and, indeed, all children in Aotearoa.<sup>84</sup>

---

## Recommendations

- Withdraw all reservations to the CRC.
  - Ensure the rights of children in Tokelau are protected and realised.
- 

## Bringing Domestic Legislation in Line with the CRC – LOIPR 4(b)

### Inclusion in domestic law

35. The CRC is not fully incorporated in legislation. It is attached as a schedule to the Children’s Commissioner Act 2003.<sup>85</sup>
36. Since 2016, reference to the CRC has been included in two key pieces of legislation:
  - a. Amendments to the Oranga Tamariki Act 1989 oblige any Court or person who exercises powers under the Act to be guided by the CRC and the UNCRPD, and to recognise and commit to the principles of Te Tiriti.<sup>86</sup>
  - b. Amendments to the Children’s Act 2014 in 2018 require that rights under domestic law, including those derived from the CRC and UNCRPD, must be considered when the CYWS is adopted or changed. The legislation states that the CYWS is intended to help meet Aotearoa’s international obligations, but *“does not, in and of itself, give domestic legal effect to, or implement in New Zealand law, any of those obligations.”*<sup>87</sup>

---

<sup>84</sup> See Children’s Rights in a Changing Climate Thematic Report, submitted by OraTaiao: NZ Climate and Health Council.

<sup>85</sup> A Bill to replace this Act is currently being considered by Parliament. It will also include the CRC as a schedule to the legislation. See paras 56 to 60 below, also Appendix Two.

<sup>86</sup> Other amendments to the Oranga Tamariki Act 1989 included: a specific requirement to improve outcomes for tamariki Māori; the care and protection age being raised to 21 years; enhanced transition from State care provisions; inclusion of 17-year-olds in State care and youth justice; embedding of child participation rights through the redesign of the care and protection and youth justice systems: see ss 5 and 7AA.

<sup>87</sup> Children’s Act 2014, s 6A(3).

37. Government's ad hoc approach to incorporating children's rights into domestic law continues, and there is no guarantee that all future legislation will incorporate the CRC.<sup>88 89</sup> There is no reference to the CRC in the Education and Training Act 2020, for example, or any requirement to take children's rights into account in decision-making under that Act.<sup>90</sup>
38. This variable approach to the domestic legal status of children's rights, coupled with low levels of understanding and training on the CRC, has the potential to lead to confusion and gaps in the practical application of children's rights, especially for those working closely with children, such as social workers and teachers.
39. Legislative amendments to the care and protection and youth justice systems are intended to more closely align domestic laws with the CRC, and include:
- **Inclusion of 17-year-olds:** some 17-year-olds have been included in the care, protection and youth justice system, but not all.<sup>91</sup>
  - **Children with disabilities:** Sections 141 and 142 of the Oranga Tamariki Act 1989 have been repealed. These sections created a separate entry pathway into State care for disabled children, without the same safeguards as other children. Repeal remedied this situation and was a positive development. Now, disabled children have the same protections and safeguards when entering care as are provided to other children.<sup>92</sup> However, this does not fully uphold the rights of disabled children. For disabled children,

---

<sup>88</sup> For example, the Resource Management Act is currently being reviewed and will have significant implications for children's rights, especially their environmental rights now and into the future. It would be appropriate to include reference to children's rights in the revised legislation.

<sup>89</sup> As a result of this ad hoc approach, the degree of domestic legal protection afforded to children's rights varies. Legislatively, children in Aotearoa are currently viewed differently regarding their CRC rights; decision-making affecting children under the Oranga Tamariki Act 1989 must, under domestic law, take their CRC rights into account. However, children who are not covered by the Act have no such domestic legal protection of their CRC rights. Furthermore, the extent of this domestic legal protection under the Act is unclear. Would domestic legal protection of CRC rights extend to decision-making about exclusion from school for a child in State care, for example? As a matter of principle, we are also concerned that, through the Chief Executive of Oranga Tamariki, Government decides which children fall within the ambit of Oranga Tamariki decision-making and therefore have domestic legal protection of their CRC rights.

<sup>90</sup> For example, there is no requirement to take children's rights into account when developing the Ministerial statement of national education and learning priorities. <https://www.legislation.govt.nz/act/public/2020/0038/latest/whole.html#LMS274511>; see Education section below.

<sup>91</sup> See paras 249–253 below.

<sup>92</sup> Government Report, para 20.



entry into State care must include accommodations and supports to uphold their rights on an equal basis with their peers.<sup>93</sup>

40. The Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021 (the Oversight Bill 2021) is an example of the lack of a child rights approach to the development of legislation and policy affecting children (see Appendix Two).<sup>94</sup>

---

## Recommendations

- Fully incorporate the CRC in domestic law.
  - Uphold the rights of all children under 18 in the justice system, including those in the adult justice system.
  - Fully incorporate all rights of disabled children in domestic law, including those under the UNCRPD.<sup>95</sup>
- 

## Oranga Tamariki, Ministry for Children (OT) – LOIPR 4(c)

41. OT is primarily concerned with statutory care, protection and youth justice services. It does not cover all children, despite its name.
42. While largely accurate, the Government Report does not provide full details on OT developments over the reporting period. We refer the Committee to Appendix Two, which provides information on:
  - Public outcry over the removal of, predominantly Māori, babies into care and subsequent investigations by the Children's Commissioner, Waitangi Tribunal, Ombudsman and Māori.
  - Changes to OT's operating model, including moves to shift decision-making and resources to communities, particularly Māori.
  - Strategic partnerships between OT and some Iwi, in an effort to begin meeting Te Tiriti o Waitangi obligations.

---

<sup>93</sup> UNCRPD, Article 7.

<sup>94</sup> For an analysis of the policy process underpinning the Bill see: David King and Jonathon Boston (27 July 2022) *Improving a system when young lives are at stake: A public policy analysis of the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill*:

[https://img.scoop.co.nz/media/pdfs/2208/Improving\\_A\\_System\\_When\\_Young\\_Lives\\_Are\\_At\\_Stake\\_1.pdf](https://img.scoop.co.nz/media/pdfs/2208/Improving_A_System_When_Young_Lives_Are_At_Stake_1.pdf)

<sup>95</sup> United Nations Convention on the Rights of Persons with Disabilities.

- The need to respect the experiences and mana of survivors of abuse in State care, and ensure that the findings and recommendations of the RCOI feed into OT practice and oversight.
  - The importance of children’s participation and listening to children.
  - The need to put children (and their whānau) at the heart of OT’s work ensuring their experiences and outcomes from the system are positive.
43. The importance of Government taking a children’s rights approach to child welfare,<sup>96</sup> at this critical time, cannot be overstated.

---

## Recommendations

- Invest in training and wānanga to give effect to the legal requirement for a child rights based approach to care, protection and youth justice, including children’s participation rights, throughout the OT system.<sup>97</sup>
- Take a Te Tiriti based approach to OT and implement the recommendations of the Waitangi Tribunal Urgent Inquiry Report (2021).
- Use the findings and recommendations of the Royal Commission to design care and protection systems, now and in the future, that:
  - keep children, especially those in the State care, safe from all forms of harm; and
  - if harm occurs, ensure that children’s rights are protected in the process of recovery and redress.
- Engage whānau and children who have been affected by the child protection system in policy and practice development within OT.<sup>98</sup>

---

<sup>96</sup> Consistent with the CRC, Te Tiriti o Waitangi and other relevant international human rights obligations.

<sup>97</sup> Oranga Tamariki Act 1989, s 5.

<sup>98</sup> See Te Rōpū Arotahi (2022) *Kia Tika, Kia Pono – Honouring Truths: An Ethical Framework for Engaging with Children and Young People who are Care Experienced*: <https://voyce.org.nz/kiatikakiapono>

- Resource/fund whānau, hapū, iwi and community-led decision-making and supports for children.
- Evidence the outcomes for children and their families and whānau of the significant changes to the child protection system.
- Ensure an adequate standard of living for all children, to help strengthen preventative factors, reduce poverty, and support holistic family and whānau wellbeing.

## Comprehensive Strategy to implement the Convention – LOIPR 4(d)

44. Improving children’s wellbeing is an important part of realising children’s rights. We welcome the increased focus on children’s issues, as evidenced by:
- Establishment of the Child Wellbeing and Poverty Reduction Group and a Ministerial portfolio of Child Poverty Reduction, currently held by the Prime Minister.<sup>99</sup>
  - Legislation requiring child poverty reduction targets to be set and monitored.<sup>100</sup>
  - Legislation requiring Government’s to have:
    - a Child and Youth Wellbeing Strategy (CYWS);<sup>101</sup>
    - an Oranga Tamariki Action Plan (OTAP) to improve the wellbeing of particular groups of children.<sup>102</sup>
45. The first CYWS,<sup>103</sup> adopted in 2019, is not a comprehensive plan to implement children’s rights. While the intent of the CYWS broadly aligns with the CRC, and one of its nine principles states that “Children and young people’s rights need to be respected and upheld”, mechanisms to give effect to this principle are limited.<sup>104</sup> Coupled with the low levels of knowledge about children’s rights within the public service, there are risks that CYWS’

<sup>99</sup> Government Report, para 6.

<sup>100</sup> Child Poverty Reduction Act 2018.

<sup>101</sup> Children’s Act 2014, ss 4 and 7D.

<sup>102</sup> The inaugural Oranga Tamariki Action Plan was released in July 2022. This sits under the CYWS, as required by the Children’s Act 2014, and sets out how CEOs from a range of agencies will improve children’s wellbeing: <https://www.orangatamariki.govt.nz/about-us/how-we-work/oranga-tamariki-action-plan/>

<sup>103</sup> <https://www.chilyouthwellbeing.govt.nz>

<sup>104</sup> The CYWS intends to provide a unifying framework to plan for and improve children’s wellbeing.

implementation may not reflect the universality, indivisibility and interdependence of children’s rights, including their civil rights and freedoms, such as their rights to identity, participation, privacy and information.<sup>105 106</sup>

46. The CYWS will be reviewed in 2023.

---

## Recommendations

- Develop a comprehensive strategy to implement the CRC.
- Establish and resource mechanisms within government to implement the CRC, such as children’s leads in all Ministries.
- Consider the effectiveness of existing government structures for children, specifically whether there should be a Ministry responsible for all children.
- Invest in training and wananga to embed a child rights based approach throughout the public service, including in the development of laws and policies.
- Strengthen the alignment between:
  - The CRC and CYWS, and develop a rights based approach within the strategy and its implementation, for all children.
  - The CRC and OTAP, to ensure children’s rights underpin co-ordination of efforts to improve children’s wellbeing across Government.

---

<sup>105</sup> For example, the significant fluctuations in rates of baby removal into State care (see Appendix Two) during 2018/19, arguably demonstrates insufficient consideration being given to children’s right to, as far as possible, know and be cared for by their family and their right to identity; for tamariki Māori, their right to whakapapa. The significant, intergenerational impact of disrupting whakapapa and failing to uphold identity rights is clear from the evidence that has been presented to the Royal Commission.

<sup>106</sup> Very little of the CYWS applies directly to children under five years of age and is a missed opportunity to ensure every child has the best start in life.





## Child Impact Assessment and Allocation of Resources – LOIPR 4(e) and 5

47. Use of the recently developed Child Impact Assessment Tool (CIAT) is not mandatory.<sup>107</sup> Guidance was published in 2018, but training to support the CIAT's use has been limited.
48. The current Government has adopted a wellbeing approach to the Budget, including a child wellbeing objective,<sup>108</sup> which lends itself to strengthening the application of children's rights in budget decision-making.<sup>109</sup> Children's rights could inform:<sup>110</sup>
- The development of the child wellbeing component of the *Treasury's Flexible Living Standards Framework*.<sup>111</sup>
  - The setting and co-ordination of spending priorities.
  - Evaluation of the effectiveness of public spending for children.
  - The development of child-friendly mechanisms for participation in the development of national and local budgets.<sup>112</sup>

---

### Recommendations

- Incorporate a child rights based approach into the Budget process.
  - Implement a rights-based, and transparent, tracking system for the allocation, use and monitoring of resources for children, to eliminate disparities, create equity, and ensure spending serves the best interests of all children.
- 

---

<sup>107</sup> The Child Impact Assessment Tool was developed to guide public servants considering the impact on children of policy or legislative proposals: see <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>

<sup>108</sup> See for example, Budget Policy Statement 2022.

<https://www.treasury.govt.nz/publications/budget-policy-statement/budget-policy-statement-2022-html#section-3>

<sup>109</sup> As outlined in the UN Committee on the Rights of the Child's General Comment No. 19.

<sup>110</sup> See <https://budget.govt.nz/budget/2022/wellbeing/approach/index.htm>

<sup>111</sup> <https://www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/our-living-standards-framework>

<sup>112</sup> Processes for civil engagement in investment of public funds are not child-friendly. For example, the Government Report notes that at the broadest level this involves free and fair elections, but children can't vote (paras 35-37).

## Data Collection – LOIPR 6

49. While we acknowledge improvements in data collection about children,<sup>113</sup> there is no comprehensive mechanism for collecting high quality disaggregated data about children and for making it accessible.<sup>114 115</sup>
50. In addition to the lack of accessible data, disruptions and delays to data collection make it very difficult to track changes for children over time. For example: the most recent official statistics on disabled children are from 2013;<sup>116</sup> and the Youth2000 survey did not occur in 2018 as scheduled.<sup>117 118</sup> Lower than targeted numbers of Māori and Pacific people responded to the most recent national Census.<sup>119</sup>
51. Demographic measures related to rainbow (LGBTI+) children are not routinely collected in research or population surveys, though there has been a

---

<sup>113</sup> For example, CYWS indicators <https://www.childyouthwellbeing.govt.nz/measuring-success/indicators>. Also, there has been increased focus on the views of children, see paras 91-94 below.

<sup>114</sup> For example: the Child Poverty Reduction Act 2018 requires the Government Statistician to report annually on Aotearoa’s child poverty rates and its progress towards meeting key targets and to provide analysis on “identified populations” including Māori and Pacific children, disabled children, and children with a disabled parent, guardian, or caregiver in their annual report, but only if “data is available.” The Child Wellbeing Strategy requires an annual report to Parliament on progress in achieving social, economic and environmental factors needed for child and youth wellbeing. As part of monitoring the CYWS, a new annual data collection effort will sample 15-year-olds and the data will be used to measure CYWS outcomes. The Household Economic Survey will begin to collect data on disabled children and their households.

<sup>115</sup> In the Aotearoa context, our small population size can make it difficult to understand wellbeing among various population groups and to be able to present statistics in a way that is both confidential (does not identify individuals) and provides confidence in the estimates. Reliance on more surveys targeted at certain groups is needed.

<sup>116</sup> Although some insight can be gained from looking at data from the Ongoing Resourcing Scheme (ORS): see CCS Disability Action (2019) [The state of wellbeing and equality for disabled people, their families, and whānau](#).

<sup>117</sup> The survey, previously implemented by the University of Auckland Adolescent Health Research Group, was conducted in 2001, 2007 and 2012 and has been a rich source of data on school-age children used in policy development. In 2016/17, Government outsourced the Youth2000 survey series to Malatest, an international research company.

<sup>118</sup> Youth 19 was completed by the University of Auckland Adolescent Health Research Group, but was limited to only part of the country (Auckland and Northland). <https://www.youth19.ac.nz/>; The Malatest survey was delayed to 2021: <https://www.whataboutme.nz/#>

<sup>119</sup> Government stated that: The 2018 Census collection response rates generally, and for Māori and Pacific people in particular, are unacceptably low and are a significant concern <https://www.stats.govt.nz/methods/2018-census-collection-response-rates-unacceptably-low>



commitment to begin collecting data on sexuality, gender and intersex variations in the next Census.<sup>120</sup>

52. Data is not yet available for some measures of poverty.<sup>121</sup> For example, an official survey measuring persistent poverty over time is only starting to collect data from 2022 onwards. COVID-19 limited data collection resulting in limited official data on the extent and impact of poverty on children during the pandemic.
53. Given the reforms underway across Government in multiple areas affecting children, ongoing evaluation of system-level changes and their impacts on children, and different groups of children, is needed. We are unaware, for example, of:
  - Any ongoing evaluation of changes to the OT system over the last decade, to ensure the changes are in children's best interests and consistent with CRC obligations.
  - Any mechanisms built into the new Education and Training Act 2020 to assess how well the systemic changes made are meeting children's rights.
54. The implications of data collection for children's privacy and identity rights also remain 'live' issues, as does data sovereignty, especially for Māori.<sup>122</sup>

---

## Recommendations

- To ensure a strong information base for the implementation of all children's rights, strengthen:
  - Government data collection systems, especially the collection of disaggregated data about children.
  - Evaluation of policy effectiveness for children.
  - Research into children's issues.

---

<sup>120</sup> <https://www.stuff.co.nz/national/politics/126720006/aotearoas-rainbow-communities-to-be-formally-quantified>

<sup>121</sup> Under the Child Poverty Reduction Act 2018.

<sup>122</sup> Māori data sovereignty recognises that Māori data should be subject to Māori governance: see <https://www.temanararaunga.maori.nz/> and para 107 below.

- Prioritise data collection about children to understand the impact of COVID-19 in relation to children’s rights, including their standard of living.
- Strengthen the collection of data about disabled children, and include a central focus on children in the next official Disability Survey.
- Prioritise children as a sub-population for Integrated Data Infrastructure analysis and research, to inform policies to support children’s rights outcomes.<sup>123</sup>

---

## Children’s Commissioner

55. Despite strong opposition, significant changes to the Office of the Children’s Commissioner are currently proposed under the Oversight Bill 2021, which is expected to pass into law imminently (see Appendix Two).<sup>124</sup>
56. A children’s rights approach<sup>125</sup> has not been used to develop the Bill.<sup>126</sup> Children themselves have not had a say on the structure and function of their Commissioner. As a result, the Bill has been a missed opportunity to strengthen the Office of the Children’s Commissioner’s (OCC) so that it continues to be an effective, authoritative and independent voice for all children in Aotearoa, grounded in evidence, research and maatauranga about children and their lives.
57. The Commissioner requires the independence, mandate and resources needed to effectively monitor, protect and promote children’s rights in accordance

---

<sup>123</sup> <https://www.stats.govt.nz/integrated-data/integrated-data-infrastructure/>

<sup>124</sup> [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_116701/oversight-of-oranga-tamariki-system-and-children-and-young](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_116701/oversight-of-oranga-tamariki-system-and-children-and-young)

<sup>125</sup> Consistent with the CRC, Te Tiriti o Waitangi and other relevant international human rights obligations.

<sup>126</sup> See the Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report, submitted by Te Puna Rangahau o Te Wai Ariki | Aotearoa New Zealand Centre for Indigenous Peoples and the Law. Recommendation 2 in that report calls upon the New Zealand Government to develop mechanisms, like a monitoring body and/or the rights framework put forward in that report, in partnership with Māori, including tamariki Māori, to ensure that all the rights of tamariki Māori are recognised and provided for in government-led action going forward. This mechanism will also provide a way to monitor whether the New Zealand Government is meeting its specific obligations to tamariki Māori.

with the Committee's General Comment No. 2 and previous recommendations.<sup>127</sup> Under the Bill, the Children's Commissioner will no longer monitor the OT system or have powers to investigate.

58. As set out in Appendix Two, we have a number of deep concerns about the changes proposed by the Bill and process for its development.
59. Should the Bill pass, the new law is required to be reviewed within 3 years.

---

### Recommendation

- Should the Bill pass, review any changes as soon as possible (within 6 months of the RCOI final report) to design, in consultation with children:
    - a Children's Commission/er with the structure and functions to be a true champion for all children in Aotearoa, and all their rights, in all circumstances, now and into the future;
    - an OT oversight system that is effective for children and their families and whānau.
- 

### Definition of a Child - LOIPR 8

60. While there has been steady progress bringing definitions of the child in line with the CRC, this needs to be done more systematically.

### Youth Justice

61. The inclusion of some 17-year-olds in the care, protection and youth justice systems over the reporting period is positive. However:<sup>128</sup>

---

<sup>127</sup> UN Committee on the Rights of the Child (2002). [General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child.](#)

<sup>128</sup> See paras 249 and 253 below. The Alliance strongly supports these calls to include all 17-year-olds in the Youth Court jurisdiction and to raise the minimum age of criminal responsibility to 14 immediately.

- i. Some 17-year-olds remain outside the youth justice system and are instead dealt with in the adult justice system.<sup>129 130</sup>
- ii. The minimum age of criminal responsibility remains low and inconsistent with the CRC, at 10 years of age.<sup>131 132</sup>

## Voting Age

- 62. A youth-led campaign is underway to lower the voting age to 16.<sup>133</sup> 'Make It 16' has sought a declaration from the Supreme Court that the minimum voting age is inconsistent with the New Zealand Bill of Rights Act 1990.<sup>134 135</sup>
- 63. At the 2022 Youth Parliament, more than half of the 120 youth MPs signed an open letter calling for Parliament to lower the voting age for both local and general elections.<sup>136</sup>
- 64. An independent panel, appointed by Government to review electoral law, including the voting age, will report by the end of 2023.<sup>137</sup>

---

<sup>129</sup> The former Children's Commissioner Andrew Becroft has said: "*The Youth Court should be empowered to deal with all offending by all under 18-year-olds, and be responsible for all sentencing. .... This would promote a consistent and youth-specific approach that prioritises alternatives to charging in court and emphasises rehabilitation for people under 18, still leaving all sentencing options open.*"

<https://www.occ.org.nz/publications/news/some-stark-injustices-in-our-youth-justice-system-need-fixing-and-heres-how/>

<sup>130</sup> See also: <https://www.wgtn.ac.nz/news/2021/10/youth-justice-experts-call-for-urgent-law-changes-to-reduce-harm-in-the-youth-justice-system>

<sup>131</sup> The former Children's Commissioner is calling for the minimum age of criminal responsibility to be raised to 14: "*The present age is 10, which is unconscionably and unarguably too low and completely out of step with what we know of child development. It should be set at 12 and soon moved to 14 as soon as New Zealand's care and protection system is transformed to become fit for purpose.*" See:

<https://www.rnz.co.nz/news/national/424271/children-s-commissioner-wants-age-of-criminal-responsibility-raised-to-14>

<sup>132</sup> <https://www.occ.org.nz/publications/news/some-stark-injustices-in-our-youth-justice-system-need-fixing-and-heres-how/>

<sup>133</sup> <https://www.makeit16.org.nz>

<sup>134</sup> <https://www.renews.co.nz/fight-to-lower-voting-age-to-16-will-head-to-supreme-court>

<sup>135</sup> <https://www.stuff.co.nz/national/129244852/voting-age-change-for-parliament-and-court-should-bow-out-crown-says>

<sup>136</sup> <https://www.makeit16.org.nz/post/pr-cross-party-support-for-make-it-16-at-youth-parliament>

<sup>137</sup> <https://www.beehive.govt.nz/release/independent-panel-appointed-review-electoral-law>



## Age of Consent

65. The lack of a legal requirement for affirmative consent to sexual intercourse means people charged with the sexual violation (rape) of children can argue it was consensual. In a recent case it was argued a 12-year-old consented.<sup>138</sup> A petition to reform consent law has been lodged with Parliament.<sup>139</sup>

---

### Recommendations

- Include all 17-year-olds in the youth justice system.
  - Increase the minimum age of criminal responsibility to 14.
  - Make the voting age 16.
  - Reform consent law.
- 

## General Principles – LOIPR 9-12

66. The general principles are key to maximising the wellbeing of all children. Currently, they are not systematically or consistently applied in Aotearoa.

### Non-discrimination – LOIPR 9

*As a community, we are constantly having to fight for our basic needs to be fulfilled, we are having to fight to be acknowledged as people who deserve the bare minimum.*<sup>140</sup>

67. Inequity in realisation of rights continues to be a significant concern. Persistent disparities remain in the experiences and outcomes in health, education and welfare for tamariki Maori, Pacific children, rainbow and

---

<sup>138</sup> <https://www.nzherald.co.nz/nz/horrifying-laws-allowing-consent-as-a-court-defence-for-sex-with-a-minor-need-reform/4Y6DOFVSK3BXZUT5FGJ4DZTVDY/>;  
<https://www.nzherald.co.nz/nz/verdict-in-man-guilty-on-33-charges-of-sexually-abusing-underage-girls/AULVYUJWJKZ5HCATAWIUZ75VDA/>

<sup>139</sup> [https://www.parliament.nz/en/pb/petitions/document/PET\\_124116/petition-of-layba-zubair-consent-law-reform](https://www.parliament.nz/en/pb/petitions/document/PET_124116/petition-of-layba-zubair-consent-law-reform)

<sup>140</sup> Care experienced young person – see Children in State Care Thematic Report, submitted by VOYCE Whakarongo-Mai.

disabled children.<sup>141</sup> <sup>142</sup> These disparities are likely to be compounded by climate change.<sup>143</sup>

68. Giving practical effect to Te Tiriti o Waitangi and increased recognition of the intersectionality between the application of the CRC and the rights of children under other international human rights obligations, would help to address issues of discrimination and ensure equal realisation of the rights of all children.

## Muslim children

69. Despite many years of calls for action from the Muslim community, discrimination against Muslim children and their families was more publicly exposed following the Christchurch and New Lynn terror attacks in 2019 and 2021. In 2021, a National Islamic Youth Association formed to provide a platform for Muslim Youth and be a unified voice speaking out on issues of social and political injustice.<sup>144</sup>

70. Humairaa Saheb, a youth MP in the 2022 Youth Parliament, spoke about school inaction on racism and religious intolerance:

*I come from South Auckland. I come representing my religion, wearing my hijab, which I am attacked for. On 9 February, there was an Islamophobic attack at Otago Girls' High School where a student was beaten up and her hijab was ripped off. By trying to make her take off her hijab, they're trying to make us fit into the standards that society has for us, taking away our identity, and taking away our rights.<sup>145</sup>*

---

<sup>141</sup> For example: Pacific children are admitted to hospital for rheumatic fever 140 times more often than children of European or Other ethnicities (para 155 below); disabled children have over double the rate of severe material hardship to non-disabled children (para 193 below); and 86% of the 140 children in youth justice custody as at 31 March 2022 were tamariki Māori (para 142 below).

<sup>142</sup> <https://www.youth19.ac.nz/publications/sexual-attraction-wellbeing>;  
<https://www.youth19.ac.nz/publications/transgender-and-diverse-students-brief>;  
<https://www.youth19.ac.nz/publications/negotiating-multiple-identities-report>

<sup>143</sup> See Children's Rights in a Changing Climate Thematic Report, submitted by OraTaiao: NZ Climate and Health Council.

<sup>144</sup> <https://www.stuff.co.nz/pou-tiaki/125674843/national-islamic-youth-association-focused-on-empowering-muslim-youth-and-elevating-their-voices>

<sup>145</sup> Humairaa Saheb's quote continues: "Our youth are constantly suffering. We are being divided because of our differences, and our schools are not doing enough to conquer the racism. According to the New Zealand Herald, 25 percent of Asian students are treated unfairly because of their ethnicity. Fifteen percent of Māori students and 12 percent of Pasifika students said that teachers treat them unfairly because of their ethnicity. Where is the justice in this? Why must the youth have to struggle with their identity and be ashamed



## Rainbow children

71. Children in Aotearoa face specific, unique barriers to the full enjoyment of human rights based on their actual or perceived SOGIESC.<sup>146</sup> Experiences of violence, social exclusion and discrimination lead to poorer health and social outcomes, including disproportionate rates of suicidality,<sup>147</sup> homelessness<sup>148</sup> and poor mental health.<sup>149</sup> <sup>150</sup> These outcomes are often worse for rainbow children who are Māori, Pacific or disabled, or who have been involved with OT.<sup>151</sup>
72. There has been some progress on ensuring rainbow children's rights. A recent law change established an administrative process to make it easier for people to change their own or their children's registered sex to match their gender based on a statutory declaration.<sup>152</sup> <sup>153</sup> <sup>154</sup> <sup>155</sup>

---

of where they come from?" <https://www.rnz.co.nz/national/programmes/the-house/audio/2018851667/youth-mps-in-their-own-words-a-photo-essay>

<sup>146</sup> Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics.

<sup>147</sup> M Clunie, et al. (2017) *Suicide prevention and the rainbow population - A submission on A Strategy to Prevent Suicide in New Zealand: Draft for public consultation*. Retrieved from Mental Health Foundation.

<sup>148</sup> Housing First Auckland (2019) *Ira Mata, Ira Tangata: Auckland's Homeless Count Report: Point in time count 2018*. Retrieved from Auckland Council: <https://www.aucklandshomelesscount.org.nz/wp-content/uploads/2019/10/PiT-FinalReport-Final.pdf>.

<sup>149</sup> J Adams, P Dickinson & L Asiasiga (2012) *Mental health promotion and prevention services to gay, lesbian, bisexual, transgender and intersex populations in New Zealand: Needs assessment report*, Te Pou, Auckland, New Zealand.

<sup>150</sup> See also: <https://tewhariki.org.nz/assets/Honour-Project-Aotearoa-Final-Report.pdf>; <https://researchspace.auckland.ac.nz/handle/2292/49090>; [https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/629e7d2d64349d3b11b08919/1654553906843/Same+and+Multiple+Sex+Attracted\\_030622.pdf](https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/629e7d2d64349d3b11b08919/1654553906843/Same+and+Multiple+Sex+Attracted_030622.pdf)

<sup>151</sup> <https://www.youth19.ac.nz/publications/negotiating-multiple-identities-report> ; <https://www.youth19.ac.nz/publications/takatapui-rainbow-young-people-involved-with-oranga-tamariki>

<sup>152</sup> [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_74854/births-deaths-marriages-and-relationships-registration](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_74854/births-deaths-marriages-and-relationships-registration)

<sup>153</sup> For insight into the difficulties with the current process, see the submission on the Bill from a group of Parents and Caregivers of Transgender and Gender Diverse Children in New Zealand:

[https://www.parliament.nz/resource/enNZ/52SCGA\\_EVI\\_74854\\_817/bd87133e395ea5621c5fa55e7306657c4c290822](https://www.parliament.nz/resource/enNZ/52SCGA_EVI_74854_817/bd87133e395ea5621c5fa55e7306657c4c290822)

<sup>154</sup> <https://www.dia.govt.nz/bdmreview---recognising-gender-on-birth-certificates#:~:text=To%20recognise%20gender%2C%20a%20self,transgender%2C%20intersex%20and%20takat%C4%81pui%20people.>

<sup>155</sup> Previously an application had to be made to the Family Court along with medical evidence, which was a barrier to having accurate identity documents. The Human Rights Commission's Inquiry into Discrimination Experienced by Transgender People was carried out in 2006 and reported on in 2008. This barrier has been known about for a long time.



73. Parliament has passed legislation to end conversion practices – attempts to change or suppress a person’s sexuality or gender.<sup>156 157</sup>
74. Budget 2022 committed specific funding to create a rights-based approach for intersex health and to improve access to gender-affirming healthcare.<sup>158</sup>

### *Access to education for rainbow children*

75. Schools are not consistently providing safe, affirming environments for rainbow students. Rainbow students experience significant rates of school bullying, discrimination and social exclusion.<sup>159</sup> Several state-funded Christian schools have policies that discriminate against rainbow children.<sup>160</sup>
76. 35% of 15-19-year-old trans and non-binary participants in the 2018 Counting Ourselves Survey had faced discrimination at school. This rate was much higher than the 13% of 15–19-year-olds in the general population who faced such discrimination, as measured by the 2016 General Social Survey.<sup>161</sup>

---

<https://www.hrc.co.nz/our-work/sogiesc/past-projects/inquiry-discrimination-experienced-transgender-people/>

<sup>156</sup> Conversion Practices Prohibition Legislation Act 2022. Conversion Therapy refers to practices that seek to change or suppress a person’s sexual orientation, gender identity, or gender expression: <https://www.rnz.co.nz/news/national/461599/politicians-react-as-bill-to-ban-conversion-therapy-passes>

<sup>157</sup> The Bill was strongly supported by organisations representing rainbow children and young people, who called for: inclusion of protections for inter-sex people; stronger focus on redress processes that support justice, healing and restoration of relationships; education for whānau, communities and medical professionals to build understanding about the nature and harms of conversion practices, as well as rainbow identities and the importance of inclusion: <https://www.tengakaukahukura.nz/banning-conversion-practices>

<sup>158</sup> <https://www.stuff.co.nz/national/health/128827328/finally-heard-intersex-kiwis-celebrate-historic-government-healthcare-funding>; <https://www.1news.co.nz/2022/06/05/govt-announces-47m-to-support-intersex-transgender-people/>;

<https://www.youth19.ac.nz/publications/sexual-attraction-wellbeing>;  
<https://www.youth19.ac.nz/publications/transgender-and-diverse-students-brief>;  
<https://www.youth19.ac.nz/publications/negotiating-multiple-identities-report>

<sup>159</sup> <https://www.youth19.ac.nz/publications/sexual-attraction-wellbeing>;  
<https://www.youth19.ac.nz/publications/transgender-and-diverse-students-brief>;  
<https://www.youth19.ac.nz/publications/negotiating-multiple-identities-report>

<sup>160</sup> <https://www.stuff.co.nz/national/education/129102047/institutional-homophobia-more-statefunded-christian-schools-with-antiqueer-policies-identified>

<sup>161</sup> <https://countingourselves.nz>

<sup>162</sup> See also Youth 19 findings: <https://www.youth19.ac.nz/publications/tag/Identity>



77. The survey also asked school students about specific safety concerns for trans and non-binary students. Over half (59%) disagreed that it is safe for trans and non-binary students in their school to use a toilet or changing room that matches their gender. Less than half had access to a unisex bathroom at their school.<sup>163</sup>
78. We refer the Committee to the Intersex Aotearoa Thematic Report.

---

## Recommendations

- To ensure that all children experience all their rights without discrimination, prioritise:
  - Education and awareness-raising for children and the wider public that supports and promotes diversity, inclusion and anti-racism.<sup>164</sup>  
165
  - Implementation of policies and practices that prevent discrimination and racism and support the development of an inclusive society and elimination of disparities.
  - Establishment and resourcing of effective, accessible mechanisms for complaints and concerns about discrimination, racism and hatred to be heard and acted on.
  - Resourcing specific initiatives to address rainbow-targeted discrimination in schools and communities.

---

<sup>163</sup> Jack Byrne (1 March 2020) *The right to education for trans children in Aotearoa New Zealand: A submission to the UN Committee on the Rights of the Child for the Draft List of Issues Prior to Reporting*.

<sup>164</sup> Link with Government work programme to address racism and discrimination and work under CYWS accepted, respected and connected outcome.

<sup>165</sup> This includes improved consistency of delivery of relationships and sexuality education, as well as teaching and learning about sexuality and gender diversity:  
<https://hpe.tki.org.nz/guidelines-and-policies/relationships-and-sexuality-education/>



## Best Interests – LOIPR 10

79. The best interests principle is discussed in the public domain.<sup>166</sup> However, little progress has been made on the Committee’s 2016 recommendation and there remains a need for consistent application and transparent processes for ensuring decisions regarding a child’s best interests are based on good information, it is clear who decides what is in a child’s best interests, and what factors need to be taken into account.<sup>167</sup>
80. We note recent missed opportunities to include the best interests principle in legislation, including in the Education and Training Act 2020 and Privacy Act 2020.

---

### Recommendation

- Establish processes and criteria to ensure the best interests principle is properly applied and given due weight, consistent with the Committee’s 2016 recommendation.
- 

## Life, Survival and Development – LOIPR 11

81. During the period 2015-2019, 2,666 children aged 28 days to 24 years died in Aotearoa, most commonly due to suicide, transport incidents, cancers and sudden unexpected death in infancy (SUDI). 1,012 of those deaths were in tamariki and rangatahi Māori, 390 were in Pacific children and young people.<sup>168</sup>

---

<sup>166</sup> See, for example, media coverage of the return of a woman with Isis links and her children: <https://theconversation.com/with-their-mothers-australian-citizenship-cancelled-over-alleged-isis-links-how-will-nz-deal-with-her-children-155385>; <https://www.rnz.co.nz/news/political/447715/new-zealand-to-bring-in-terror-suspect-suhayra-aden-and-her-children>; Ministry of Justice (2021) *Adoption in Aotearoa New Zealand Discussion Document*: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/adoption-law-reform-options-for-creating-a-new-system/first-round-of-engagement-in-2021/>

<sup>167</sup> CRC/C/NZL/CO/5, para 16.

<sup>168</sup> Te Rōpū Arotake Auau Mate o te Hunga Tamariki, Taiohi |Child and Youth Mortality Review Committee (2021) *15th data report: 2015–19*, Health Quality & Safety Commission. <https://www.hqsc.govt.nz/resources/resource-library/child-and-youth-mortality-review-committee-15th-data-report-201519-te-ropu-arotake-auau-mate-o-te-hunga-tamariki-taiohi-te-purongo-raraunga-15-201519/#B1>

82. There were large inequities in mortality, with a disproportionate impact of deprivation in Māori mortality, and higher mortality rates overall for tamariki and rangatahi Māori compared with non-Māori non-Pacific children.<sup>169</sup>
83. Pēpē Māori were three times more likely to die than non-Māori non-Pacific infants. The most common cause of death was SUDI, with 114 deaths.<sup>170</sup>
84. For rangatahi Māori aged 15–19 years, the leading cause of death was suicide at 46 percent in this age group.<sup>171</sup>
85. We strongly support calls for an end to tolerance for the suffering represented by these figures.<sup>172</sup>
86. Those working in child and youth mental health and wellbeing, report increased suicidality presentation, including presentation by younger age groups and with increasingly sophisticated planning.<sup>173</sup>
87. Young people who are exposed to violence at home are twice as likely to attempt suicide as those who are not so exposed.<sup>174</sup> Rainbow children are more like to be negatively affected by suicide.<sup>175</sup>
88. Despite suicide being a leading cause of death in children, there does not appear to be an explicit focus on children within the Mental Health and Wellbeing Commission, the Suicide Prevention Office, or the Every Life Matters Strategy and Action Plan: a missed opportunity to take a

---

<sup>169</sup> Ibid.

<sup>170</sup> See Basic Health and Welfare Rights of Children 0-5 years of age Thematic Report

<sup>171</sup> Footnote 168.

<sup>172</sup> “We call on the decision-makers and the people of Aotearoa/New Zealand to end tolerance for the suffering represented in the pages of this report.” Dr Alayne Mikahere-Hall and Dr Matthew Reid, Child and Youth Mortality Review Committee co-chairs. Fn168, Introduction.

<sup>173</sup> Discussion with Youthline; see paras 173 to 175 below on mental health and wellbeing.

<sup>174</sup> Te Aorerekura The Enduring Spirit of Affection, The National Strategy to Eliminate Family Violence and Sexual Violence, at p. 11. This underscores the importance of making children visible within Te Aorerekura, taking practical steps to protect children from violence, and responding to and supporting children who experience violence-related trauma.

<sup>175</sup>

[https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/60ca75d00a6a3a028b086ce0/1623881172777/Youth19+Brief\\_Rainbow+rangatahi.pdf](https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/60ca75d00a6a3a028b086ce0/1623881172777/Youth19+Brief_Rainbow+rangatahi.pdf)

comprehensive and co-ordinated approach to establishing child and youth specific suicide prevention measures.<sup>176 177 178</sup>

89. In 2018, 31,300 children (2.8% of the child population) had a potentially avoidable hospitalisation (treatment for illnesses arising from poor environmental factors such as nutrition, housing, timely treatment, and which are considered preventable).<sup>179 180</sup>
90. The impact of climate change and environmental degradation, including air and water pollution, on children’s survival and development is of urgent concern.<sup>181 182</sup>

---

## Recommendations

- Embed a children’s-rights approach across Government, consistent with the CRC, Te Tiriti o Waitangi and other relevant international human rights obligations, to ensure all children:
  - have an adequate standard of living, a healthy home, nutritious food and clean water;
  - grow up with a sense of belonging and knowing that they matter.
- Ensure equitable access to family and whānau friendly, and culturally appropriate, mental health and wellbeing services for

---

<sup>176</sup> <https://www.mhwc.govt.nz>

<sup>177</sup> <https://www.health.govt.nz/news-media/media-releases/new-director-suicide-prevention-office-puts-people-heart-mahi>

<sup>178</sup> The Every Life Matters: Suicide Prevention Action Plan 2019-2024 includes one action with a focus on children and young people: Action Area 5: Promotion – Promoting wellbeing. It identifies three distinct factors related to promoting wellbeing as being fundamental to reducing suicide risk: strengthening sense of identity; reinforcing connection to others, to land, and to place; and feeling accepted and included by others. Yet this one key action with a focus on children is limited to increased wellbeing support for children and young people in places of learning. No specific mention is made of children and young people in the other seven key action areas: <https://www.health.govt.nz/publication/every-life-matters-he-tapu-te-oranga-o-ia-tangata-suicide-prevention-strategy-2019-2029-and-suicide>

<sup>179</sup> <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Data-analytics-and-insights/At-A-Glance-Harm-to-Children-in-New-Zealand.pdf>

<sup>180</sup> See paras 182 to 210 below for more information about these environmental factors.

<sup>181</sup> See Children’s Rights in a Changing Climate Thematic Report, submitted by OraTaiao: NZ Climate and Health Council

<sup>182</sup> <https://www.rnz.co.nz/news/national/470488/air-pollution-invercargill-revealed-as-deadliest-centre-study>



children (and their families and whānau) when needed, throughout the country.

- Require and resource the Suicide Prevention Office to lead the development and implementation of child suicide prevention strategies, with a focus on tamariki Māori and rainbow children.
  - Arrest climate change and environmental degradation and take urgent measures to mitigate its negative impacts on children’s survival and development.
- 

## Respect for the Views of the Child – LOIPR 12

*It has been amazing to be a part of this group. To be listened to, to be heard, and for adults to take us seriously. Not just to be seen, to be really heard. It has been an awesome opportunity to change problems. To look back and say, I was part of that. It is empowering.*<sup>183</sup>

91. There has been increasing acceptance that children’s views are important and need to be listened to.<sup>184</sup> <sup>185</sup> However, more work is needed to ensure that children can share their views and are listened to, including in the Parliamentary process and about climate change.
92. Children had very limited opportunity to participate in the development of the Oversight Bill 2021, and their submissions on the Bill were not listened to.<sup>186</sup>

*This is too important to get wrong. Time and time again the voices of young people with care experience are pushed aside for systems that don’t serve us.*<sup>187</sup>

---

<sup>183</sup> Caitlin Rees, Next Generation Conversation member. See para 184 below.

<sup>184</sup> The OCC Mai World team has sought the views of children from around the country on a range of topics including education, experiences of the COVID-19 lockdowns, and the CYWS: <https://www.occ.org.nz/voices/mai-world/>

<sup>185</sup> We note the legislative and other developments listed in the Government’s Report and the initiatives noted in its Annex: para 97; and the Summary of Findings from public consultation: <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/uncroc/reporting/index.html#PublicConsultationontheDraftSixthReport3>

<sup>186</sup> See Appendix Two.

<sup>187</sup> Mary-Lynn Huxford, Vice-chair of the VOYCE Whakarongo Mai National Youth Council: <https://voyce.org.nz/oranga-tamariki-oversight-bill-must->



93. Some local councils are working to enable children to participate in decision-making about things that matter to them, such as climate change, which could be replicated at the national level.<sup>188 189</sup>
94. We welcome the proposed Children and Young People’s Commission functions to encourage children’s participation and voices.<sup>190</sup> However, the duty to uphold children’s participation rights rests with Government and more can be done by Government to enable children’s meaningful participation in Government processes, in their daily lives, and on matters that are important to them. This should include practical supports to facilitate children’s meaningful participation, such as those provided by Talking Trouble Aotearoa NZ who work alongside government agencies to improve responses to the speech, language and communication needs experienced by many children involved with care and protection, justice, mental health and behaviour services.<sup>191</sup>

## Complaints processes

95. Under the Oversight Bill 2021, the Children’s Commissioner will no longer have statutory functions to:
- Investigate any decision or recommendation made, or any act done or omitted, in respect of any child in that child’s personal capacity.

---

[go/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=oranga-tamariki-oversight-bill-must-go](https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/topic-based-plans-strategies/community-social-development-plans/annualreports/i-am-auckland-annual-update-2021.pdf)

<sup>188</sup> See, for example, *I am Auckland Implementation and Evaluation Annual Update 2021*: <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/topic-based-plans-strategies/community-social-development-plans/annualreports/i-am-auckland-annual-update-2021.pdf>; and discussion about children’s involvement in Climate Change discussions and planning, paras 182-187 below.

<sup>189</sup> Research by a team at the University of Auckland School of Nursing was conducted into policies to enable children’s voice for healthy neighbourhoods and communities and involved a systematic mapping review of existing policies and their application. Over half of the 74 local councils in Aotearoa showed at least some awareness and made mention of child consultation. While policies exist at a national level to support, but not mandate, children’s participation and consultation in policy development for health promoting environments. there was, overall, little consistency across local councils in policies for child participation and consultation in planning processes: Eve Sullivan, Victoria Egli, Niamh Donnellan & Melody Smith (2021) Policies to enable children’s voice for healthy neighbourhoods and communities: a systematic mapping review and case study, *Kōtuitui: New Zealand Journal of Social Sciences Online*, 16(1), 18-44, DOI: [10.1080/1177083X.2020.1772325](https://doi.org/10.1080/1177083X.2020.1772325)

<sup>190</sup> Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill (2021), clause 101.

<sup>191</sup> <https://talkingtroublenz.org>





- Investigate any decision or recommendation made, or any act done or omitted, in respect of any child in that child’s personal capacity in relation to the Oranga Tamariki Act 1989.
- Promote the establishment of accessible and effective complaints mechanisms for children and to monitor the nature and level of complaints.

96. The Oversight Bill is inconsistent with children’s participation rights<sup>192 193</sup>

97. Although the Education and Training Act 2020 enables the creation of dispute resolution panels, no funding has been allocated and a date for establishing the panels has not been set.<sup>194</sup>

98. Government has declared a climate emergency. With reference to General Comment No. 12, we urge the Government to establish mechanisms to enable the ongoing participation of children in efforts to address the climate and environmental crisis.<sup>195 196</sup>

---

## Recommendations

- Enable and resource meaningful child participation in government processes and practices, including in the development of laws and policies; when children share their views, listen and implement active feedback loops.

---

<sup>192</sup> As elaborated in General Comment No. 12 (2009) on the Right of the Child to be Heard. Specifically, that there be mechanisms to ensure children in alternative care are able to express their views and have those views given due weight and that there be a monitoring body mandated to have unimpeded access to residential facilities (including those for children in conflict with the law), hear the views and concerns of children directly, and monitor the extent to which their views are listened to and given due weight by the institution itself - General Comment No. 12, para 97.

<sup>193</sup> See Appendix Two for more information on the Oversight Bill 2021.

<sup>194</sup> Government Report, para 247. [https://www.education.govt.nz/our-work/legislation/education-and-training-act-2020/enabling-a-new-dispute-resolution-panel-to-hear-complaints-about-school-board-decisions/#:~:text=Bill%20\(No%202\)-,Education%20and%20Training%20Act%202020%3A%20Enabling%20a%20new%20dispute%20resolution,review%20in%20the%20High%20Court](https://www.education.govt.nz/our-work/legislation/education-and-training-act-2020/enabling-a-new-dispute-resolution-panel-to-hear-complaints-about-school-board-decisions/#:~:text=Bill%20(No%202)-,Education%20and%20Training%20Act%202020%3A%20Enabling%20a%20new%20dispute%20resolution,review%20in%20the%20High%20Court)

<sup>195</sup> <https://www.rnz.co.nz/news/political/431942/climate-emergency-declaration-by-new-zealand-government-includes-commitment-to-2025-targets>

<sup>196</sup> CRC/C/GC/12/, paras 125-126: “children affected by emergencies should be encouraged and enabled to participate in analysing their situation and future prospects. Children’s participation helps them to regain control over their lives, contributes to rehabilitation, develops organisational abilities and strengthens a sense of identity.”



- With children, develop and disseminate guidance and training to support and give effect to children’s participation rights.
- Ensure all children have access to child-friendly processes for raising concerns and complaints when they need to.
- Review, as soon as possible, any changes made by the Oversight Bill 2021 to ensure they uphold children's participation rights.
- Resource and establish dispute tribunals as provided for under the Education and Training Act 2020.
- Recognise children as key stakeholders and support their active participation in emergency situations, including climate change adaptation and mitigation; specifically include children in the Emissions Reduction Plan.<sup>197</sup>

---

## Civil Rights and Freedoms – LOIPR 13-15

99. Greater consideration needs to be given to children’s civil rights and freedoms, particularly the rights of tamariki Māori to preserve both their individual and collective identity and maintain their links with whānau and culture.

### Identity

#### Whakapapa and the collective rights of tamariki Māori

100. The identity rights of tamariki Māori have a strong collective dimension and are inextricably linked to their right to culture.
101. Tamariki Māori have a central role in Māori culture. They are seen to be the ‘binding rope that ties people together over time’ and the genealogical link that enhances family relationships. To Māori, children are a living connection to the family – past, present and future – a living embodiment of ancestors, and a link in descent lines stretching from the beginning of time into the

---

<sup>197</sup> <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/emissions-reduction-plan/>

future.<sup>198</sup> As is the same for other Indigenous peoples, tamariki Māori are central to the cycle and continuation of life, and embody the survival of Māori culture and community.<sup>199</sup> Their standing is reflected in the word 'tamariki': 'Tama' is derived from Tama-te-rā (the central sun, the divine spark), while 'ariki' means 'chief' and therefore refers to their chiefly status.<sup>200 201</sup>

102. Sir Joseph Williams, Aotearoa's first Māori Supreme Court judge has explained that the priority accorded to the collective, and the responsibility of the collective for its individuals, remain powerful values in contemporary Māori life.<sup>202</sup> The ethic of collectivism does not diminish the value of the individual in te ao Māori, but adds to their significance, each person representing a link in the chain of life.<sup>203</sup>
103. The identity rights of tamariki Māori are therefore inextricably linked with their right to be connected to their culture and to know their whakapapa (ancestry). Through knowing their whakapapa, tamariki Māori can identify their connection to all living things, including their tīpuna (ancestors), and to which kin groups they belong. Through whakapapa, tamariki Māori are also gifted with attributes fundamental to their cultural, physical, and spiritual well-being such as mana, tapu, wairua (spirit), and mauri (life force). A critical part of the well-being of tamariki Māori is maintaining a balance across these dynamics.<sup>204</sup>
104. Te Tiriti guaranteed to protect Māori culture and enable Māori, including tamariki Māori, to continue to live as Māori. The UNDRIP, which Aotearoa has endorsed, also protects the right of indigenous people's to the full enjoyment, as a collective or as individuals, of human rights and fundamental freedoms, including their rights to culture and identity.<sup>205</sup>

---

<sup>198</sup> L Rameka (2016). [Kia whakatōmuri te haere whakamua: 'I walk backwards into the future with my eyes fixed on the my past.](#)

<sup>199</sup> United Nations Sub-Group on Indigenous Children and Young People. (2006). [Indigenous Children: Rights and Reality – a Report on Indigenous Children and the U.N. Convention on the Rights of the Child.](#)

<sup>200</sup> Dr Rose Pere, cited in P King, D Cormack & M Kōpua (2018) [Oranga mokopuna: A tāngata whenua rights-based approach to health and wellbeing.](#)

<sup>201</sup> See the Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report.

<sup>202</sup> Te Aka Matua O Te Ture/Law Commission (2022) *Te Kōpū Whāngai: He Arotake/ Review of Surrogacy*, at para 2.72.

<sup>203</sup> Ibid.

<sup>204</sup> See the Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report.

<sup>205</sup> UNDRIP, Article 1.

## Children of Aotearoa

*Claudie, you may not be my sister, but I am going to see you soon at Matariki. We have no Māori ancestry, but love our nation's cultural heritage. We are so happy Matariki is being acknowledged appropriately as a special time for our families, and that a national holiday allows us to come together.*<sup>206</sup>

105. Protecting and upholding the identity rights of tamariki Māori is central to advancing and upholding the identity rights of all children – tamariki Māori and tamariki Tiriti - in Aotearoa, as a young nation with a growing sense of national identity. Celebration of Matariki and teaching of Aotearoa's history in schools, for example, help all children in Aotearoa to have a sense of place.<sup>207</sup>  
208

---

### Recommendations

- Recognise the collective dimension of Māori cultural identity and the importance of whakapapa for Māori children's identity in all legislation and policies affecting children, and ensure whānau Māori are able to exercise that right.
  - Undertake inclusive initiatives that place children at the centre of Aotearoa's developing national identity and build social cohesion, upholding the unique identity rights of tamariki Māori.
- 

---

<sup>206</sup> From a letter written to the Prime Minister by a five-year-old and her mother and shared by the Prime Minister in her 2022 Matariki speech: <https://www.beehive.govt.nz/speech/prime-minister%E2%80%99s-matariki-speech-2022>. Matariki is the Māori New Year <https://www.tepapa.govt.nz/discover-collections/read-watch-play/matariki-maori-new-year>

<sup>207</sup> See how Brooklyn School in Wellington celebrates Matariki: <https://www.facebook.com/watch/?v=1569284796429557>

<sup>208</sup> As a result of petitions, including by children and young people, Aotearoa has recently begun teaching our history in all schools: <https://www.1news.co.nz/2019/09/13/former-otorohanga-college-girls-celebrating-role-they-played-in-govts-compulsory-nz-history-decision/>: <https://www.education.govt.nz/our-work/changes-in-education/aotearoa-new-zealands-histories-and-te-takanga-o-te-wa/>

## Privacy

106. New privacy legislation requires care when collecting information from children.<sup>209</sup>

### Photographing of tamariki Māori by Police

107. In 2021, media revealed that Police across the country were taking photographs of tamariki Māori and sending them to their national database, leading to a change in Police practice and an inquiry by the IPCA<sup>210</sup> and Privacy Commissioner into whether the children's privacy has been breached. The inquiry report is due later in August 2022.<sup>211 212 213</sup>

---

## Recommendations

- Work with the Privacy and Children's Commissioners, to actively monitor, protect and promote children's privacy rights, including in the digital world.
  - Act on the findings of the IPCA and Privacy Commissioner's inquiry into the photographing of tamariki Māori by Police.
- 

### Children's privacy and the media

108. In July 2021, RNZ (Aotearoa's public broadcaster) reported on a situation involving a child using personal information obtained via the dark web. Complaints were made to the Broadcasting Standards Authority (BSA) that

---

<sup>209</sup> Under the Privacy Act 2020, collection of information must be lawful, fair and reasonable, requiring care to address any power imbalance and genuine consent, or authorisation of their family, when collecting information from children <https://www.privacy.org.nz/privacy-act-2020/privacy-principles/4/>

<sup>210</sup> Independent Police Conduct Authority.

<sup>211</sup> <https://www.rnz.co.nz/news/in-depth/437944/police-using-app-to-photograph-innocent-youth-it-s-so-wrong>; <https://www.stuff.co.nz/national/300248803/police-photographing-inquiry-extends-to-wider-publics-experiences>

<sup>212</sup> <https://www.rnz.co.nz/news/national/459415/police-to-no-longer-photograph-youth-unless-in-custody-barrister-concerned-arrests-of-maori-could-increase>

<sup>213</sup> Terms of Reference for the inquiry:

<https://www.privacy.org.nz/publications/commissioner-inquiries/joint-inquiry-into-police-photographing-of-members-of-the-public/>

RNZ breached the child's privacy rights.<sup>214</sup> There is no requirement under broadcasting standards that the best interests principle be applied in editorial decision-making or that the rights of children should be considered in determining the public interest in broadcasting, although media outlets can choose to include this in their own internal policies.<sup>215</sup> The BSA has made a provisional finding that the child's privacy had been breached in this case.

109. There are gaps in the regulation of, and education about, the risks to children's privacy from social media and the need to prioritise their best interests online.<sup>216</sup>

### Changes to public media

110. A new entity, Aotearoa New Zealand Public Media (ANZPM), is being established and presents an urgently needed opportunity to create, curate and deliver high quality local content for children in places where they can find it.<sup>217 218</sup>
111. The ANZPM Bill includes the purpose of supporting children's emotional, physical and mental wellbeing, creativity, learning and development, social participation and sense of belonging.<sup>219</sup>
112. Currently, children are an underserved audience in public media. As the changes are made, it will be important that content creation for, and delivery

---

<sup>214</sup> The Alliance was one of the complainants.

<sup>215</sup> Media outlet Stuff's code of practice and ethics requires the best interests principle to be applied: <https://www.stuff.co.nz/about-stuff/300106664/stuff-editorial-code-of-practice-and-ethics>

<sup>216</sup> Sharing photographs online creates connection, but it can also lead to cyber or in-person bullying, psychological impacts such as depression, anxiety and social alienation, and even, potentially, fraud and identity theft: <https://www.newsroom.co.nz/parental-oversharing-risks-nz-kids-privacy>

<sup>217</sup> ANZPM will include both Radio New Zealand and Television New Zealand <https://www.rnz.co.nz/national/programmes/mediawatch/audio/2018843526/more-unanswered-questions-about-public-media-plan>

<sup>218</sup> Communication between the Alliance and KidsOnScreen:New Zealand Children's Screens Trust.

<sup>219</sup> The Aotearoa Public Media Bill 2022, clause 13, provides that, under its charter, ANZPM will, amongst other things: strive to understand, engage, and serve New Zealanders of all ages, genders, abilities, ethnicities, regions, and communities; ensure that Māori perspectives are included in content and services for and about Māori; and ensure the perspectives of under-served and under-represented audiences are reflected in the development and delivery of content and services, including by providing opportunities for participation by those audiences.



to, children, particularly of local content, is prioritised and funded so Aotearoa’s children can see themselves and their stories in their public media.

---

## Recommendations

- Embed a children’s rights approach in ANZPM and require the best interests of children to be a primary consideration in editorial decision-making.
  - Prioritise children’s content, especially the local content, in the structure and operation of ANZPM from the outset.
- 

## Books and stories

113. Aotearoa’s first Reading Ambassador has been appointed to advocate for and champion the importance of reading for children.<sup>220</sup> More books are being published in Te Reo.<sup>221</sup>
  114. However, children’s literacy rates are falling and fewer children are reading books for pleasure, with experts pointing to children not having books, parents being too tired to read with their children, teachers reading less themselves, and increased screen time.<sup>222 223</sup>
- 

## Recommendations

- Ensure all children have access to books and stories.
  - Support adults to read with their children, including through time with their children and improved adult literacy.
- 

---

<sup>220</sup> <https://natlib.govt.nz/about-us/collaborative-projects/new-zealand-reading-ambassador>

<sup>221</sup> <https://www.stuff.co.nz/pou-tiaki/te-reo-maori/122740039/the-best-te-reo-mori-books-for-children>

<sup>222</sup> <https://www.rnz.co.nz/programmes/the-detail/story/2018845659/reading-the-signs-why-literacy-rates-are-falling>

<sup>223</sup> <https://www.stuff.co.nz/national/129045624/how-books-rescued-kate-de-goldi-and-how-reading-can-save-society>



## Freedom from Violence – LOIPR 16

115. Violence is a pervasive issue in Aotearoa. It is essential that the way violence affects children is well-understood, prevented and responded to as an integral part of Government’s cross-agency work to eliminate violence and abuse.

### Te Aorerekura: The National Strategy to Eliminate Family Violence and Sexual Violence

116. ‘Te Aorerekura: The Enduring Spirit of Affection’,<sup>224</sup> aligns with the holistic approach of children’s rights. It is based on interactions between toiora (enduring), which is about protecting and nurturing the potential inside every person, wairua (spirit) which is about the essence and connections between people and the world around them, and aroha (affection), which is about giving and receiving expressions of love – such as affection, compassion, care, healing, kindness, empathy and respect. Mobilising communities is central to Te Aorerekura.<sup>225</sup>
117. In Aotearoa, violence impacts disproportionately on sections of society, including children, women and girls, and on people who experience compounding forms of disadvantage and discrimination, such as disabled children and rainbow children.<sup>226</sup> For example, disabled children have a three times higher risk of being exposed to physical and sexual abuse than other children.<sup>227</sup>
118. Government has recognised the need to build on and share new data, research and evidence to improve practice and strengthen relationships as the Strategy is implemented, and the need for a generation of sustained

---

<sup>224</sup> A new 25-year National Strategy and Action Plan to eliminate Family Violence and Sexual Violence: <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>, launched December 2021; see the Action Plan: <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-Action-plan.pdf>

<sup>225</sup> <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>, pp. 38-43.

<sup>226</sup> These disproportionate impacts are acknowledged in Te Aorerekura. <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>, p. 10.

<sup>227</sup> Government Report, para 134.



investment and focus to strengthen the protective factors and and enable social changes.<sup>228 229</sup>

119. We welcome Government's commitment to implementing Te Aorerekura consistent with international obligations and other national strategies that address human rights issues and inequalities.<sup>230</sup>
120. However, despite Te Aorerekura stating that "Children and young people need to be at the centre of systems and responses to address family violence and sexual violence",<sup>231</sup> the specific focus on children and their rights and needs in the Strategy and Action Plan<sup>232</sup> remains limited (including for specific groups of children, for example, disabled children), especially given children (along with women) most commonly experience family and sexual violence.<sup>233</sup>
121. An aim of Te Aorerekura is that children understand healthy relationships, how to seek help, and can access tailored services.<sup>234</sup> Once implemented, this should go some way to addressing LOIPR question 16(c). Resourcing and implementation will be key.
122. It is critical that children, their experiences and views, are made a focus of Te Aorerekura (both the Strategy and Action Plan) and its implementation, especially for the current generation living through the Strategy's

---

<sup>228</sup> <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>, p. 8.

<sup>229</sup> Te Aorerekura uses the Tokotoru model (meaning the unbreakable three), a whānau centred model with three dimensions to enable and enhance wellbeing: Strengthening - a strength-based approach to enhancing the factors that support wellbeing and prevent harm; Responding - holistic, safe, accessible and integrated responses tailored to individuals, families, whānau and communities; Healing - a focus on supporting recovery, redress and restoration.

<sup>230</sup> Ibid, p. 23.

<sup>231</sup> Ibid, p. 48.

<sup>232</sup> <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-Action-plan.pdf> - The Action Plan includes 40 Actions across the six 'shifts' the Strategy focuses on. Only some of the actions specifically mention children (Action 14: Build the specialist workforces for children; Action 25: Develop social and emotional learning for children; Action 26: Strengthen community-led solutions to prevent child sexual abuse). However, a number of others clearly relate to children (e.g., Action 17: Develop tools to support healthy, consensual relationships for young people; Action 24: Holistic support for safe early years; Action 34: Develop training and resources for parents, caregivers and whānau).

<sup>233</sup> <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>, p. 11.

<sup>234</sup> Ibid, p. 25.

implementation.<sup>235</sup> Practical steps need to be taken and resourced to uphold children’s rights, including their rights to be safe and to have ongoing support to recover if they experience violence, thereby building family and whānau strengths to keep children safe intergenerationally.

123. Building connections between Te Aorerekura and other strategies is also central to improving children’s experiences, their opportunities to participate, receive support, and enhance their outcomes. As well as links to the CYWS, OTAP and developments in child protection, connections must be made with initiatives that strengthen the factors that help prevent violence and abuse against children, such as implementation of the WEAG recommendations.<sup>236</sup>

---

## Recommendations

- Develop a stronger focus on children within Te Aorerekura.
- Prioritise children within Te Aorerekura’s implementation, with a focus on Actions to strengthen families and whānau to enable children to be safe and free from violence.
- Implement a child rights approach across government to explicitly connect Te Aorerekura with other strategies, including the CYWS and developments in care and protection, as well as efforts to improve children’s standard of living.
- Together with communities, children and whānau implement the action “children and young people understand healthy relationships, how to seek help, and can access tailored services”, ensuring this:
  - Is informed by a child rights approach and grounded in children’s rights to be safe and have ongoing support to recover from

---

<sup>235</sup> Footnote 229. This includes ensuring that all three arms of the Tokotoru model (strengthening, responding and healing), as well as the learning and monitoring process, have a focus on children, their experiences and views.

<sup>236</sup> I Hyslop, E Keddell *Opinion Report – Changes needed to the current system of child protection and care in Aotearoa* (June 2022). <https://www.abuseincare.org.nz/our-progress/library/v/433/witness-statement-of-associate-professor-emily-keddell-and-dr-ian-hyslop-for-the-foster-care-public-hearing>

violence, Te Tiriti o Waitangi and other relevant international human rights law obligations.

- Includes a specific focus on specific groups of children who disproportionately experience violence, such as children with disabilities and rainbow children.
- Aligns with and mutually supports the strategic focus on children across other government strategies and key initiatives such as the CYWS, OTAP and OT reforms.

---

## Data – LOIPR 16(e) and (f)

124. Despite the Committee’s previous recommendations, there is no single data source providing a comprehensive and exact understanding of harm to children. We note that official records are likely to understate the problem, due to the levels of unreported harm.<sup>237 238 239</sup> In addition to the data provided in Table 13 of the Government’s statistical information, the Oranga Tamariki Evidence Centre has identified the following harm to children in Aotearoa:

- In the 12 months to June 2020, 12,861 children (about 1.1% of the child population) were found to have been abused or neglected after investigation by OT.
- In 2018, 79,200 children (around 7.0% of the child population) had a family violence notification.
- In the 12 months to June 2020, around 0.7% of those aged under 20 reported that they were a victim of acts intended to cause injury or harm.
- In 2018, there were 12,095 public hospital discharge events for people under 20, of which 282 were from assault.

---

<sup>237</sup> CRC/C/NZL/CO/5, para 22(d).

<sup>238</sup> <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Data-analytics-and-insights/At-A-Glance-Harm-to-Children-in-New-Zealand.pdf>

<sup>239</sup> Te Aorerekura also states (at p. 68): “We know there are gaps in our data collection on family violence and sexual violence. For example, we know there is no reliable data on the violence used against disabled people, children, young people, older people, ethnic and LGBTIQ+ communities amongst others. Protocols need to be developed to ensure this data is collected by multiple organisations including specialist violence services, Ngā Pirihimana o Aotearoa | New Zealand Police, health boards, and disability services.”  
<https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>

- The rate of children discharged from hospital due to assault has declined from 43 per 100,000 in 2009, to 22 per 100,000 in 2018.<sup>240</sup>

---

## Recommendations

- Strengthen official data on all forms of violence affecting children and the collection of data about violence experienced by specific groups of children, including tamariki Māori, children with disabilities, rainbow children, and culturally diverse children.
  - Monitor and track Te Aorerekura's impact on children's right to be safe and live free from all forms of violence, including by hearing from children themselves, and regularly publish the findings of this monitoring.
- 

## Violence and Abuse of Children in State Care (16(a))

125. Unacceptably, children continue to experience violence and abuse in State care. In July 2018, Government began reporting on neglect and emotional, sexual and physical harm to children in care across different types of care placements.<sup>241</sup>
126. Latest available data shows that, from July 2020 to June 2021, of the 5239 children in care, there were 742 incidences of harm experienced by 486 children. This amounts to 8% of children in State care experiencing harm in care, an increase from 5.6% in 2018.<sup>242 243</sup>
127. The proportion of tamariki Māori<sup>244</sup> in care with findings of harm in this period (76%) was more than the overall numbers of tamariki Māori in care in the period (68%), a 6% increase on the previous year.<sup>245</sup>

---

<sup>240</sup> Ibid.

<sup>241</sup> Safety of Children in Care reports. <https://www.orangatamariki.govt.nz/about-us/performance-and-monitoring/safety-of-children-in-care/>

<sup>242</sup> <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/safety-of-children-in-care/2020-21/SOCiC-AR-2021-FA.pdf>, p. 8.

<sup>243</sup> The Report (p. 13ff) states that 52 children had 58 findings of neglect; 183 children had 252 findings of emotional harm; 289 children had 344 findings of physical harm; and 77 children had 88 findings of sexual harm.

<sup>244</sup> This includes Māori Pacific children: children who have both Māori and Pacific ancestry.

<sup>245</sup> Ibid, p. 9.

128. We note the establishment of a regulatory framework for monitoring standards of care and identifying where practice improvements are needed.<sup>246</sup>
129. In June 2021, a media outlet released video footage showing physical restraint of children in a State-run residential care facility.<sup>247</sup> The Minister for Children ordered an investigation into the restraint of children and the facility in question was closed.<sup>248</sup> <sup>249</sup> The closure of the facility while an investigation took place sent a clear message that physical harm to children would be taken seriously and addressed. However, we also understand that the facility's closure caused distress to the children who lived there and who had to be relocated. This incident, and the fact that it was driven by footage in the media and may not otherwise have come to light, underscores the need for oversight of the OT system to be an integral part of ongoing service improvement and to safeguard children's rights, with their best interests being paramount at all levels.<sup>250</sup> <sup>251</sup>
130. Anecdotal reports suggest that prior to this incident, OT had moved to employ youth workers instead of trained social workers in residential facilities, as a cost saving measure. Both the youth worker and social worker roles are important in the care of children in residences: both must be properly defined, resourced and supported, including through ongoing provision of appropriate training and supervision.
131. We are deeply concerned that proposed changes to oversight arrangements for the OT system remove protections for children and young people in care.<sup>252</sup>

---

<sup>246</sup> Government Report, paras 113-117.

<sup>247</sup> <https://www.newsroom.co.nz/alarm-at-physical-restraints-of-kids-in-care>

<sup>248</sup> <https://www.stuff.co.nz/national/politics/125593928/childrens-minister-orders-investigation-into-restraint-of-children-at-care-facilities-after-whistleblower-video>

<sup>249</sup> <https://www.orangatamariki.govt.nz/about-us/news/media-release-closure-of-te-oranga/>

<sup>250</sup> See Appendix Two on the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021, which describes proposed changes to oversight of the OT system, including State care.

<sup>251</sup> The facility has now been reopened: [Te Oranga to stay open after investigation into whistleblower video - no evidence tamariki unsafe](#)

<sup>252</sup> Currently, under the proposed changes: children and young people are no longer able to get in touch with the Children's Commissioner if they are experiencing abuse in care or being treated poorly. Instead, they are required to make a complaint to OT. If dissatisfied with the outcome, they may seek a review by contacting the Chief Executive's Advisory Panel or the Office of the Ombudsman. Furthermore, the agency that has been set up to monitor the care system is a departmental agency, so is not independent from Government. It has limited powers of entry and must give notice of entry. The Monitor's statutory mandate does not cover any safeguarding obligations in relation to individual children if, for example, during monitoring it uncovers a situation where a child is at risk of violence or abuse. Under the Bill, the Children and Young People's Commission no longer has any specific monitoring

132. Care experienced children and young people are concerned about the implications of the Oversight Bill for children in State care.<sup>253</sup> They advocate for a system that respects children, listens to their voices and provides child and youth-centred oversight and care. They are concerned the Bill will undermine the safety of children in the care system and leave them with no one to turn to if they have a problem in care or know of someone else who does.

### **Abuse in Care: Royal Commission**

133. A Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (RCOI) between 1950-1999 was established in 2018.<sup>254</sup> The RCOI can make recommendations to ensure the failures of the past do not continue in the future.

134. The RCOI is hearing from survivors and gathering evidence and research, and can take current (post-1999) settings, policies, legislation and experiences into account in developing recommendations for the future. Its final report and recommendations are due in mid-2023.<sup>255</sup>

135. The RCOI's interim report (2021) focused on redress for survivors,<sup>256</sup> and emphasised that, to date, the monitoring system for children in care has not been effective due to monitoring functions being spread across several government agencies/portfolios. It recommended that any new monitoring body:

- Nurtures the trust of children, young people and adults at risk.
- Is consistent with the Crown's Te Tiriti o Waitangi obligations.
- Is organised to reflect the Māori-Crown relationship.
- Is independent of other oversight mechanisms and the organisation(s) being monitored.
- Complies with all relevant human rights obligations.

---

responsibilities or powers in relation to children in the care system. See Appendix Two for more information.

<sup>253</sup> In this television interview two care experience young people from VOYCE-Whakarongo Mai explain their concerns. <https://www.facebook.com/watch/?v=5529901897042984> . See also the Children in State Care Thematic Report.

<sup>254</sup> The RCOI's terms of reference are available here: <https://www.abuseincare.org.nz/our-progress/library/v/3/terms-of-reference>

<sup>255</sup> <https://www.abuseincare.org.nz/our-inquiries/>

<sup>256</sup> He Purapura Ora, He Māra Tipu From Redress to Puretumu Torowhānui Vol. 1 [https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol\\_1\\_Web.pdf](https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol_1_Web.pdf) and Vol. 2 <https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Volume-Two-Web.pdf>, December 2021.



- Operates regularly, or is conducted regularly, using staff with appropriate skills and expertise.<sup>257</sup>
136. We are gravely concerned that changes to the oversight system for OT are proceeding without waiting to take the RCOI findings and recommendations into account.<sup>258</sup>

---

## Recommendations

- Ensure OT upholds the right of all children in State care to be safe and free from violence, abuse and neglect.
- Take urgent measures to address the unacceptable levels of harm experienced by tamariki Māori and Māori Pacific in care.
- Strengthen training and professional support for all those working with children in state care system, particularly social workers and youth workers.
- Uphold children’s participation rights (including by listening to children) at all levels of the state care system, including in the development and operation of laws, regulations, policies and practice.
- Review new OT oversight arrangements as soon as possible (within 6 months of the RCOI final report) and design, in consultation with care experienced children, an effective OT oversight system for children and their families and whānau.

---

## Family and Alternative Care – LOIPR 18-20

*To feel safe and secure we need to know there is someone committed to our long-term wellbeing, and to feel valued we need to know that we are worth somebody making this commitment to us.*<sup>259</sup>

---

<sup>257</sup> <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/from-redress-to-puretumu-5/1-1-introduction-24/>

<sup>258</sup> See Appendix Two.

<sup>259</sup> Fatima, Isaac & Reihana, State care experienced young people and members of independent advocacy organisation, VOYCE – Whakarongo Mai, New Zealand.



137. Changing family patterns, values and structures require flexible, well planned policy responses to enable all children to grow up in a family environment and atmosphere of happiness, love and understanding.<sup>260 261</sup>
138. Since 2016 there has been a strong focus on improving the State care system. An equal focus is now needed on preventing children from going into State care by supporting family environments that allow children to grow, safely and well, within their families, whānau, hapū and iwi, and communities. If a child has to be removed from the care of their family or whānau, the reasons and process for removal, as well as the child's experience of alternative care, must be consistent with their CRC rights.

## Family Environment – LOIPR 18

139. Iwi and community-based initiatives to support and strengthen families and whānau are central to realising children's rights to family.
140. *The Prevention Project: Supporting whānau and reducing baby removals*,<sup>262</sup> recommended the following policy and practice changes to support whānau and reduce the removal of babies into State care:
- Community building.
  - Greater consensus and coordination between NGO, Iwi/ Māori, health and government services and shared agenda-setting, power and service coordination between OT, NGOs and iwi and Māori organisations.
  - Recognition of the impact of systemic discrimination, particularly racism and ableism.

---

<sup>260</sup> Many children grow up in reconstituted families and research suggests that there is churn in family relationships as parental partnerships change. Non-biological parenting has become more common with the growth in reconstituted families, same-sex relationships, surrogate parenting and transgender parenting. There are increasing numbers of "beanpole" families (families that contain several generations in low numbers, often all living in the same household) and dispersed families (families who do not live together in one location for various reasons). The OECD predicts there will be an increase in single-parent households of 29% between 2006 and 2031:

<https://www.nzherald.co.nz/lifestyle/paul-spoonley-book-how-new-zealand-families-have-changed/IEGBVEQE4TOB2EBUHQ4KX5ZFTU/#>

<sup>261</sup> About 30% of all family households in Aotearoa are sole-parent families, and numbers are predicted to rise. In 2013, the median household income for a couple with children was \$92,000, but for sole parents it was \$33,000. Children with disabilities are more likely to live in sole-parent households.

<sup>262</sup> E Keddell, L Fitzmaurice & K Cleaver (2021). *The prevention project: Supporting whānau and reducing baby removals*. University of Otago: <https://ourarchive.otago.ac.nz>



- Greater provision of intensive services that are accessible, long-term and holistic, recognising the interconnections between poverty and the range of issues that affect parenting capacity.
- Improving pathways to service entry, such as more structured referral pathways from universal services to more specialist intensive services, to ensure equity and ease of access.
- Capacity and capability development within services.
- When needed, more community based residential support for both parents and babies, in a wide range of locations, with some dedicated to drug rehabilitation.

141. Government has said it will work collectively with Māori and community organisations and there are positive developments in this area.<sup>263 264 265</sup> However, despite stated intentions to work with communities and non-government partners to prevent child harm and strengthen whānau and community outcomes,<sup>266</sup> OT is currently proposing to reduce or cut a range of

---

<sup>263</sup> <https://www.stuff.co.nz/national/politics/300418466/oranga-tamariki-government-again-directs-overhaul-after-report-criticises-weak-disconnected-and-unfit-agency>.

<sup>264</sup> Iwi are working with the Government to keep their pēpē, tamariki and rangatahi out of State care. For example, Ngati Porou's objective is that "all tamariki mokopuna are nurtured in caring and loving environments provided by their immediate and extended whānau." These aspirations are fairly universal across all Iwi including, for example, Tuhoē, Tainui, Ngāphui, Ngāti Kahungunu and Ngāi Tahu: <https://www.stuff.co.nz/pou-tiaki/126753087/govt-funds-trailblazer-ngi-tahu-programme-to-keep-mori-kids-out-of-state-care>; <https://www.gisborneherald.co.nz/frontpage-featured/20200201/iwi-vision-for-children/>

<sup>265</sup> See, for example, [https://www.sspa.org.nz/images/Mana\\_Whaanau\\_Handout\\_October\\_2019.pdf](https://www.sspa.org.nz/images/Mana_Whaanau_Handout_October_2019.pdf)

Mana Whānau is an intensive in-home parenting support programme predicated on strong, collaborative relationships between community organisations and the local OT site. It is based on the understanding that: being separated from whānau has a detrimental effect on both tamariki and their whānau; it is in the best interests of the tamariki to remain safely in the care of their whānau, wherever this is possible; change is possible since, with the right support and resources, most whānau have the ability to care for their tamariki safely; toxic stressors must be reduced or removed for parents to be able to build their capabilities; and change is more likely and sustainable when whānau determine and drive the changes they want to make.

<sup>265</sup> As stated in the Minister for Children's Ministerial Advisory Board's report *Hipokingia ki te kahu Aroha, Hipokingina ki te Katoa* (<https://www.beehive.govt.nz/sites/default/files/2021-09/SWRB082-OT-Report-FA-ENG-WEB.PDF>), and the Oranga Tamariki Future Direction Action Plan: (<https://www.orangatamariki.govt.nz/assets/Uploads/About-us/News/2021/MAB-report-action-plan-release/OT-Future-Direction-Action-Plan.pdf>).

<sup>266</sup> As stated in the Minister for Children's Ministerial Advisory Board's report *Hipokingia ki te kahu Aroha, Hipokingina ki te Katoa* (<https://www.beehive.govt.nz/sites/default/files/2021-09/SWRB082-OT-Report-FA-ENG-WEB.PDF>), and the Oranga Tamariki Future Direction Action Plan: (<https://www.orangatamariki.govt.nz/assets/Uploads/About-us/News/2021/MAB-report-action-plan-release/OT-Future-Direction-Action-Plan.pdf>).



services currently provided by NGOs for children and whānau, including preventative services.<sup>267</sup>

---

## Recommendations

- Uphold children’s rights in the ongoing changes in OT, including any changes to models and contracts for service provision, to ensure their best interest are paramount.
- Using a child-rights, strength-based, and holistic approach to supporting whānau and families, actively:
  - build relationships and coordination between NGOs, Iwi/ Māori, health and government services;
  - share agenda-setting, power and service coordination between OT, community organisations and iwi/Māori;
  - take steps to ensure equitable, adequate standards of living for all families and whānau, to support parenting capacity.
- Support and resource a range of services in local communities for children and whānau that focus on preventative, early support, in ways that work for children and whānau themselves and contribute to children being safe and cared for within their family and whānau.
- Monitor and evaluate the holistic effectiveness for children of family and whānau support services, informed by their views.

---

## Children Deprived of a Family Environment – LOIPR 19

*For the first eight years of my life, I spent moving between families. All the disruption had taught me was to be afraid.*<sup>268</sup>

---

<sup>267</sup> See, for example, <https://www.rnz.co.nz/national/programmes/ninetoon/audio/2018847604/oranga-tamariki-funding-for-charities-in-doubt>

<sup>268</sup> Care experienced young person, see Children in State care Thematic Report.

142. As at 31 March 2022 there were 4,940 children in OT custody:
- Of the 4,800 children in care and protection custody, 68% were tamariki Māori.<sup>269</sup>
  - Of the 140 children in youth justice custody, 86% were tamariki Māori.<sup>270</sup>
143. There has been investment in improving the quality of care for children in out-of-family care over recent years, including the establishment of National Care Standards, but continual improvement is needed.<sup>271 272</sup>
144. The ICM has raised concerns about:
- Self-monitoring/data collection to ensure the rights of children are met.
  - Children’s knowledge of their rights and ability to complain.
  - Children not getting what is set out in their care plan.
  - Wellbeing assessments not being completed.<sup>273 274</sup>
145. Most children in care rate their experiences positively, especially around feeling loved, cared for, settled, accepted, and belonging, but are less positive about participation in decisions, relationships with their social worker, contact with whānau, knowledge of whakapapa and culture, and feeling optimistic about the future.<sup>275 276</sup>
146. While training on children’s rights is available to OT social workers, levels of uptake are unclear, and there are gaps in training for others working in the OT system, including lawyers on children’s rights.<sup>277</sup>

---

<sup>269</sup> This includes Māori Pacific children: children who have both Māori and Pacific ancestry. <https://www.orangatamariki.govt.nz/about-us/performance-and-monitoring/quarterly-report/care-and-protection-statistics/>

<sup>270</sup> This includes Māori Pacific children: children who have both Māori and Pacific ancestry. <https://www.orangatamariki.govt.nz/about-us/performance-and-monitoring/quarterly-report/youth-justice-statistics/>

<sup>271</sup> As recommended by the Committee previously at CRC/C/NZL/CO/5, para 28.

<sup>272</sup> See Appendix Two for more information about children deprived of a family environment.

<sup>273</sup> "Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations" (ICM, 2022).

<sup>274</sup> Covers the period between 1 July 2020 and 30 June 2021.

<sup>275</sup> Te Matatangi 2021, Aotearoa’s first national survey of children in care:

<https://www.orangatamariki.govt.nz/about-us/news/te/>

<sup>276</sup> For more information on what children say about their experiences of care, see <https://www.youth19.ac.nz/publications/the-voices-of-young-people-involved-with-orangatamariki>

<sup>277</sup> His Honour Judge Tony Fitzgerald discusses on the use of children’s rights by lawyers and others in the OT system in this webinar. <https://www.youtube.com/watch?v=Mp7V5FCeTQ>

147. The RCOI recommendations will be critical to continual improvement in the care system.<sup>278</sup>

---

## Recommendations

- Invest in children’s rights training and wananga for all those working in care system to develop common understanding and application of a child-centred approach, including children’s participation and best interests.
  - Review new OT oversight arrangements as soon as possible (within 6 months of the RCOI final report) and design, in consultation with care experienced children, an effective OT oversight system for children.
- 

## Adoption – LOIPR 20

148. Government’s commitment to ensuring adoption law aligns with Aotearoa’s values and protects children’s rights, including those set out in the CRC, is welcome.<sup>279</sup>

149. Currently, while most adoptions are open, adoption law creates a legal fiction that severs ties with a child’s birth family or whānau. Alongside law reform, there is a need to recognise and address the harm that has been done by the current adoption system,<sup>280</sup> as well its legacy.<sup>281</sup> It has not upheld children’s identity rights, including the whakapapa and whānaungatanga rights of tamariki Māori. This includes their collective rights under Te Tiriti and UNDRIP, as well as their rights under the CRC, to develop their identity and understand how they belong within their whānau, hapū and iwi. There are intergenerational implications for the identity rights of children descended from those adopted since 1955, under the current legislation.

---

<sup>278</sup> See paras 134-137 above.

<sup>279</sup> Government Report, para 176.

<sup>280</sup> Based on governing legislation from the 1950s: Adoption Act 1955.

<sup>281</sup> See, for example, <https://www.rnz.co.nz/programmes/the-detail/story/2018849156/growing-pains-our-outdated-adoption-laws>



150. The current adoption law review is promising,<sup>282</sup> with the discussion document<sup>283</sup> stating that Government proposes to place children’s rights at the centre of the new law<sup>284</sup> and ensure it better supports and considers the needs – including cultural needs<sup>285</sup> – of everyone involved. However, adoption law reform has been considered before and has been on the agenda for a long time.<sup>286</sup> Changes must be made this time.

---

## Recommendations

- Reform Aotearoa’s outdated adoption law and enact new adoption legislation that:
    - upholds and protects children’s rights under the CRC, Te Tiriti o Waitangi and other relevant human rights law obligations;
    - takes an intergenerational view of adoption and upholds the child’s rights to identity, to grow up in a family environment, and cultural rights – with special protections for the rights of tamariki Māori and their whakapapa;
    - is informed by the lived experience and views of adopted persons; and
    - enables and supports best practice in adoption.
- 

<sup>282</sup> <https://www.beehive.govt.nz/release/adoption-laws-under-review#:~:text=New%20Zealand's%2066%2Dyear%2Dold,largely%20the%20same%20since%201955>. Public consultation is currently underway:

<https://consultations.justice.govt.nz/policy/adoption-law-reform/>

<sup>283</sup> <https://www.justice.govt.nz/assets/Documents/Publications/Adoption-in-Aotearoa-NZ-Discussion-doc.pdf>

<sup>284</sup> <https://www.justice.govt.nz/assets/Documents/Publications/Adoption-in-Aotearoa-NZ-Discussion-doc.pdf>, at p. 5.

<sup>285</sup> <https://www.beehive.govt.nz/release/adoption-laws-under-review#:~:text=New%20Zealand's%2066%2Dyear%2Dold,largely%20the%20same%20since%201955>, at pp. 4-5.

<sup>286</sup> For a chronology of the inaction of successive governments in adoption law reform over the past 42 years see: *Adoption Action*: <http://adoptionaction.co.nz/wp-content/uploads/2021/05/Chronology.pdf>

## Surrogacy law reform

151. Aotearoa’s surrogacy law is out-of-date and there is a pressing need for reform.<sup>287</sup> The Law Commission has made 63 recommendations to establish a new legal framework to improve surrogacy law and practice.<sup>288</sup> A Principle guiding these recommendations is that:

The best interests of the surrogate-born child should be paramount. Children have rights under the United Nations Convention on the Rights of the Child (UNCROC) that must be protected in the surrogacy context. Under UNCROC, the best interests of the child must be a primary consideration in all actions concerning children. Given surrogacy is concerned with the creation of a child, we consider that their best interests should be paramount. This is consistent with international best practice and requires protecting and promoting children’s rights to identity, nationality, family life, health, freedom from discrimination and protection from abuse, exploitation and sale.<sup>289</sup>

152. Guiding Principle 1 of the Law Commission’s review is that surrogacy law should reflect the Crown’s obligations under Te Tiriti o Waitangi to exercise kāwanatanga in a responsible manner, including facilitating the exercise of tino rangatiratanga by Māori in the context of surrogacy.<sup>290</sup> The Law Commission notes that this requires Aotearoa to weave new law that reflects tikanga Māori and other values shared by New Zealanders, such as the importance of children’s best interests and the significance of whakapapa for tamariki Māori.<sup>291</sup>

---

<sup>287</sup> <https://www.lawcom.govt.nz/our-projects/review-of-surrogacy>

<sup>288</sup> Te Aka Matua o te Ture | Law Commission (2022) *Te Kōpū Whāngai: He Arotake – Review of Surrogacy*, Pūrongo Report 146: <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-Report146-Review-of-Surrogacy.pdf>

<sup>289</sup> Guiding Principle 2. <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/Surrogacy%20-%20Final%20Report%20146%20-%20-%20-%20Executive%20Summary.pdf>, at p. 7; see also the discussion at pp. 75-84.

<sup>290</sup> <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/Surrogacy%20-%20Final%20Report%20146%20-%20-%20-%20Executive%20Summary.pdf>, at p. 7; see also pp. 69-75.

<sup>291</sup> <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/Surrogacy%20-%20Final%20Report%20146%20-%20-%20-%20Executive%20Summary.pdf>, at p. 90;



153. A Private Member's Bill on surrogacy is currently before Parliament at Select Committee stage.<sup>292</sup> It was drafted before the Law Commission's recommendations were published.

---

### Recommendation

- Implement the Law Commission's recommendations to provide new surrogacy legislation, ensuring, in particular, that new surrogacy law:
    - Enshrines the best interests of surrogate-born children as paramount, to protect their full range of CRC rights.
    - Is grounded in Te Tiriti o Waitangi and tikanga Māori, upholding the rights of tamariki Māori and their whānau, including whakapapa.
- 

## Disabled Children – LOIPR 21

*When children's rights are considered, children with disabilities tend to be forgotten. When the rights of people with disabilities are considered, children with disabilities tend to be forgotten.*<sup>293</sup>

154. Despite some progress, this statement holds true for disabled children in Aotearoa - continued, sustained effort is required to ensure disabled children enjoy their rights and freedoms on an equal basis with other children.<sup>294</sup>
155. In 2018-2019, OCC spoke with disabled children about what makes a good life for them, and what gets in the way. The children talked about:
- Acceptance: discrimination is widely experienced by disabled children.
  - Accessibility: a lack of accessibility gets in the way of a good life.
  - Safety: unique for us all.

---

<sup>292</sup> Improving Arrangements for Surrogacy Bill 2021, [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_115955/improving-arrangements-for-surrogacy-bill](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_115955/improving-arrangements-for-surrogacy-bill)

<sup>293</sup> Gerison Lansdown (2014) "Children with disabilities" Chapter 6 in Maya Sabatello & Marianne Schulze (Eds) *Human Rights and Disability Advocacy*, University of Pennsylvania Press. <http://www.jstor.org/stable/j.ctt5hjm1h>

<sup>294</sup> UNCRPD, Article 7.



- Education: to work better for us, be flexible and supportive.
  - Employment: job opportunities and being supported is important to us.
  - Whānau: we want support from, and for, friends, families, whānau and communities.<sup>295</sup>
156. Disabled students report positive family and school environments, but also major inequities compared to non-disabled students, and concerns about safety, supports, housing, income and participation.<sup>296</sup>
157. Data on disabled children (e.g., rates of disability-related exclusions from school, or the number of disabled children in emergency housing) is limited. Disabled children are more likely to experience violence and be unsafe,<sup>297</sup> live in material hardship,<sup>298</sup> not be included in education,<sup>299</sup> and be raised by a sole parent.<sup>300</sup> Climate change is likely to exacerbate these inequities.<sup>301</sup>
158. Action is needed to uphold all rights of all disabled children, including:
- Support for disabled children’s participation, to ensure they can communicate their views and preferences and have these taken into account.<sup>302</sup>
  - Provision of timely, flexible, quality disability supports.
  - Ensuring an adequate standard of living to reduce family stress and to enable families to care for their disabled child.<sup>303</sup>

---

<sup>295</sup> *What makes a good life for disabled children and young people?* (2021) Summary Report in the *What Makes a Good life?: Children and young people’s views on wellbeing* series, Office of the Children’s Commissioner, Wellington:

<https://www.occ.org.nz/publications/reports/disabled-children-young-people-summary-report/>

<sup>296</sup>

<https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/6184806e7f75f066263cacef/1636073585149/Youth19+Disability+Brief.pdf>

<sup>297</sup> Children with disabilities have a three times higher risk of being exposed to physical and sexual abuse than other children – para 134, Government Report.

<sup>298</sup> See para 193 below.

<sup>299</sup> See para 221 below for comments on inclusive education.

<sup>300</sup> Sam Murray (2019) *Breaking the link between disability and child and whanau poverty*, 14(4), *Policy Quarterly November 2019*, Victoria University of Wellington, New Zealand.

<sup>301</sup> See Thematic Report on Children’s Rights in the Climate and Environmental Crises.

<sup>302</sup> Phoebe Eden-Mann *Shared decision making with disabled children and young people*. CCS Disability Action: <https://www.ccsdisabilityaction.org.nz/assets/resource-files/Shared-Decision-Making-FINAL.pdf>

<sup>303</sup> See Child Poverty Thematic Report, submitted by Child Poverty Action Group.



## Ministry for Disabled People and Disability System transformation

159. A Ministry for Disabled People is being established and the disability system is being transformed to implement Enabling Good Lives.<sup>304</sup> The Ministry's role includes strengthening disability rights approaches across government strategies, including the CYWS.
160. This structural and system reform has potential to improve realisation of disabled children's rights by promoting inclusion and providing supports.<sup>305</sup> Disabled children, their views, experiences and outcomes, must be a specific focus and priority across government, including within the new Ministry.
161. The relationships between the new Ministry, the Ministry for Education and OT will be especially critical to inclusion for all disabled children and their access to flexible and timely, quality supports when they need them.

## Fetal Alcohol Spectrum Disorder (FASD)

162. There are an estimated 30,000 children with FASD in Aotearoa, many undiagnosed, and a lack of understanding and awareness of this disability.<sup>306</sup> Children with FASD are overrepresented in the justice system.<sup>307</sup> Government has a FASD action plan but better access to Disability Support Services is needed for children impacted by FASD.<sup>308 309</sup>

---

<sup>304</sup> [Enabling Good Lives](https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/disability-system-transformation/ministry-for-disabled-people-establishment-unit/creating-a-new-ministry.html) is a new approach to supporting disabled people that offers more choice and control over the supports they receive, so they can plan for the lives they want: <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/disability-system-transformation/ministry-for-disabled-people-establishment-unit/creating-a-new-ministry.html>

<sup>305</sup> For example, the McKenzie Centre provides early childhood intervention services and demonstrates how joy, hope and fun can be brought to the lives of disabled children and their whānau through supportive relationships, inclusion and participation:

<https://www.mckenziecentre.org.nz/life-with-us/>

<sup>306</sup> <https://ourarchive.otago.ac.nz/bitstream/handle/10523/9948/SherwoodKesiaN2020PhD.pdf?sequence=1&isAllowed=y>

<sup>307</sup> [https://www.fasd-can.org.nz/fasd\\_and\\_justice\\_in\\_the\\_news](https://www.fasd-can.org.nz/fasd_and_justice_in_the_news)

<sup>308</sup> <https://www.health.govt.nz/our-work/diseases-and-conditions/fetal-alcohol-spectrum-disorder/summary-progress-fetal-alcohol-spectrum-disorder-fasd-action-plan>

<sup>309</sup> See [https://www.fasd-can.org.nz/about\\_us](https://www.fasd-can.org.nz/about_us)



## Intellectual Disability Compulsory Care and Rehabilitation (IDCCR) Act 2003

163. A small number of children are held under the IDCCR Act, which provides statutory powers for care orders, seclusion, restraint and medication.<sup>310</sup> Care may be in the community, or for a few (up to eight) children, in a forensic intellectual disability inpatient unit, where the average length of stay is around 18 months. By comparison, children admitted to the Ngā Taiohi Unit either via court orders or the Mental Health (Compulsory Assessment and Treatment) Act 1992 MH(CAT), have an average stay of 3-4 months.<sup>311 312</sup> The Children's Commissioner has recently raised serious concerns about inpatient mental health care for children.<sup>313</sup>
164. Work to review the framework that protects the bodily integrity of disabled children, including the issue of consent, appears to have stalled.<sup>314</sup>

---

### Recommendations

- To uphold all rights of all disabled children, ensuring they are included and have the supports they need for a good life:
- Make disabled children a core focus of the work of the Ministry for Disabled Peoples.
- Actively support disabled children's participation in their own lives and the things that matter to them.
- Ensure all disabled children have an adequate standard of living.

---

<sup>310</sup> <https://www.health.govt.nz/our-work/disability-services/about-disability-support-services/intellectual-disability-compulsory-care-and-rehabilitation-act-2003>

<sup>311</sup> <https://www.mh aids.health.nz/our-services/regional-forensic-and-rehabilitation-services/national-secure-youth-forensic-inpatient-service/>

<sup>312</sup> Personal communication between the Alliance and people working in intellectual disability and youth mental health services.

<sup>313</sup> See <https://www.newstalkzb.co.nz/on-air/wellington/wellington-mornings-with-nick-mills/audio/porirua-youth-mental-health-care-causes-concern/>

<sup>314</sup> The December 2020 Disability Action Plan Biannual report (latest available) notes this work as off-track, but with low risks or issues to delivery: <https://www.odi.govt.nz/disability-action-plan-2/dap-biannual-reports/report-2-july-december-2020/>



- Take a rights based approach to implementation of the FASD action plan.
- Ensure all disabled children are included in the wider care and oversight system for children and their rights upheld on an equal basis with their peers, including by removing children from the IDCCR and MH(CAT) Acts, and actively monitoring, protecting and upholding all rights of children currently under those Acts.

---

## Health and Welfare – LOIPR 22 - 24

165. There are significant inequities in children’s rights to health.<sup>315</sup> The rights of all children to the highest attainable standard of health, including mental health and wellbeing, are either already compromised or in jeopardy due to ongoing failures to address the determinants of health, including an adequate standard of living, warm safe housing, and nutritious food, as well as variable access to quality healthcare when needed.
166. Reforms in the health system, especially the establishment of the Māori Health Authority, are paving the way for a Te Tiriti based health system that supports everyone, including children, to be well.
167. It is essential that the rights of all children- as a population, groups of children, and individuals - are woven into reform of the health system from the start.

## Health, Mental Health and Health Services – LOIPR 22

### Reform of the health system

168. Aotearoa’s public health system is being reformed to create a more equitable, accessible, cohesive and people-centred system to achieve better health outcomes for Māori and other groups, especially those who have not always been served well in the past.
169. The reforms offer potential to address some long-standing inequities and shortfalls in access to healthcare, including:

---

<sup>315</sup> Cure Kids *State of Child Health in Aotearoa New Zealand* (2021).  
<https://curekids.org.nz/state-of-child-health/>

- Infant, young child and maternal health care.<sup>316</sup>
- Children’s primary health care, specifically access to GPs.<sup>317</sup>
- Child and adolescent mental health services.<sup>318</sup>

170. It is critical that pēpē, tamariki and rangatahi are made visible and their specific health care needs are prioritised within the structural reform of the health sector.<sup>319 320</sup>

---

### Recommendation

- Prioritise children within the new health system and resource (funding and workforce) accordingly.
- 

### Limited data on child health

171. There are gaps in the availability of data needed to measure and monitor the state of child health and groups of children at risk of experiencing health inequities. These include children with disabilities, children whose families are refugees or asylum seekers, children who are culturally or linguistically diverse, who are gender or sexually diverse, who live in out-of-home or state care, who live in rural or isolated areas, and children who are involved with the youth justice system.<sup>321</sup>

---

### Recommendation

- Improve national child health data to:

---

<sup>316</sup> Basic Health and Welfare Rights of Children 0-5 years of age Thematic Report, submitted by Whanau Awhina Plunket and Save the Children New Zealand

<sup>317</sup> Ibid.

<sup>318</sup> See, for example, this young woman’s experience of waiting for treatment for an eating disorder as an adolescent. <https://www.rnz.co.nz/news/on-the-inside/438919/battling-anorexia-there-must-be-so-many-suffering-in-silence>

<sup>319</sup> Consistent with the best interests principle and Government’s obligations under the CRC, Article 4.

<sup>320</sup> We welcome Health NZ’s new dedicated adolescent health unit. <https://www.rnz.co.nz/news/national/466852/teens-to-get-dedicated-unit-under-new-health-nz-authority>

<sup>321</sup> Footnote 315, p. 6.



- detect and address preventable risk factors;
  - identify and better manage mild disease;
  - enable better evaluation and monitoring of healthcare interventions.
- 

## Mental health and wellbeing

172. Youth19 survey data shows that most secondary school students are happy or satisfied with their lives, have good wellbeing and are not depressed. However:

- A large number reported high levels of distress, with symptoms of depression generally particularly high among female students.
- Youth emotional and mental health appears to have worsened compared to previous Youth2000 surveys in 2001, 2007 and 2012, with most of this change occurring since 2012.
- There is persistent and growing mental health inequity between Māori and other ethnic groups.
- Socioeconomic deprivation is important, with symptoms of depression and rates of suicide attempts generally higher among those living in lower income communities.
- Rainbow youth are more like to be negatively affected by poor mental health and wellbeing outcomes, higher rates of depression, self-harm attempts, exclusion and suicide.<sup>322</sup>

173. Those working in the child and youth mental health report a number of concerning issues:

- Increased suicidality presentation, by younger age groups and with increasingly sophisticated planning.<sup>323</sup>
- Increased complexity of risk and support needs together with reduced service capacity. There is an urgent need for increased capacity, especially of crisis/specialist services.
- Large gaps in the mental health services available with long wait times for access.

---

<sup>322</sup>

<https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/5f338e4cfb539d2246e9e5ce/1597214306382/Youth19+Mental+Health+Report.pdf>

<sup>323</sup> Alliance communication with those working to support child mental health and wellbeing.

- Regional variances in the services available and different ways of working across teams. It can be hard for children and their families and whānau to navigate the system.
- The need to build knowledge about mental health amongst children and their families and whānau, including more education to help prevent children reaching crisis.<sup>324</sup>
- Limited availability of child and youth specific services.<sup>325</sup>
- Some children are prevented from accessing counselling or therapy in relation to their experiences of violence and abuse by either their abusive parent using guardianship rights to withhold consent, or Family Court orders.<sup>326</sup>

174. Calls to What's Up<sup>327</sup> over the last three years (2019/20 – 2021/22) have shown a continued high number of calls relating to mental distress, anxiety, mental health, suicide ideation, bullying, family relationships, and partner and peer relationships. During the year to December 2021, What's Up were contacted 23,846 times during opening hours; a 46% increase compared to the previous year.<sup>328</sup>

---

## Recommendations

- Urgently prioritise and uphold children's rights to mental health and wellbeing, including by:
  - Embedding a children's-rights approach<sup>329</sup> across Government, to ensure co-ordination and to address preventable risk factors such

---

<sup>324</sup> For example, education about emotions, thoughts, healthy relationships etc., in schools.

<sup>325</sup> For example, Youth Workers work in a less clinical way and 'journey with' young people in highly relational and strengths-based ways. Youth Work relationships are often pre-existing, rather than being formed because of a mental health challenge. This allows for high trust relationships that can partner with a more clinical 'intervention' resulting in the best outcome for young people.

<sup>326</sup> See Backbone Collective's (2020) report for MSD – a prevalent theme was the Family Court denying children access to therapy:

<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5f29217f4f222031501a82c5/1596531111262/Victim+Survivor+Perspectives+on+Longer+Term+Support+Backbone+report+for+MSD+2020+FINAL.pdf>

<sup>327</sup> <https://whatsup.co.nz> - this information has been provided by Barnardos who run the What's Up line.

<sup>328</sup> Children are increasingly choosing to use online chat instead of phones, and mobile phones to chat and call, in contrast to the high usage of payphones and landlines in previous years.

<sup>329</sup> Consistent with the CRC, Te Tiriti o Waitangi and other relevant international human rights obligations.



as inadequate standards of living (especially income, housing and nutritious food) and climate change.

- Ensuring a focus on children's mental health within the Mental Health and Wellbeing Commission, the Suicide Prevention Office, and implementation of the Every Life Matters Strategy and Action Plan, and resourcing accordingly (funding and workforce).
  - Increasing the availability and accessibility of mental health services for children.
- 

## Preventable and Infectious Diseases – LOIPR 22(a)

*This report highlights the inexcusable inequity that exists in our health outcomes for children. We can no longer just provide the ambulance at the bottom of the cliff. Focused effort is required to detect and improve preventable risk factors, to identify and better manage mild disease, and to have better national data to enable us to evaluate and monitor healthcare interventions in real time.*<sup>330</sup>

175. Children in Aotearoa are being sent to hospital at increasing rates for respiratory conditions, dental disease, skin infections, rheumatic fever and rheumatic heart disease.<sup>331 332</sup>
- Since 2000, the rate of hospitalisations for children with serious respiratory conditions has increased, most notably for acute bronchiolitis, asthma and wheeze. In 2020, one in seven children aged 2-14 years were being treated for asthma.
  - On average in 2019, 41% of 5-year-olds and 31% of Year-8 children had evidence of tooth decay. Since 2000, average rates of dental decay have declined overall, but the rate of hospitalisations for children with serious dental decay has increased steadily. Rates of tooth decay and hospitalisation have been consistently highest for Pacific and Māori children. Those living in the most deprived areas had three times the number of tooth extractions as those in the least deprived areas.

---

<sup>330</sup> Professor Stuart Dalziel, Paediatrician and Cure Kids Chair of Child Health Research, University of Auckland, referring to Cure Kids *State of Child Health in Aotearoa New Zealand* (2021). <https://curekids.org.nz/state-of-child-health/>

<sup>331</sup> Ibid. These health issues were selected based on their prevalence and burden of disease, public importance, rates of hospitalisation or death and availability of robust published data.

<sup>332</sup> See also Thematic Report on Basic Health and Welfare Rights of Children 0-5 years of age.



- The rate of hospitalisations for children with serious infections was increasing until 2011, but has since been gradually decreasing. Serious skin infections, like cellulitis, make up nearly 4% of hospital admissions for children, with the highest rates in 1-year-olds and other young children.
- Rates of hospital admissions for children with acute rheumatic fever and rheumatic heart disease have remained high over the past 20 years in Aotearoa, despite efforts to reduce them. This burden of disease is particularly high for Pacific children, who were admitted to hospital for rheumatic fever 140 times more often than children of European or Other ethnicities. Māori children were admitted to hospital for rheumatic fever 50 times more often than children of European or Other ethnicities.<sup>333 334</sup>

---

## Recommendations

- Use a children’s-rights approach<sup>335</sup> and co-ordinate across Government to address preventable risk factors, such as inadequate standards of living (especially housing and nutritious food) and climate change, and ensure good health for all children.
  - Increase the availability of child health services, so all children can access primary health care when they need to.
- 

## Immunisation

176. Immunisation coverage at six months of age is the lowest it has been in 10 years, at only 71% in September 2021. Coverage at eight months of age during 2021 was the lowest since 2012 at only 87%.<sup>336</sup> Of particular concern is the threat of measles, with gaps in immunisation coverage across the population creating heightened risk of the disease taking off, leaving non-immunised infants vulnerable.<sup>337</sup> Efforts are underway to increase

---

<sup>333</sup> <https://curekids.org.nz/state-of-child-health/>

<sup>334</sup> <https://www.rnz.co.nz/news/national/470427/healthy-homes-vital-in-cutting-risk-of-childhood-rheumatic-fever-study-finds>

<sup>335</sup> Consistent with the CRC, Te Tiriti o Waitangi and other relevant international human rights obligations.

<sup>336</sup> Records began in 2012. <https://covid.immune.org.nz/news-insights/maintaining-high-immunisation-coverage-current-covid-19-disease-circulating>

<sup>337</sup> <https://www.newshub.co.nz/home/new-zealand/2021/01/fears-of-measles-resurgence-as-covid-19-disrupts-childhood-immunisation-programmes.html>;  
<https://www.1news.co.nz/2022/07/29/low-vaccination-rates-prompt-fears-of-severe-measles-outbreak/>



immunisation rates, but are going more slowly than immunisation experts recommend.<sup>338 339</sup> There are worrying inequities in immunisation coverage.<sup>340</sup>

177. Providers are taking steps to encourage childhood immunisation access and uptake, with vaccines delivered in a range of ways and places where people feel comfortable and safe to encourage uptake.<sup>341 342</sup> These initiatives need to be resourced to increase childhood immunisation rates, fill childhood immunisation gaps that have developed during the pandemic, and keep rates of preventable childhood diseases on a downward trajectory.

---

### Recommendation

- Take sustained action to achieve high and equitable coverage of childhood immunisations.
- 

## Adolescent Health– LOIPR 22(b)

### *Vaping and smoking*

178. Substance use is a major cause of health and social harm in adolescents (aged 13-19) and is linked to the two leading causes of death in this age group: road crashes and suicide.<sup>343</sup>
179. Emerging evidence about rates of vaping and vaping uptake amongst adolescents are of concern, as are reports of younger, intermediate school-

---

<sup>338</sup> <https://www.rnz.co.nz/news/national/438455/measles-vaccination-campaign-way-off-target>

<sup>339</sup> See Thematic Report on Basic Health and Welfare Rights of Children 0-5 years of age

<sup>340</sup> <https://www.nzherald.co.nz/nz/dr-gary-payinda-frightening-vaccination-rates-in-nz-children-will-lead-to-preventable-deaths/ABV7EETAO2IHKCOI7EEQKEXDVE/>

<sup>341</sup> For example, through improving health literacy and ensuring information, resources and services are culturally relevant and accessible, including being available in languages other than English.

<sup>342</sup> These included: home visits for vaccination; having time and space set aside to provide 'safe' clinic access; having families wait in their cars or a separate, warm space to other patients before vaccinations: <https://covid.immune.org.nz/news-insights/maintaining-high-immunisation-coverage-current-covid-19-disease-circulating>

<sup>343</sup> Jude Ball, Rose Crossin, Joseph Boden, Sue Crengle & Richard Edwards (2022) Long-term trends in adolescent alcohol, tobacco and cannabis use and emerging substance use issues in Aotearoa New Zealand, *Journal of the Royal Society of New Zealand*, 52(4), 450-471, DOI: [10.1080/03036758.2022.2060266](https://doi.org/10.1080/03036758.2022.2060266)



age children vaping.<sup>344</sup> More needs to be done to protect children from the physical and social harms associated with vaping, including by raising awareness about the potential harms and restricting targeted marketing to youth.<sup>345</sup> There is concern that vaping is fuelling smoking.<sup>346</sup>

180. The Hashtags<sup>347</sup> have petitioned Parliament to restrict the sale of vaping products to licenced R18 specialist vape retailers and to develop and implement proximity and density limits to limit the number of vape retailers near schools, marae and other youth facilities.<sup>348</sup>

---

## Recommendations

- Adopt a public health approach to reduce the harm caused by children's substance use.
  - Restrict the sale of vaping products.
- 

### *Sexual and Reproductive Health – LOIPR 22(c)*

181. Sexual and reproductive health is strongly influenced by healthcare access, access to quality relationship and sexuality education, discrimination, stigma and poverty.<sup>349</sup> There is inequitable access to sexual and reproductive

---

344

<https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/5e7d50e5e1a6fc55dd1e6c8a/1585271016485/Youth19+Vaping+fact+sheet.pdf> ;

<https://www.tandfonline.com/doi/full/10.1080/03036758.2022.2060266>

<sup>345</sup> <https://www.rnz.co.nz/news/national/468855/vaping-imposing-terrible-burden-on-young-people-researcher>; <https://www.rnz.co.nz/news/national/469012/worries-over-teen-vaping-rise-in-new-plymouth>

<sup>346</sup> <https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/5e7d50e5e1a6fc55dd1e6c8a/1585271016485/Youth19+Vaping+fact+sheet.pdf>

<sup>347</sup> A group of rangatahi from Wainuiomata in Wellington: <https://www.rph.org.nz/news-and-events/news-and-media-releases/2021-11-30-community-minded-youth-play-vital-role-to-achieve-smokefree-law-change/>

<sup>348</sup> [https://www.parliament.nz/en/pb/petitions/document/PET\\_125221/petition-of-the-hashtags-require-licences-for-all-vape](https://www.parliament.nz/en/pb/petitions/document/PET_125221/petition-of-the-hashtags-require-licences-for-all-vape)

349

<https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/5fbac2c9b41d97178886e285/1606075090004/Youth19+Sexual+and+Reproductive+Health+Report.pdf>; see also: [https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/60dd227e2226ae499706dd69/1625105031254/Youth19+Intersectionality+Report\\_FINAL\\_2021\\_print.pdf](https://static1.squarespace.com/static/5bdbb75ccef37259122e59aa/t/60dd227e2226ae499706dd69/1625105031254/Youth19+Intersectionality+Report_FINAL_2021_print.pdf) ; K Southey, A Green, B Lawton, TO Matthews, J Tipene & R Laurence (2022) *Te Kaha o te Rangatahi - Rangatahi Access to Long-Acting Reversible Contraception in Counties Manukau*.

healthcare and education that supports young people to talk with non-judgemental health professionals and trusted adults with confidence.<sup>350 351</sup>

---

## Recommendations

- Expand access to low-cost or free youth-friendly sexual and reproductive health services in primary care, including school-based health services.
  - Support improved delivery of relationship and sexuality education in all schools across New Zealand by resourcing effective implementation of Ministry of Education guidelines.
- 

## Climate Change – LOIPR 23

182. Climate change and its implications for children’s rights, including their environmental rights, is a significant issue in Aotearoa, as it is globally.<sup>352</sup> Climate change is now the greatest threat to the realisation of health. The health of land, air, and water is indivisible from child health.<sup>353</sup>
183. Yet, Government has no climate change policies or programmes specifically aimed at addressing the special vulnerabilities, needs and views of children.<sup>354</sup> This is a significant gap given the impacts that climate change is having on children’s rights now, and will continue to have on successive generations of children.
184. ‘We ask to be heard’ demonstrates the power of teaching and supporting climate change hope, and the difference that can be made when children are

---

<sup>350</sup> Ibid.

<sup>351</sup> See The sexual and reproductive health and rights of young people in Aotearoa New Zealand Thematic Report, submitted by New Zealand Family Planning.

<sup>352</sup> A report by Save the Children includes modelling showing that children born from 2020 will experience the climate crisis up to seven times more significantly than their grandparents’ generation, with increased crop failures, droughts, heatwaves, wildfires and flooding events, in addition to other impacts of climate change such as sea level rise: <https://www.savethechildren.net/born-climate-crisis>

<sup>353</sup> See Children’s Rights in a Changing Climate Thematic Report, submitted by OraTaiao: NZ Climate and Health Council.

<sup>354</sup> Government Report, para 207.

respected as active participants in responding and adapting to the climate crisis.<sup>355 356</sup>

185. It is imperative that children, their experiences, views and outcomes, are systematically factored into the development of policies and programmes addressing climate change (mitigation and adaptation).
186. At a minimum, to safeguard and uphold children’s rights now and intergenerationally, as the climate crisis deepens, Government must take urgent action to: reduce emissions;<sup>357</sup> move to carbon-neutrality;<sup>358</sup> monitor, evaluate and reduce the impact of the agricultural sector (especially the dairy industry) on children’s rights; <sup>359</sup> raise awareness and educate, with active participation by schools, on climate change and environmental health;<sup>360 361</sup> collect data on the impact of climate change on children; and contribute to child-centred bilateral, multilateral, regional and international cooperation on climate change and environmental degradation.<sup>362</sup>

---

<sup>355</sup> [‘We ask to be heard’](#) is a short film about Next Generation Conversation, a coalition of climate activists aged between 10-14 years in Ōtautahi-Christchurch, and how they are influencing the climate change journey. The group submitted on the Christchurch City Council’s Coastal Hazard Adaptation framework and the film follows the process and eventual outcome, which saw the children’s concerns and suggestions about climate change education and managed retreat influence the Council’s decision-making.

<sup>356</sup> <https://www.stuff.co.nz/environment/climate-news/129047835/teaching-climate-hope-not-despair>

<sup>357</sup> On 27 July 2022, the Climate Change Commission advised Government, in its advice on the ETS scheme, that there is a risk not enough is being done to drive down gross emissions, putting Aotearoa at a comparative disadvantage and placing costs onto future generations. Te Tiriti o Waitangi obligations and implications are also unaddressed:

<https://www.climatecommission.govt.nz/our-work/advice-to-government-topic/nz-ets/our-advice-on-the-nz-ets/nz-ets-unit-limits-and-price-control-settings-for-2023-2027>

<sup>358</sup> Government is currently at risk of failing to meet its own target of a carbon neutral government sector by 2025 due to the inadequate speed of action on this front:

<https://350.org.nz/governments-increase-to-decarbonisation-fund-a-disappointment/>

<sup>359</sup> See Children’s Rights in a Changing Climate Thematic Report.

<sup>360</sup> Currently, there is no comprehensive Climate Change Education strategy for all ages and stages of education; see the NZEI Te Riu Roa submission to the draft Emissions Reduction Plan consultation: <https://bit.ly/3DsF8bh>. There is also no comprehensive plan for adult education on climate change, placing the burden further on children. This education could be funded from the Climate Emergency Response Fund and run out of the proposed Climate Information Centre (which could be renamed the Climate Education and Engagement Centre). Importantly, there are no resources developed for Māori or Pacific communities on climate change. Many iwi have their own climate plans now, but many Māori will not be exposed to these.

<sup>361</sup> The Aotearoa curriculum is currently being reviewed, providing an opportunity to improve climate change education. Professional development for teachers and supporting schools to have specialist environmental science teachers, would also enhance climate change education.

<sup>362</sup> See Children’s Rights in a Changing Climate Thematic Report, submitted by OraTaiao: NZ Climate and Health Council.



187. Please see the Children’s Rights in a Changing Climate Thematic Report.

---

## Recommendations

- Use a children’s rights approach to develop, implement, monitor and evaluate climate change policies, paying particular attention to the rights of tamariki Māori, Pacific children, disabled children, and children living in low-income settings.
  - Assess the agricultural sector’s impacts (especially pollution and greenhouse gas emissions) on children’s rights and use a children’s rights approach to support shifts in modes of production where necessary.
  - Ensure national emissions reductions plans and targets explicitly protect the rights of tamariki Māori and all children.
  - Strengthen climate change education for children by integrating environment and climate change issues into the national curriculum, supporting the professional development of teachers, and developing resources for Māori or Pacific communities on climate.
  - Collect disaggregated data to monitor the impact of climate change on children.
  - Ensure a focus on children and their rights in contributions to bilateral, multilateral, regional and international cooperation to mitigate and adapt to the effects of climate change.
- 

## Standard of Living – LOIPR 24

### Child Poverty

188. Child poverty is now being measured in Aotearoa by levels of income (before and after housing) and material hardship. Governments are required, by

---



statute, to set targets for child poverty reduction.<sup>363</sup> By 2023/24, Government aims to reduce the proportion of children in:

- Low-income households on the before-housing-costs measure to 10%.
- Low-income households on the after-housing costs measure to 15%.
- Material hardship to 9%.<sup>364</sup>

189. The latest child poverty statistics are for the 2020/21 year and show some reduction in child poverty rates, with two out of three Government reduction targets being met.<sup>365</sup>
190. However, overall numbers remain high with disabled children, or living in families with disabilities, experiencing the highest rates of material disadvantage, and tamariki Māori and Pacific children disproportionately experiencing poverty on all measures.<sup>366</sup>
191. Child Poverty Action Group has reported that in 2020/21 (until June 2021):
- **Approximately 322,900 children** (28.1%) were living in after-housing-costs income poverty, on the 60% of equivalised household median, moving-line measure.
  - **Approximately 236,900 children** (20.6%) were living in income poverty, on the related 50% measure.
  - **Approximately 150,400 children** (13.1%) were living in **severe** income poverty, on the 40% or less measure.
192. Material hardship rates for Māori and Pacific children are far above national rates overall: around one in five Māori children (20.2% of 298,000 children i.e., 60,300 children) live in material hardship, and around one in four Pacific children (24% of 141,500 children. i.e., 34,000), compared to just over one in ten children overall (11%).
193. The material hardship rate for disabled children is one in five (20.5% of 126,800 children). Disabled children have over double the rate of severe

---

<sup>363</sup> See Government's Child Poverty Related Indicators Report (2020/2021): <https://www.childyouthwellbeing.govt.nz/resources/child-poverty-related-indicators-report-20202021>

<sup>364</sup> <https://www.childyouthwellbeing.govt.nz/our-aspirations/context/reducing-child-poverty/child-poverty-measures-targets-and-indicators>

<sup>365</sup> <https://www.stats.govt.nz/news/child-poverty-statistics-show-all-measures-trending-downwards-over-the-last-three-years/>; <https://www.stats.govt.nz/information-releases/child-poverty-statistics-year-ended-june-2021>

<sup>366</sup> Child poverty indicators have been developed by Government to help it understand more fully the causes and consequences of child poverty. These indicators are housing affordability, housing quality, food insecurity, regular school attendance, and avoidable hospitalisations: <https://www.childyouthwellbeing.govt.nz/our-aspirations/context/reducing-child-poverty/child-poverty-measures-targets-and-indicators>

material hardship to non-disabled children (10.3% and 4.2% respectively), while children in households with a disabled member have four times the rate of severe material hardship to children in a non-disabled household (10.3% and 2.5% respectively).<sup>367</sup>

194. Systematic, sustained income increases are needed for all low income families, including those receiving benefits.<sup>368</sup> Progress on the recommendations of the WEAG has been very slow and the majority of people receiving income support do not have enough to live on.<sup>369</sup>
195. The pandemic's ongoing impact and the surge in living costs makes it crucial that affirmative action is taken to ensure all children in Aotearoa enjoy all their rights, and that this is not limited by an inadequate income and standard of living.<sup>370</sup> Children's charities have reported record demand for support for children (food and warm clothing) during winter 2022.<sup>371</sup>
196. A distinction continues in income support policy between those children living in low-income households where income is derived from work, and those where income is derived from benefits. Only those in paid work are entitled to the in-work tax credit under the Working for Families Package.<sup>372 373</sup>
197. There has been little opportunity for those whānau, including children, living in low income households and defined as being in poverty to have input on solutions. Using a child rights approach to underpin Government responses to child poverty would help to ensure these responses are holistic and focus on every child having an adequate standard of living, and a say in what constitutes an adequate standard of living for them.

---

<sup>367</sup> Child Poverty Action Group: <https://www.cpag.org.nz/statistics/latest-child-poverty-figures>

<sup>368</sup> <https://fairerfuture.org.nz/what-you-need-to-know>; <https://fairerfuture.org.nz/liveable-incomes-2022>

<sup>369</sup> According to Child Poverty Action Group none of the 42 key recommendations in the WEAG Report were fully implemented as of 1 April 2021:

<https://www.cpag.org.nz/commentary/no-plan-no-budget-two-years-on-from-weag>

<sup>370</sup> For the June 2022 quarter, the annual inflation rate was 7.3%:

<https://www.stats.govt.nz/information-releases/consumers-price-index-june-2022-quarter/>

<sup>371</sup> <https://www.rnz.co.nz/news/national/469459/whanau-are-at-breaking-point-2000-children-on-kidscan-waiting-list>

<sup>372</sup> <https://www.cpag.org.nz/our-campaigns/fix-working-for-families>

<sup>373</sup> Children's Rights Alliance Aotearoa New Zealand *Supplementary Report on the impact of COVID-19 on children's rights in Aotearoa New Zealand* (June 2020) pp. 12-13; during Aotearoa's first lockdown a higher rate of job-seeker allowance was paid to those who lost their jobs due to the pandemic than was paid to those who had been on the jobseeker allowance prior to the pandemic.



## Benefit Sanctions

198. Although some benefit sanctions have been removed, families reliant on welfare payments for their household income can still have their payments reduced by up to 50%. Most sanctions are for missed appointments. Government does not know how many children are affected.<sup>374</sup>

---

### Recommendations

- Resource the Children’s Commissioner to independently monitor and report on the right of all children to an adequate standard of living, with a focus on tamariki Māori, Pacific children, and disabled children, including by listening to children and conducting research about their experiences.
  - Implement all WEAG recommendations.
  - Ensure all children in low-income families receive the same level of needs-based income support whether their household income is derived from paid work or benefit; remove all benefit sanctions.
  - Collect disaggregated data to ensure that the adequacy of standard of living is assessed according to the rights of the child, or groups of children, including their views and best interests.
- 

## Housing

199. The availability and affordability of quality housing remains a significant human rights issue in Aotearoa.<sup>375</sup> Not having a permanent, warm, and safe home impacts children’s physical and mental wellbeing.<sup>376</sup> Despite this, it is not known how many children are registered for public housing; neither are children a clear strategic priority within public housing or homelessness planning.

---

<sup>374</sup> <https://www.1news.co.nz/2021/11/04/govt-doesnt-know-how-many-kids-caught-up-in-benefit-sanctions/>

<sup>375</sup> <https://www.newsroom.co.nz/to-solve-our-housing-crisis-lets-learn-from-whats-already-working>

<sup>376</sup> <https://www.stuff.co.nz/national/127868304/the-women-raising-their-families-in-emergency-housing> ; <https://www.stuff.co.nz/national/128955097/familyoffive-including-newborn-share-onebedroom-motel-unit-while-waiting-for-a-home>





200. Over one billion dollars has been spent on emergency housing grants over the last five years, underscoring the need for long-term, sustainable housing solutions.<sup>377 378</sup> More than 4,000 children live in emergency housing, many in motels, but specific data is not collected on their number, gender, age, ethnicity or disability.<sup>379</sup>
201. Half of Government’s Kainga Ora housing does not yet meet quality standards.<sup>380</sup>
202. A high proportion (38%) of those registered for public housing are single adult households with children.<sup>381</sup> For children, homelessness can be especially harmful and have longer-term impacts on wellbeing.<sup>382</sup>
203. Youth homelessness is an issue, with rainbow young people particularly affected.<sup>383</sup> Increased resources are urgently needed for immediate housing, research, and youth specific strategies to address homelessness, both regionally and nationally.<sup>384</sup>

---

## Recommendation

- Prioritise children in responses to the housing crisis and resource accordingly.
- 

---

<sup>377</sup> <https://www.nzherald.co.nz/nz/politics/govt-has-spent-1b-on-emergency-housing-grants-including-motel-accommodation/ZISPLXHMVIOIYV34HCE5KSJIVM/>

<sup>378</sup> <https://www.newsroom.co.nz/to-solve-our-housing-crisis-lets-learn-from-whats-already-working>

<sup>379</sup> <https://www.1news.co.nz/2022/02/18/exclusive-record-365-million-spent-on-emergency-housing/>

<sup>380</sup> <https://www.stuff.co.nz/business/129225899/half-of-kinga-ora-homes-still-not-up-to-healthy-homes-standard?cid=app-iPad>

<sup>381</sup> New Zealand Government (2018) *Public Housing Plan 2018-2022*, Ministry of Social Development, at p. 6: <https://www.hud.govt.nz/community-and-public-housing/increasing-public-housing/public-housing-plan/>

<sup>382</sup> New Zealand Government *Aotearoa/New Zealand Homelessness Action Plan Phase One 2020-2023: Working together to prevent and reduce homelessness*, at p. 2.

<sup>383</sup> <https://www.rnz.co.nz/news/national/471881/rainbow-community-face-high-rates-of-homelessness>; B Fraser, E Chisholm & N Pierse (2021) “You’re so powerless”: Takatāpui/LGBTIQ+ people’s experiences before becoming homeless in Aotearoa New Zealand, *PLoS ONE* 16(12): e0259799. <https://doi.org/10.1371/journal.pone.0259799>

<sup>384</sup> See Manaaki Rangatahi’s petition: [https://our.actionstation.org.nz/petitions/end-youth-homelessness?fbclid=IwAR3VoxwG2XTsHxLmG\\_4hWjoRffcryUX0V0BMZX6NC8-KBWU1sk6a9dGIMB0](https://our.actionstation.org.nz/petitions/end-youth-homelessness?fbclid=IwAR3VoxwG2XTsHxLmG_4hWjoRffcryUX0V0BMZX6NC8-KBWU1sk6a9dGIMB0)

## Food Security<sup>385</sup> – LOIPR 24(d)

204. The root causes are complex, but land use, economic drivers, and prioritisation of food safety over food security in policies, mean that some children in Aotearoa are malnourished.
205. Many factors, including low incomes, the rising costs of living, supermarket duopoly, and geographic location give rise to inequities in children’s nutrition. Children living in the most deprived areas are at least six times as likely to experience food insecurity as children living in the least deprived areas.<sup>386</sup> More Pacific children (37.1%) live in food insecure households than non-Pacific children (16.2%).<sup>387</sup>
206. Food insecurity during pregnancy impacts on children’s body composition at age 14 and any lack of essential nutrients has implications for child health, including a well-functioning immune system.
207. Obesity and hidden hunger (lack of vitamins and/or minerals in the diet) are forms of malnutrition. About one in eight children aged 2–14 years (12.7%, or approximately 100,000 children) were classified as obese in 2020/21, up from 9.5% in 2019/20. Children living in the most deprived areas were 2.5 times more likely to be obese as children living in the least deprived areas, after adjusting for differences in age, gender and ethnicity.<sup>388</sup>
208. Aotearoa is capable of producing sufficient diversity of foods, but lacks a food system plan.<sup>389</sup> Ministry of Health food based dietary guidelines are not supported by policies in other government sectors.<sup>390 391</sup>

---

<sup>385</sup> Food security means access to sufficient diverse foods every day of life (from conception and for the mother) and is essential for a child to grow and develop to their full potential.

<sup>386</sup> 2020/21 New Zealand Health Survey: <https://www.health.govt.nz/publication/annual-update-key-results-2020-21-new-zealand-health-survey>

<sup>387</sup> Sakura Oyama, El-Shadan Tautolo, Collin Tukuitonga & Elaine C Rush (2021, October) Pacific Islands Families Study: Adverse impact of food insecurity on child body composition, *NZMJ* 8, 134(543) (based on 2015/16 New Zealand Health Survey data).

<sup>388</sup> Ministry of Health, 2020/2021 New Zealand Health Survey <https://www.health.govt.nz/publication/annual-update-key-results-2020-21-new-zealand-health-survey>

<sup>389</sup> Fat and protein are exported and refined carbohydrate (flour and sugar) imported. Not enough legumes and vegetables (especially leafy green vegetables) are grown to meet dietary guidelines or to provide the required nutritional diversity.

<sup>390</sup> See F Curran-Cournane & E Rush (2021) Feeding the New Zealand Family of Five Million, 5+ a Day of Vegetables? *Earth*, 2, 797–808. <https://doi.org/10.3390/earth2040047>

<sup>391</sup> Elaine Rush & Vladimir Obolonkin (2020, January 10) Food exports and imports of New Zealand in relation to the food-based dietary guidelines, *European Journal of Clinical Nutrition* <https://doi.org/10.1038/s41430-019-0557-z>

209. Recent external pressures, including the pandemic, climate change and the Ukraine war, highlight the fragility and inequities in Aotearoa’s food system, underscoring the need to future-proof food supply, for children and those yet to be born.
210. Community-led responses to ensuring food security during COVID-19 lockdowns demonstrated the importance of an holistic approach and investment in long-term sustainable solutions that build resilient food systems, especially as the climate changes.<sup>392</sup>

---

### Recommendation

- Use a children’s rights approach to co-ordinated, comprehensive planning and action to ensure food security for all children in Aotearoa, now and into the future.
- 

## Education, Recreation and Culture – LOIPR 25

211. Aotearoa needs to do more to build an inclusive education system that upholds children’s rights and teaches children about their rights.<sup>393</sup>

### Ongoing impact of COVID lockdowns on education

212. COVID-19 has had, and continues to have, an impact on children’s education, especially for children in Auckland, including those under five in ECE, who spent more than 100 days in lockdown.<sup>394 395</sup> We acknowledge the efforts

---

<sup>392</sup> Children’s Convention Monitoring Group (2021) *Getting it right: Children’s rights in the COVID-19 response*: <https://www.occ.org.nz/publications/reports/childrens-rights-in-covid19/>

<sup>393</sup> Including their education rights under Articles 28 and 29 of the CRC, Article 24 of the UNCRPD and Article 14 of UNDRIP.

<sup>394</sup> <https://www.rnz.co.nz/news/national/457156/covid-19-wrap-for-3-december-auckland-lockdown-ends-traffic-light-system-comes-in>

<sup>395</sup> See Basic Health and Welfare Rights of Children 0-5 years of age Thematic Report: Children under five years of age were unable to attend their early learning centre during lockdown (for some children in Tamaki Makaurau, this was for more than 100 days) limiting play with other children (especially sole child families) and access to early learning. This also created considerable stress for parents trying to work from home and care for their young children without support. ECE children were largely left out of Government efforts to provide learning materials and sustained engagement with ECEs during lockdowns.

made by many teachers and schools during the pandemic to keep children engaged and learning.<sup>396</sup>

213. At the end of 2021, students called for more help to recover from the impacts of COVID on their learning.<sup>397</sup>

## School attendance

214. Increased rates of COVID-19, as well as other illnesses, affect both student attendance and staffing in schools.<sup>398</sup> Some students are finding it difficult to return to the classroom after learning remotely during the pandemic, becoming disengaged from education.<sup>399</sup> This has been compounded by cost of living increases, with petrol costs of getting children to school prohibitive for some families.<sup>400</sup>
215. Children are leaving school early (before completing their school qualifications) to work. Some are entering trade training with strong future prospects, but others are in jobs without many prospects. More options are needed for children to continue to study for meaningful qualifications while they are working.<sup>401</sup>

---

## Recommendations

- Work with children to understand and respond to the issues causing disengagement from school.
  - Develop options for children to continue studying while they are working.
- 

---

<sup>396</sup> <https://ero.govt.nz/our-research/learning-in-a-covid-19-world-the-impact-of-covid-19-on-schools>

<sup>397</sup> <https://www.rnz.co.nz/national/programmes/ninetonoon/audio/2018811494/students-call-for-more-help>

<sup>398</sup> <https://www.educationcounts.govt.nz/publications/schooling/he-whakaaro-how-covid-19-is-affecting-school-attendance>

<sup>399</sup> <https://www.theguardian.com/world/2022/jul/06/new-zealand-principals-voice-alarm-as-students-fail-return-to-school-after-covid-lockdowns>

<sup>400</sup> <https://www.rnz.co.nz/news/national/470824/principals-urge-education-ministry-to-avoid-staff-cuts-despite-student-absences>

<sup>401</sup> <https://www.rnz.co.nz/news/national/471826/high-employment-covid-19-see-high-rates-of-teens-leave-school-early-principals>

## Review of the Education Act and Curriculum – LOIPR 25(a)

216. The Education Act 1989 has been replaced by the Education and Training Act 2020, following consultation – [Kōrero Mātauranga \(Education Conversation\)](#) – including with children.<sup>402</sup>
217. There is no requirement to take children’s rights into account in decision-making under the new Act, or in the Ministerial statement of national education and learning priorities.<sup>403</sup> The Act recognises the right to free education, entitling children to attend school from ages 5 to 19, and explicitly provides that students with special educational needs have the same rights to education at State schools as others.<sup>404 405</sup>
218. The new legislative framework could do more to create an education system that is child-centred, child-friendly and empowering, and capable of developing each child’s skills, learning and other capacities, dignity, self-esteem and self confidence.<sup>406 407</sup> For example, students who have been in care are more likely to have challenges around school engagement, achievement, and education pathways, so the education system needs to be capable of responding to the unique needs of this group of students.<sup>408</sup>
219. The curriculum is being refreshed and, from 2026 onwards, will be an opportunity to address some of the shortcomings in the legislative framework so that all children learn about and experience their rights in the education system.<sup>409</sup> Education on the environment and climate change, healthy food, participation, consent, cultural and identity rights are all areas that could be strengthened in the curriculum.<sup>410</sup>

---

<sup>402</sup> <https://conversation.education.govt.nz/conversations/education-conversation/>

<sup>403</sup> <https://www.legislation.govt.nz/act/public/2020/0038/latest/LMS170680.html>

<sup>404</sup> Education and Training Act 2020, ss 32 and 33.

<sup>405</sup> Ibid, s 34.

<sup>406</sup> The Act’s purpose is to establish and regulate the education system so it: provides students with the skills, knowledge and capabilities to fully participate in the labour market, society and their communities; supports their health, safety and well-being; assures education quality; and honours Te Tiriti o Waitangi and supports Māori-Crown relations.

<sup>407</sup> Consistent with the United Nations Committee on the Rights of the Child (2001). General Comment No. 1: The Aims of Education.

<sup>408</sup> Education Review Office (2021); see Children in State care Thematic Report, submitted by VOYCE Whakarongo-Mai for further information.

<sup>409</sup> <https://www.beehive.govt.nz/release/schools-kura-and-early-learning-given-space-build-back-covid-19>

<sup>410</sup> There is a call for consent education to be mandatory in schools. Currently this is advised, but not compulsory. The review of the health and physical education curriculum will not happen until 2024. <https://www.1news.co.nz/2022/03/06/calls-for-sexual-consent-education-to-be-compulsory-in-nz-schools/> ; <https://i.stuff.co.nz/national/128338334/calls->

220. As well as participation in [Kōrero Mātauranga \(Education Conversation\)](#), a [Ministerial youth advisory group](#) has been established for children to advise the Minister on the education system.<sup>411</sup>

---

## Recommendations

- Take a children's rights approach<sup>412</sup> to education, including the curriculum review, so that all children learn about and experience their rights in the education system.
  - Ensure children are active participants in their own education and have a say at all levels of the education system.
- 

## Inclusive education

221. Disabled students' families and whānau, and the professionals who support them, are increasingly concerned about a lack of adequate support for disabled students to be at school, and for schools to do their best by them.<sup>413</sup> In 2008, IHC lodged a complaint with the Human Rights Commission arguing that children with a range of disabilities experience discrimination enrolling at their local school, participating in school life and accessing the curriculum.<sup>414</sup> The complaint is not yet resolved.<sup>415</sup>
222. Planned expansion of enrolments in Residential Special Schools will use resources that could be directed to inclusive education enabling children to attend school in their local community.<sup>416</sup>

---

[to-make-consent-education-compulsory-in-the-classrooms-as-new-sex-education-resources-released](#)

<sup>411</sup> <https://www.education.govt.nz/school/student-support/youth-advisory-group/>

<sup>412</sup> Consistent with the CRC, Te Tiriti o Waitangi and other relevant international human rights obligations

<sup>413</sup> <https://ihc.org.nz/'broken'-system-leaves-disabled-students-without-support>

<sup>414</sup> <https://ihc.org.nz/ihcs-education-complaint>

<sup>415</sup> <https://ihc.org.nz/getting-it-right-disabled-students-school>

<sup>416</sup> <https://ieag.org.nz/news-and-events/an-open-letter-on-the-plans-to-expand-enrolments-in-residential-special-schoolsnew-article-page/>

---

## Recommendation

- Provide supports and reasonable accommodations to ensure all disabled children can realise their education rights.
- 

## Disciplinary procedures

223. Anecdotal reports suggest that COVID-related stress within schools may be resulting in increased use of disciplinary, rather than behaviour management, processes. Stand-down rates were slightly higher than previous years immediately after the national lockdown and in the latter part of 2020.<sup>417</sup> This needs to be monitored.
224. Schools continue to stand-down and suspend Māori students at the highest rates. In 2020, the stand-down rate for Māori students was 38.8 per 1,000 students (7,740 stand-downs) compared to the overall rate of 23.4, and the suspension rate was 5.5 per 1,000 students (1,091 suspensions), compared to overall rate of 2.9. Following the suspension process, Māori students were excluded at the highest rate (2.1 per 1,000 students).<sup>418</sup>
225. Autistic students experience a significantly higher likelihood of suspension when compared to their non-autistic peers.<sup>419</sup>

---

## Recommendation

- Reduce the number of stand-downs and suspensions, especially of tamariki Māori and disabled students.
- 

---

<sup>417</sup> <https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/September-2021/8.-BN-1266682-Student-engagement-data-2020.pdf>

<sup>418</sup> <https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/September-2021/8.-BN-1266682-Student-engagement-data-2020.pdf>

<sup>419</sup> N Bowden, S Gibb, R Audas, et al. (2022, May 16) Association Between High-Need Education-Based Funding and School Suspension Rates for Autistic Students in New Zealand, *JAMA Pediatrics*, doi:10.1001/jamapediatrics.2022.1296.



## The Right to Play

226. The pandemic, especially quarantine and lockdowns, caused stress and anxiety which limited children's freedom to play. Policies and programmes to provide culturally appropriate environments and opportunities for play and recreation are needed.
227. Responses to the housing crisis should promote quality home and neighbourhood environments for children's play and play spaces in intensive housing developments.<sup>420 421</sup>
228. The lack of space for outdoor play in ECE settings threatens this right and also makes sufficient social distancing difficult.<sup>422</sup>

---

### Recommendation

- Ensure children are able to play, including in times of crisis.
- 

## Special Protection Measures – LOIPR 26-29

229. Underlying many of the inequities detailed in this report is a failure to give sufficient attention to the affirmative action and special protection measures that certain groups of children in Aotearoa are entitled to.

## Asylum-seeking, Refugee and Migrant Children – LOIPR 26

230. We support the information provided by the Human Rights Commission and their suggested recommendations.

---

<sup>420</sup> See paras 199 to 203 above; Information from International Play Association (IPA) Aotearoa.

<sup>421</sup> For example, policies are needed to ensure that developers protect and enhance accessible natural areas, waterways and open spaces for children to freely play, and to design a network of public accessways and spaces that allow all children, including those with disabilities, to easily access quality spaces to play from their homes. This is consistent with the Helen Clark Foundation recommendations about creating friendly streets and neighbourhoods: [https://helenclark.foundation/app/uploads/2021/10/HCF\\_Alone-Together\\_Walker\\_June-2020\\_accessible.pdf](https://helenclark.foundation/app/uploads/2021/10/HCF_Alone-Together_Walker_June-2020_accessible.pdf)

<sup>422</sup> Currently, as little as five square metres per child.



## Tamariki Māori – indigenous children – LOIPR 27

231. Information about the rights of tamariki Māori is woven throughout this report. Please see the Rights of Tamariki Māori in Aotearoa New Zealand Thematic Report.

## Children Belonging to Minority Groups – LOIPR 27

### Pacific Children

232. As detailed throughout this report, Pacific children experience inequities in the realisation of their rights. Climate change further threatens Pacific children’s experience of their rights.<sup>423</sup>

233. Government has apologised for the ‘dawn raids’ policy of the 1970s.<sup>424</sup> <sup>425</sup> This apology aims to help Pacific youth feel proud of their Pacific heritage. An historical account of the ‘dawn raids’ for use in teaching purposes, and the provision of resources to schools and kura who choose to teach about this, are part of the apology, together with \$2.1 million in scholarships and fellowships to Pacific communities and Manaaki NZ short-term training scholarships for young leaders from Pacific nations.<sup>426</sup>

---

### Recommendation

- Building on the Dawn Raids apology, actively advance and protect the rights of all Pacific children to affirm their cultural identity, and address inequities in their experiences and outcomes.
- 

---

<sup>423</sup> Children’s Rights in a Changing Climate Thematic Report.

<sup>424</sup> <https://www.beehive.govt.nz/release/government-offers-formal-apology-dawn-raids> ; <https://www.rnz.co.nz/news/national/448212/recap-government-makes-apology-over-dawn-raids>

<sup>425</sup> These raids took place at homes, workplaces and even churches, and often led to prosecution and deportation, traumatising the Pacific communities, separating families and putting children in state care homes: <https://www.stuff.co.nz/national/125849685/dawn-raids-apology-pm-sorry-for-hurt-and-distress-of-racially-targeted-policy>

<sup>426</sup> <https://nzhistory.govt.nz/te-akomanga/contexts-activities/government-apologies-to-teach-learn-history>

## Muslim children

234. The Christchurch terrorist attacks, and their aftermath, brought to light concerns that Muslim communities had previously raised with Government, including harassment and bullying of Muslim children in school, the safety of Muslim communities in Aotearoa, negative portrayal of Muslim individuals and communities in the media, access to social workers, lack of culturally appropriate services for Muslim communities and a lack of funding for Muslim projects.<sup>427</sup>
235. Responses to the recommendations of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, especially those related to building social cohesion and inclusion, need to explicitly address the rights of Muslim children.<sup>428</sup>

---

### Recommendation

- Address the recommendations of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, ensuring responses protect and advance the rights of Muslim children in Aotearoa and that Muslim children and families are primary partners in shaping these responses.
- 

## Children who Work – LOIPR 28

236. In May 2022, the Employment Court found that children worked as employees from the age of six in companies owned by the Gloriavale Christian Community.<sup>429</sup> The plaintiffs claimed that they were required to work long hours under harsh conditions and were denied food and publicly shamed if they were regarded as not working hard enough. The Court noted:

*The mean age of Community members is 12 years, with 30 to 40 children born annually. It is plain that the ready access to child labour (children of*

---

<sup>427</sup> <https://christchurchattack.royalcommission.nz/the-report/part-9-social-cohesion-and-embracing-diversity/leadership-and-oversight-in-building-social-cohesion/>, para 23.

<sup>428</sup> See, for example, the Royal Commission's recommendations 36-38.

<https://christchurchattack.royalcommission.nz/the-report/executive-summary-2/summary-of-recommendations/>

<sup>429</sup> *Hosea Courage, Daniel Pilgrim and Levi Courage v The Attorney-General* sued on behalf of the Ministry of Business, Innovation and Employment, Labour Inspectorate [2022] NZ Employment Court 77 [10 May 2022].

*adult residents) constitutes a significant factor in the success of the Gloriavale business model.*<sup>430</sup>

237. Government has reported that Aotearoa has a range of protections and restrictions on children's work, through a combination of education and health and safety legislation.<sup>431</sup> It has chosen not to ratify the International Labour Organisation's Minimum Age Convention, 1973 (138) and it maintains the following reservation to the CRC:

*The Government of New Zealand considers that the rights of the child provided for in article 32(1) are adequately protected by its existing law. It therefore reserves the right not to legislate further or to take additional measures as may be envisaged in article 32(2).*<sup>432</sup>

238. There is very little recent information on the reality of children's work experiences, 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>433</sup>
239. Research 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.<sup>434</sup>
240. Since 2019, there have been media and anecdotal reports of older children leaving school to work to support their families financially, a situation the COVID-19 lockdowns exacerbated.<sup>435</sup> <sup>436</sup> While contributing to family wellbeing and income is honourable, and many young people want to work:

---

<sup>430</sup> Ibid, para 9.

<sup>431</sup> Government Report, para 284.

<sup>432</sup> <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/crc/>

<sup>433</sup> D Anderson (2010) *Safe enough? The working lives of New Zealand children.*

<sup>434</sup> D O'Neill (2010) *School Children in Employment: Issues and Considerations.*

<sup>435</sup> <https://www.stuff.co.nz/national/education/121633328/coronavirus-fears-teens-working-to-support-families-wont-return-to-school>; <https://www.1news.co.nz/2020/08/18/childrens-commissioner-says-too-many-kiwi-kids-leaving-school-to-help-whanau-with-covid-19-financial-burdens/>

<sup>436</sup> <https://www.stuff.co.nz/pou-tiaki/128908703/the-ticking-timebomb-forcing-students-out-of-school-and-into-work>

*Now the financial imperative is such that not making money is not an option.*<sup>437</sup>

241. Young people in South Auckland are more likely to leave school without completing their secondary education than in other parts of Auckland. In 2020, 23% of South Auckland school leavers from public schools left with university entrance qualifications, compared to nearly half of students in the rest of Auckland.<sup>438</sup>
242. Better information is needed on young workers, including levels of harm at work and how work is impacting children's education and development. This will ensure the regulatory framework, and other measures taken to protect them from harm and exploitation, are effective. Better data collection about the reality of children's work experiences and aspirations, including through listening to children, would also help to inform appropriate policy and regulatory responses. For example, extending financial support for training, such as being paid to train as a teacher or nurse, might enable children to continue with their education and contribute to their families.
243. We submit that the existing protections for young workers are not, in reality, adequate to protect the rights provided for in Article 32(1).<sup>439</sup>

---

## Recommendations

- Remove the reservation to Article 32(2).
  - Engage with child workers to strengthen regulatory framework for children who work, including minimum ages for work.
  - Collect information, including through speaking with child workers, about children's work experiences.
  - Provide children with information on their rights and support to prevent them being harmed or exploited at work.
- 

---

<sup>437</sup> Ibid. Onehunga High School Principal Deidre Shea.

<sup>438</sup> Footnote 436.

<sup>439</sup> See, for example, this case where a 17-year-old worker was left blind in one eye: <https://www.1news.co.nz/2022/07/18/kaikoura-boss-fined-after-teen-blinded-in-one-eye/>

## Youth Justice – LOIPR 29

### Minimum age of criminal responsibility and children aged 10-14 years who offend

244. The minimum age of criminal responsibility is 10 years of age for serious offences. There are calls to immediately raise this to 14 or 16 in line with the Committee’s General Comment No. 24, contemporary understanding of neuroscience and child development, and consistency with Aotearoa’s youth justice system which starts at 14.<sup>440 441</sup>
245. The majority of the small number of children aged 10-14 who offend are already involved with care and protection services. This means that raising the minimum age of criminal responsibility should not meaningfully increase the numbers of people being referred to care and protection services and will enable these children to be managed under one system, rather than two. However, recent research using Integrated Data Infrastructure (IDI) data on 48,989 children from their birth in 2000 until 30 June 2019, OT case files, and key stakeholder interviews found that existing systems are failing children who offend and that changes are needed across Government, not just in the youth justice system.<sup>442</sup>
246. The researchers made an overarching recommendation for change that Government should develop a strategic plan and vision to:

---

<sup>440</sup> The Australian Capital Territory has committed to raising their age from 10 to 14, Queensland is considering this, and there is an Australian Commonwealth discussion about raising the age which is ongoing.

<sup>441</sup> <https://www.stuff.co.nz/national/crime/129550765/can-a-10yearold-really-be-a-criminal-advocates-call-for-law-change?cid=app-iphone>

<sup>442</sup> J Reil, I Lambie, A Becroft & R Allen (2022) *How we fail children who offend and what to do about it: 'A breakdown across the whole system'*, Research and recommendations. Michael and Suzanne Borrin Foundation, New Zealand Law Foundation & University of Auckland. This report contains a detailed discussion of how the existing systems fail children who offend and at p. 4. Says: *This research clearly showed that child offending does not occur in a vacuum but, in the vast majority of cases, was preceded by significant child welfare concerns. IDI data showed very high levels of abuse, reports of concern to Oranga Tamariki, out-of-home placements, stand-downs and suspensions from school, and indicators of social deprivation among children who offended. These were significantly worse relative to their non-offending peers. ... It is therefore critical that efforts to improve systemic responses to child offending are not restricted to interventions focused only on offending behaviour; we must seek to prevent, or at least better address, the welfare concerns of children and their families that underlie the development of offending. ... Overall, key stakeholders described a child welfare system that is currently reactive, not proactive, and fails to effectively address the needs of children even though these are often well-known to services.*

- a) More effectively identify and address the needs of children (i.e., from birth to 14 years old) and families with significant child welfare concerns at the earliest opportunity.
- b) Better respond to the needs of those aged 10-13 years who have engaged in serious offending.<sup>443</sup>

247. We endorse this recommendation, and the related recommendation to implement the recommendations of the Government's WEAG.<sup>444</sup>

### Including all 17-year-olds in the youth justice system

248. From 1 July 2019, the youth justice jurisdiction was expanded to include most 17-year-olds.<sup>445 446</sup> However, there is an important exception: 17-year-olds charged with an offence listed in Schedule 1A of the Oranga Tamariki Act 1989 must be transferred from the Youth Court to the District or High Court at their first appearance.<sup>447</sup> If the young person is facing additional charges, and the Youth Court determines they are related to a Schedule 1A offence, those charges will also be transferred to the adult jurisdiction.

249. The Ministry's initial Regulatory Impact Statement proposed including all 17-year-olds within the youth justice system, with discretionary transfer for sentencing only where more intensive sentencing is required (imprisonment, home detention).<sup>448</sup> However, the Cabinet Social Policy Committee (SOC), now the Cabinet Social Wellbeing Committee (SWC), requested proposals generating a greater distinction between 17-year-olds and other young people, particularly for 17-year-olds who are serious and recidivist

---

<sup>443</sup> This recommendation is set out in a summary report with updated recommendations incorporating feedback the authors received from a variety of stakeholders regarding their main report: J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system'. Brief summary of research.](#) Updated recommendations, Michael and Suzanne Borrin Foundation, New Zealand Law Foundation & University of Auckland, at p. 11. The authors also make a series of more specific recommendations.

<sup>444</sup> Ibid, at p. 12. Welfare Expert Advisory Group (2019) [Whakamana Tāngata – Restoring Dignity to Social Security in New Zealand.](#)

<sup>445</sup> Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017.

<sup>446</sup> <https://www.beehive.govt.nz/release/lower-risk-17-year-olds-included-youth-jurisdiction>

<sup>447</sup> Oranga Tamariki Act 1989, ss 272-273 and Schedule 1A. There are over 60 offences in Schedule 1A including sexual violation, assault with intent to rob, aggravated burglary, wounding with intent to cause grievous bodily harm, arson, and various offences under the Misuse of Drugs Act 1975.

<sup>448</sup> Ministry of Justice, [Regulatory Impact Statement: Including 17 year-olds, and convictable traffic offences not punishable by imprisonment, in the youth justice system.](#)



offenders.<sup>449</sup> This resulted in the proposal changing to that ultimately implemented by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.

250. There is limited publicly available data on how many 17-year-olds have been prosecuted in the adult jurisdiction since the amendment Act came into effect. According to Statistics New Zealand, around 78 were convicted and sentenced in the adult jurisdiction in 2020, and around 51 in 2021.<sup>450</sup> However, COVID-related court delays may mean these figures do not accurately reflect the true impact of these changes.<sup>451</sup>
251. There are many reasons to raise the age of criminal majority and include those under 17 in the youth justice system, as recommended in the Committee's 2016 concluding observations.<sup>452</sup> In the Aotearoa context, any decision on the jurisdictional boundaries of the Youth Court, and any negative flow-on effects, have the potential to disproportionately affect Māori who are already over-represented in the youth and criminal justice systems.
252. Moving Māori and Pacific youth into the adult jurisdiction also prevents their involvement in the Rangatahi and Pasifika Courts.<sup>453</sup> Ministry of Justice data indicates that young people who attended Rangatahi Courts committed 14% fewer offences, and were 11% less likely to commit a new serious offence in the following year, than comparable youth.<sup>454</sup> However, there is no comparable Marae-based criminal court in the adult jurisdiction, so these benefits are lost for any Māori youth transferred into the adult jurisdiction.

## Age-mixing in places of detention

253. There are several circumstances where children can potentially be detained with adults, including within the corrections system, mental health system and immigration facilities.

---

<sup>449</sup> This is notable as it was politically generated, rather than driven by evidence or as the result of a policy process.

<sup>450</sup> [Children and young people charged in court - most serious offence calendar year \(stats.govt.nz\)](https://stats.govt.nz) In line with Statistics NZ policies to protect privacy, the figures in this data have been randomly rounded to one of the adjoining multiples of 3.

<sup>451</sup> There is also a risk that the data potentially captures 17-year-olds who have been dealt with in the adult jurisdiction for something other than a Schedule 1A offence (for example, a young person charged with murder or manslaughter) and that it may exclude 17-year-olds who have been found not guilty or had their charges dismissed or withdrawn.

<sup>452</sup> CRC/C/NZL/CO/5 para 45(b).

<sup>453</sup> <https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>

<sup>454</sup> Ministry of Justice, *Regulatory Impact Statement: Including 17 year-olds, and convictable traffic offences not punishable by imprisonment, in the youth justice system*, at p. 11.



254. Withdrawing the reservation on age-mixing would help ensure that, when a child is detained, their best interests are a primary consideration and not limited by financial or resource constraints, such as the availability of suitable facilities.
255. Recent changes to include 17-year-olds in the Youth Justice system (from 1 July 2019) mean there are now fewer 17-year-olds in the adult corrections system.
256. In male prisons, Youth Units are not restricted to offenders aged under 18 and some contain young adult male prisoners aged 18 and 19. Because there are no Youth Units in women's prisons, all young women under 18 in the adult prison system must mix with adult prisoners. The low number of under-18-year-olds in the adult justice system means that, in both male and female facilities, mixing with adults does occur when it is considered to be in the offender's best interests because it prevents isolation. Male under-18-year-olds are mixed with 18- and 19-year-olds in Youth Units, when it is assessed there is no risk of harm to the under-18-year-old.<sup>455</sup>
257. Recently, six young prisoners, including one 17-year-old, climbed onto the roof at a prison Youth Unit in protest and spent the night there in sub-zero conditions. This incident highlights the risks associated with young people being held in prisons, especially with older prisoners.<sup>456</sup>

## Disabled children and young people in the youth justice system

258. Recent Youth Court decisions have called attention to the many ways that Aotearoa fails disabled children who are involved in the youth justice system. For example:

*[T]here have been breaches of [HN]'s rights on account of his disability, both under the CRC and the CRPD. Three significant ways in particular in which that has happened, common to most cases of young people in the Youth Justice system who have a disability, are the lack of access to appropriate supports and services, the often long-term detention in Youth Justice facilities, as well as significant delays in resolving the proceedings.*<sup>457</sup>

---

<sup>455</sup> [https://www.corrections.govt.nz/resources/policy\\_and\\_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03.01-Under-20-years-old-male-prisoners](https://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03.01-Under-20-years-old-male-prisoners)

<sup>456</sup> <https://www.stuff.co.nz/national/129456982/rooftop-prison-standoff-by-teen-inmates-likely-a-cry-for-help>

<sup>457</sup> *New Zealand Police v HN* [2021] NZYC 364, at [83].



259. As the Committee recognised in General Comment No. 24, many of these children should not be in the youth justice system at all.

### Detention in Police cells

260. Data obtained from New Zealand Police under the Official Information Act 1982<sup>458</sup> demonstrates that Police continue to detain young people in Police cells. Of particular concern, rangatahi and tamariki Māori are significantly over-represented in these numbers. The practice appears to have reduced in recent years, but it is unclear whether, and to what extent, the decrease has been affected by the COVID-19 pandemic.

261. Between 1 May 2015 and 31 March 2021, Police held in custody 680 unique individuals under aged 17 years and younger on remand, and 895 unique individuals aged 17 years and younger as remanded under s238(1)(e) of the Oranga Tamariki Act 1989. As the same person could be in custody on multiple occasions, the number of custodies for these individuals during this time is 3,417.

262. Table 1 shows the number of custody records where a young person was held in Police custody on remand each year from 2016 to 2020 including the number of tamariki Māori.

**Table 1**

Year	Number of young people in Police custody	Number of custodies
2016	78 (48 Māori)	416
2017	68 (34 Māori)	380
2018	71 (33 Māori)	410
2019	50 (23 Māori)	169

<sup>458</sup> The full response including data tables is available [here](#). The data tables also include ethnicities of all children and young people detained in police cells in the period from May 2015 to 31 March 2021 and the length of time they were detained. See also <https://www.stuff.co.nz/national/crime/300338000/more-than-110-teenagers-kept-in-cells-for-24-hours-or-longer>

2020	22 (15 Māori)	26
------	---------------	----

263. Table 2 shows the number of custody records where a young person was held in Police custody under s238(1)(e) of the Oranga Tamariki Act 1989 each year from 2016 to 2020 including the number of tamariki Māori.

**Table 2**

Year	Number of young people in Police custody	Number of custodies
2016	110 (43 Māori)	433
2017	83 (43 Māori)	270
2018	80 (43 Māori)	301
2019	83 (41 Māori)	313
2020	79 (38 Māori)	260

## Use of restraints in custody

264. Judge Andrew Becroft, former Children’s Commissioner, called for the use of restraint chairs and spit hoods for children to be discontinued. Between 2015 and 2020, Police strapped 38 young people into restraint chairs in Police cells.<sup>459</sup> Police data shows more frequent use of spit hoods, with Police Tactical Options Reports (TORs) showing a spitting hood was used on a subject aged 17 or under in:

- 41 TOR events from 1 May to 31 December 2015.
- 70 TOR events in 2016.
- 42 TOR events in 2017.
- 44 TOR events in 2018.

<sup>459</sup> <https://www.occ.org.nz/publications/news/some-stark-injustices-in-our-youth-justice-system-need-fixing-and-heres-how/> Data obtained from New Zealand Police under the Official Information Act records similar figures: see [here](#).

- 43 TOR events in 2019.
- 51 TOR events in 2020.
- 17 TOR events in the three months to 31 March 2021.

265. Media reports also suggest that Police officers failed to follow their own policy which prohibits the hooding of individuals after they have been pepper sprayed – this occurred 10 times in 2018 and 13 times in 2019.<sup>460</sup> It is unclear whether these incidents involved children, but any breach of policy in relation to the use of such an abusive practice with them gives rise to additional concern.

### Over-representation of tamariki and rangatahi Māori and Pacific children in the youth justice system

266. Tamariki and rangatahi Māori continue to be overrepresented in the justice system. For example, in 2020/21:<sup>461</sup>

- The offending rates for Māori children and young people were 6.3 and .4 times higher than for European/Other children and young people respectively.
- The percentage of young Māori proceeded against who appeared in the Youth Court was 1.6 times higher than that for European/Other.
- The Youth Court appearance rate for Māori young people was 8.5 times higher than that for European/Other.
- The percentage of Māori children and young people remanded in custody was 1.9 times higher than that for European/Other.

267. There have been positive developments in that the Oranga Tamariki Act 1989 now imposes duties on the chief executive of OT under s7AA to give practical effect to Te Tiriti o Waitangi, including by ensuring that the policies and practices of OT that impact on the wellbeing of young people have the objective of reducing disparities by setting measurable outcomes for Māori young people.<sup>462</sup> However, recent decisions of the Youth Court have found no evidence that this is happening in practice.<sup>463</sup>

<sup>460</sup> <https://www.1news.co.nz/2020/08/03/spit-hoods-police-in-nz-breach-own-policy-on-controversial-restraint/>

<sup>461</sup> Ministry of Justice *Youth Justice Indicators Summary Report December 2021* at p. 7.

<sup>462</sup> *New Zealand Police/Oranga Tamariki v LV* [2020] NZYC 117, at [69(a)].

<sup>463</sup> *New Zealand Police/Oranga Tamariki v LV* [2020] NZYC 117, at [69]-[70]; *New Zealand Police v JV* [2021] NZYC 248, at [55]-[62].



---

## Recommendations

- Reform the youth justice system in line with GC No.24<sup>464</sup>, and consistent with Te Tiriti o Waitangi, to:
    - Reduce injustices and disparities for tamariki Māori.
    - Raise the minimum age of criminal responsibility to 14.
    - Include all 17-year-olds in the youth justice system.
    - Prevent offending by providing supports to children with welfare concerns at the earliest opportunity.
    - Meets the rights and needs of those aged 10-13 years who have engaged in serious offending.
    - Align with the CYWS and developments in care and protection, and address the sociocultural factors that contribute to offending by children, including through implementing the recommendations of the Welfare Expert Advisory Group.
    - Remove the reservation to Article 37 and stop age-mixing in places of detention.
    - Ban the use of restraint chairs and spitting hoods.
- 

---

<sup>464</sup> While we recognise the UN Committee's use of the term "child justice", in this report we have used the term "youth justice" as this is the terminology currently used in Aotearoa.



## Optional Protocol on Children in Armed Conflict (OP1)

268. We refer the Committee to the Optional Protocol on the Involvement of Children in Armed Conflict and the Convention on the Rights of the Child Thematic Report, submitted by Peace Movement Aotearoa.

## Optional Protocol on the Sale of Children (OP2)

269. While we acknowledge recent efforts made by teams and individuals across government agencies and departments to prevent the sale of children, child sex work and online exploitation, more work is needed to ensure Government meets its obligations under OP2.
270. We refer the Committee to the ECPAT NZ Thematic Report.

### Scale and nature of OP2 related issues

271. Definitions of child trafficking and exploitation are applied inconsistently across government agencies; they are at times ambiguous, outdated and not aligned to international definitions impacting on prohibition, prevention and protection. Inadequate policies for classifying and responding to SEC<sup>465</sup> victims by Police and OT, mean it is unlikely victims coming to their attention would be offered appropriate support. This lack of specific, consistent coding also makes it impossible to gather accurate statistics on the scale of these issues in Aotearoa.<sup>466</sup>
272. Current estimates on children exploited in sex work are difficult to establish as there are no official national statistics on this topic or current statistics from other sources. According to the 2021 US Department of State's Trafficking in Persons' (TIP) report, which downgraded Aotearoa to Tier Two, young children and teenagers are recruited into prostitution by gang members, boyfriends, family members, or others.<sup>467</sup> Some victims are coerced into prostitution through drug dependencies or threats by family members.<sup>468</sup> Law enforcement officials also speak of girls and women being brought into

---

<sup>465</sup> Sexual Exploitation of Children.

<sup>466</sup> See Optional Protocol for Child Trafficking, Prostitution and Pornography Thematic Report, submitted by ECPAT NZ Child Alert.

<sup>467</sup> US Department of State (2022) Trafficking in Persons Report, New Zealand.

<sup>468</sup> K Haines (2022) *Domestic Sex Trafficking in Aotearoa New Zealand: Law Enforcement Experiences and Identification*.

Aotearoa from overseas countries and forced into massage parlours and brothels.<sup>469</sup>

273. Children engaging in 'survival sex' or trading sex for food, shelter, alcohol, drugs, phone credit or cash has become increasingly more common.<sup>470</sup> It is inextricably linked to some type of social deprivation, such as a lack of family support, or a nurturing and safe environment.<sup>471</sup> Sex for survival is considered very common in Aotearoa by some frontline workers and is prevalent among young people who are homeless, living on the streets, and vulnerable, and further exacerbated by substance use and poor mental health.<sup>472</sup>
274. While there are links between organised crime and the sale of children, often the sexual exploitation of children appears to be less organised and more opportunistic, such as transactions occurring within the context of a gang, where:
- ... girls who are affiliated with the gang are involved in the sex industry or are being used for sex as dictated by the gang, as opposed to targeted recruitment by a gang for the purpose of exploitation.*<sup>473</sup>
275. This is not to suggest that it is a lesser issue and Police have spoken of gangs running "stables" of girls and women working in the sex industry.<sup>474</sup> A similar opportunistic sale, or lending, of children for sexual purposes has been seen in the context of family and intimate relationships, but the scale of this is unknown.
276. Child sexual abuse material (CSAM) is an increasing problem, with a recent operation identifying tens of thousands of New Zealanders using the platform to share what the DIA said was "some of the most horrific and devastating content online".<sup>475</sup>

## Government Response

277. Government considers Aotearoa to be a country where the sale of children is criminalised, including child trafficking. However, the Crimes Act 1961, as

---

<sup>469</sup> Ibid, p. 52.

<sup>470</sup> N Thorburn & L Beddoe (2021) Capital Accrual and Constraints: Domestic Sex Trafficking Victims' Negotiation of Vicarious and Feminized Capital. *Affilia*, 36(1), 62–79.

<sup>471</sup> Ibid.

<sup>472</sup> Te Whāriki Whakaaro o ngā Kaimahi Taiohi – New Zealand CSEC Community of Practice.

<sup>473</sup> K Haines (2022) at p. 56.

<sup>474</sup> Ibid.

<sup>475</sup> CommonProtect (2022, March 2) Child sex abuse operation: Level of offending much higher than before - investigator: <https://www.rnz.co.nz/news/national/462608/child-sex-abuse-operation-level-of-offending-much-higher-than-before-investigator>.

amended in 2015, does not criminalise all forms of child sex trafficking. It still requires a demonstration of deception or coercion to constitute a child sex trafficking offence.<sup>476</sup>

278. Government has focused on supply chain and labour trafficking, with insufficient efforts around prevention and awareness raising of sex trafficking. While there has been an increase in prosecutions for trafficking-type offences in Aotearoa, Government has exclusively used s 98D to prosecute labour trafficking crimes. It has never prosecuted a sex trafficking crime or a case of internal trafficking under s 98D.<sup>477</sup> There have been several convictions of what would be considered sex trafficking by the UN definition, including child sex trafficking, but these are usually prosecuted under lesser offenses, usually under the Prostitution Reform Act 2003, which does not do justice to the extent of harm caused and carries a maximum sentence of seven years prison.<sup>478</sup>
279. The Prostitution Reform Act 2003, which decriminalised commercial sex, increased protections for those who willingly engaged in commercial sex. It does not, however, adequately protect vulnerable populations, such as children and migrants.
280. The DIA, Customs and Police work collaboratively and effectively to address CSAM and have been increasingly engaging with civil society to combat the issue at all levels. However, given the scale of the issue, the severity of the content, and the fact that victim identification has become increasingly difficult, these agencies are considered by ECPAT NZ to still be drastically under-resourced. Sugar dating is becoming a trend amongst young people, making them more vulnerable to exploitation, especially as they generally do not engage with Government services or NGOs, such as the Sex Workers Collective, as they do not identify as sex workers.<sup>479</sup>
281. In 2020, Government launched the Plan of Action Against Forced Labour, People Trafficking and Slavery.<sup>480</sup> Intended as an all-of-government plan to combat trafficking, it sets out a high-level framework for the actions that government agencies will take until 2025 and was the result of a consultation process with key stakeholders.<sup>481</sup> This initiative has led to some positive steps

---

<sup>476</sup> Crimes Act 1961, s 98D.

<sup>477</sup> US Department of State (2022) Trafficking in Persons Report, New Zealand.

<sup>478</sup> [Prostitution Reform Act \(2003\)](#).

<sup>479</sup> <https://thespinoff.co.nz/society/09-05-2022/whos-your-daddy-the-rise-of-sugar-dating>

<sup>480</sup> Plan of Action Implementation Reports, updated December 2021, accessed August 2022: <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/implementation-report/>

<sup>481</sup> MBIE (2020) *Combatting Modern Slavery: Plan of action against forced labour, people trafficking and slavery*.

being taken, including the investigation of trafficking cases, the development of anti-trafficking training modules for government agencies, and increasing collaboration with civil society. Despite this, some government agencies have not yet delivered on the activities they have committed to within the Plan of Action due to COVID delays or conflicting priorities for resources.

---

## Recommendation

- Government agencies commit to considering children in all activities being implemented under the MBIE-led Plan of Action against forced labour, people trafficking and slavery.
- 





## Appendix 1: The process used to develop the Children’s Rights Alliance Aotearoa New Zealand’s 2022 Alternative Report to the United Nations Committee on the Rights of the Child

The Children’s Rights Alliance began developing this alternative report on the children’s rights situation in Aotearoa in 2020, building our *Written Input to the List of Issues Prior to Reporting* (2020). This report has been compiled drawing on the knowledge and insights of many people, who have taken the time to provide information, share their views and ideas, comment on drafts and suggest recommendations. We are very grateful to everyone who has contributed.

Over the last two years the Alliance has held a number of meetings, both on-line and in person (when COVID-19 restrictions permitted) with a wide range of individuals, academics, groups and agencies – all of which have a focus on or knowledge about the situation for children and their rights in Aotearoa. These meetings have included regular Zoom ‘drop-ins’, on the last Wednesday of the month during 2022, for those who wanted to stay in touch about our children’s rights reporting, share their knowledge and contribute. At these meetings we provided information on the reporting process and discussed with our Alliance members and friends what the key children’s rights issues are in Aotearoa, to help ensure this report, our first under the Simplified Reporting Process, focussed on the children’s rights issues of greatest concern.

Participants in these meetings included representatives from Amnesty International Aotearoa New Zealand, Ara Taiohi, Barnardos, Child Poverty Action Group, Cure Kids, IHC, International Play Association Aotearoa New Zealand, New Zealand Council of Christian Social Services, OMEP Aotearoa, OraTaiao: NZ Climate and Health Council, KidsOnScreen: The New Zealand Children’s Screen Trust, Save the Children New Zealand, Social Service Providers Aotearoa, Te Ngākau Kaukura, Te Puna Rangahau o Te Wai Ariki: Aotearoa New Zealand Centre for Indigenous Peoples and the Law, UNICEF Aotearoa, VOYCE-Whakarongo Mai, Whānau Āwhina Plunket, YouthLaw, Youthline and others, as well as individuals committed to advancing children’s rights in Aotearoa.

We also shared drafts of the report through our networks and via our website, to give as many people as possible the opportunity to input.

During 2022 we have worked collaboratively with others in the children’s sector to advocate for on the Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill (2021), which raises significant children’s rights issues. This has included co-ordinating a joint children’s sector submission on the Bill. This collaborative advocacy enabled us to raise awareness of the CRC reporting process more widely, and also forms the basis of Appendix Two to this report.



We developed guidelines on thematic reports to encourage and support people to submit thematic reports on their areas of expertise and interest. The wide range of thematic reports submitted is testament to the level of civil society commitment to children's rights in Aotearoa. These reports have been invaluable in helping to inform the development of the Alliance's consolidated report.

In developing this report we have also worked closely with the Children's Commissioner's Office and the Human Rights Commission Te Kāhui Tika Tangata.

### *The views of children in this report*

Unfortunately, due to our limited resources, we were unable to support children's direct involvement in the development of this report. However, we developed and distributed information resources about reporting by children, through our networks, raised awareness about the opportunity for children to participate and encouraged organisations working directly with children to support children's reporting.

We are considering how we might provide more opportunities for children to participate in the Alliance, and in the reporting process, in the future.

To help inform our reporting and monitoring, we have begun to develop a database of reports and other publications sharing children's views on issues, which is available on our website [here](#).

Where we have been able to, we have endeavoured to report children's views on issues covered in this report.



## Appendix 2: Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill 2021

### Introduction

As advised in our LOIPR report, Government has reviewed the independent oversight of children’s issues and the Oranga Tamariki system.<sup>1 2</sup> The resulting Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill (the Oversight Bill), introduced in Parliament in November 2021, is currently under consideration and likely to become law during August/September 2022.<sup>3</sup>

This Appendix provides information about the proposed changes and their implications for the Children’s Commissioner, as well as the background to and context for the changes, including ongoing issues related to Aotearoa’s care and protection system.

### The Oversight Bill 2021

The Bill proposes significant changes to the structure and functions of the Children’s Commissioner and therefore has implications for all children in Aotearoa, particularly, but not only, those in the Oranga Tamariki system. The Bill:

- Establishes a Children and Young People’s Commission, replacing the Children’s Commissioner sole model with a board of between 3 and 6 members. The chair of the board will be the Chief Children’s Commissioner. The Commission’s mandate under the Bill is systemic advocacy for all children aged under 18, and young people aged between 18 and 25 who have been in care or custody.
- Establishes and defines the functions, duties and powers of a new body called the Independent Monitor of the Oranga Tamariki System. Currently, these functions, duties and powers are primarily vested in the Children’s Commissioner. The decision has already been taken by Government to house the Monitor with the Education Review Office (ERO), not the Children’s Commissioner’s Office as originally planned and where it would be more appropriately situated.

---

<sup>1</sup> Children’s Rights Alliance Aotearoa New Zealand [Written Input into the List of Issues Prior to Reporting](#) (March 2020).

<sup>2</sup> Sandi Beatie *Strengthening independent oversight of the Oranga Tamariki system and of children’s issues in New Zealand Ko te whakakaha i te tirohanga Motuhake ki te pūnaha a Oranga Tamariki me ngā take tamariki i Aotearoa: Post Consultation Report* (August 2018). <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/policy-development/oversight-for-children/index.html>

<sup>3</sup> [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_116701/oversight-of-oranga-tamariki-system-and-children-and-young](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_116701/oversight-of-oranga-tamariki-system-and-children-and-young)



- Sets out the Ombudsman’s complaints function in relation to Oranga Tamariki, Ministry for Children (OT). The Ombudsman already has an oversight function in relation to OT, so the changes proposed in the Bill raise issues about the extent of the Ombudsman’s powers to investigate non-government organisations considered to be within the “Oranga Tamariki system.”<sup>4</sup>
- Constructs a framework for the Monitor, Ombudsman and Commission to work together.

The Bill, and the process leading to, and since, its development, has highlighted significant shortcomings in the way children, and the issues that affect them, have been considered by successive governments, giving rise to questions about how children’s rights might be better considered in the future.

## Background to the Bill

Earlier changes to the OT system included the establishment of National Care Standards which involved a legislative imperative to establish a body to monitor these standards by 1 July 2019, prompting the review.<sup>5</sup> The impetus for the review was not to strengthen the Children’s Commissioner, but rather the need for Government to meet accountability requirements in relation to the safety and quality of the State care system.

As a result of the review into the ‘Oversight of the Oranga Tamariki System’, Government initially announced that:

- Resourcing of the Office of the Children’s Commissioner (OCC) will be strengthened to carry out advocacy for New Zealand children and young people.
- The Ministry of Social Development (MSD) is establishing a stronger independent monitoring function for the OT system, to be transferred to OCC once established.

Government has now established an Independent Children’s Monitor (ICM) to oversee the OT system and enhanced the oversight and investigation of the OT system by the Ombudsman. The ICM has a budget of approximately \$40 million over its first four years, compared to the current budget of approximately \$12 million for OCC over four years.

---

<sup>4</sup> The ‘Oranga Tamariki system’ is defined (in clause 9 of the Bill) as the system responsible for delivering services and supports under ‘or in connection with’ the Oranga Tamariki Act 1989; and applying to those providing services and supports (agencies, or contracted partners within the system) including health, education, disability and other services.

<sup>5</sup> <https://www.legislation.govt.nz/regulation/public/2018/0111/latest/whole.html#LMS56030>

Since our LOIPR report, Government decided:

- To shift from having a Children’s Commissioner sole to a 3-6 person Children and Young People’s Commission, covering all those aged under 18 and care experienced young people up to the age of 25.
- The Commission’s functions will relate to system advocacy, monitoring the progressive implementation of the CRC, and gathering and sharing the voices of children and young people.
- The Commission will retain a function around the facilitation of resolution of individual children’s issues, but will no longer have powers to receive or investigate complaints.
- The ICM is a departmental agency and has been placed in the ERO,<sup>6</sup> rather than the OCC (an Independent Crown Entity) as originally intended.<sup>7</sup>

The design and drafting of the Bill has not been informed by any comprehensive consultation with children, despite the Bill affecting all children due to the changes proposed to the Children’s Commissioner. Children have not had opportunities to influence the structure and functions of their Commission, what they want to see from their Commissioner(s), or for care experienced children and young people to inform the changes to care system oversight outlined in the Bill. Overall, there have been extremely limited opportunities for children to have a say on the Bill. Where children and young people have shared their views, it appears that these have not been reflected in the Bill as it has progressed through the legislative process and they have reported a feeling of not being heard and having their views acted on by Government.

There is also a lack of alignment in the consistency, coordination and timing of the Bill and other relevant system-level developments relating to children’s rights, the child care and protection system, and the protection of children within that system. This includes the lack of alignment with the timing of the final recommendations of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (due in June 2023), a failure to reflect the Royal Commission’s interim report findings (as set out in the Redress Report, 2021), and the reforms of OT as the State’s child care and protection agency.<sup>8</sup>

## Timing of the Bill and submissions

The Bill was introduced to Parliament in November 2021, with submissions due late January 2022. This timing (over the summer holidays) meant there was little time for community organisations to consult and develop their submissions. It was also

---

<sup>6</sup> <https://ero.govt.nz> ERO evaluates and reports on the education and care of learners in schools, kura, kohanga reo, puna reo and early childhood services.

<sup>7</sup> <https://www.beehive.govt.nz/release/long-term-home-independent-children’s-monitor-identified>

<sup>8</sup> *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions, Wellington, 2021).

difficult for children and young people to submit on the Bill because they were all on school holidays.

In total, 403 submissions were made on the Bill, of which only eight were in support. The Select Committee recommended the reinstatement of a named Children's Commissioner and retention of the power of this Commissioner to report to the Prime Minister, both of which had been absent from the Bill.

The children's sector submitted that the Bill was an opportunity to strengthen the way Government fulfills its responsibilities to children to create the conditions in which all children in Aotearoa can grow and thrive. Specifically, the sector submitted that the Bill should:

- Strengthen the Children's Commissioner's Office so that it continues to be an effective, authoritative and independent voice for all children in Aotearoa, grounded in evidence, research and maatauranga about children and their lives.
- Improve oversight of OT, so that problems or areas for improvement are identified and responded to quickly, minimising any harm to children and creating a continuously improving care and protection system.

There was a strong call through submissions for Government to pause the Bill so that the fundamental flaws within it could be addressed and the opportunity taken to get the Bill right for children, their families and whānau, taking into account the recommendations of the Royal Commission and paying respect to those who have shared their concerning experiences of being in State care so as to prevent further harm to children now and in the future. This call for Government to pause the Bill has gone unheeded.

Concerns about the Bill include:

- Removal of the Children's Commissioner's complaints and investigations functions, leaving children, including those in the care and protection system, without a statutory body with the powers to receive and investigate complaints about children's issues. Under the Bill, the Commission's functions and powers are limited to systemic advocacy, as children with complaints about OT will have to go to the Ombudsman. Concern has been voiced by civil society that the Ombudsman is not equipped with the capability to work in ways that focus first and foremost on children.
- The new ICM is a departmental agency, not an Independent Crown Entity. This means it is not independent from Government. Its functions relate to monitoring the system, not monitoring for children, and its purposes include building public trust in the OT system.

- The Children’s Commissioner is an Independent Crown Entity, but no longer has any statutory complaints or monitoring functions in relation to the care and protection system.<sup>9</sup>
- The ICM’s powers to enter care facilities are limited and it cannot enter without notice.
- Inconsistency with Government’s obligations and plans to give effect to Te Tiriti o Waitangi in the care and protection system, undermining the rights of tamariki Māori.
- Fragmentation and the removal of one clear place for children to go to have their issues and concerns championed. Three agencies will be involved in the ‘system of ‘Oversight’: the ICM, the Children and Young People’s Commission and the Ombudsman. The Bill lacks clarity about how children’s complaints, monitoring and advocacy will be co-ordinated to ensure they work together as a system. There is concern this may lead to children falling through gaps, including those children who may report experiences of harm that should be responded to in real-time in order to prevent further harm.
- A lack of clarity around appointment processes and operation of the Commission to ensure its diversity and effectiveness and its accountability to children and the public.

The proposed changes alter the role and structure of the Children’s Commissioner and raise the following issues or questions:

- How will the focus on the particular rights and needs of those under 18 be maintained within the Commission’s broader age mandate, given children are entitled to special care and assistance due to their age, developmental stage and lack of political voice?
- How will the Commissioner’s current functions in relation to advancing and monitoring the application of the CRC for all children in Aotearoa be affected?
- What will be done to ensure the Commission has the adequate human, technical and financial resources to fulfil its functions, including its CRC functions?
- A 3-6 person Commission implies a very different model of operation to a Commissioner sole model, with greater administrative requirements. Adequate resourcing will be essential to ensure the essence of the Office – as an authoritative and respected voice for children – is maintained.
- Given the expanded focus to also include young people up to the age of 25, how will the Commission’s role differ to, and what will the relationship be, with the Ministry of Youth Development which supports and empowers those aged between 12 and 24?

Overall, insufficient consideration has been given to children and their rights in the development of this legislation at every step of the process. From the problem definition underpinning the Beatie review, through to the Bill, the focus has been on

---

<sup>9</sup> The Children’s Commissioner remains a designated National Preventive Mechanism under OPCAT.





the oversight system rather than an evidence-based assessment of what changes to the Children's Commissioner would be in children's best interests.<sup>10</sup>

## Looking Ahead

It seems likely that the Bill will proceed, albeit with some amendments, despite widespread opposition and calls to wait for the Royal Commission's findings, due in 2023. If the Bill does pass into law it will be important that Government establish and embed processes to:

- Monitor how the legal changes are working in practice from the start, and on an ongoing basis, particularly to track their impact on children. Childhood is a relatively short part of the life span, and monitoring of the new system needs to result in continuous, real-time improvement of practice that optimises children's experiences and outcomes in line with their sense of time.
- Listen to children and young people about how they are experiencing the changes, especially those in the OT system. This would allow children to help to shape the operation of the oversight system, including their Commission/er, even if they have not had adequate opportunity to inform its legislative framework.
- Enable public servants, Māori, civil society, academic experts and children, especially those who are care experienced, to work together (for example, by establishing a Working Group) to:
  - Optimise the way the legislative changes are operationalised.
  - Identify any problems or gaps arising from the law being operationalised so these can be remedied as quickly and as comprehensively as possible without legislative change. For example, there may be practical adjustments to be made to the way the interface between the Commission/er, the Ombudsman and the ICM works for children and whānau.
- Determine when the comprehensive overarching review should be held within the next three years and inform its scope:
  - The review must ensure that the findings and recommendations of the Royal Commission contribute to the continuous improvement of the oversight system, by highlighting or raising flags about potential issues or shortcomings in oversight, based on past experience.
  - To respect the experiences and mana of survivors, we strongly urge Government to commit to undertaking the review of the proposed legislative changes within six months of the Royal Commission providing

---

<sup>10</sup> For an analysis of the policy process underpinning the Bill see: David King and Jonathon Boston *Improving a system when young lives are at stake: A public policy analysis of the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill* (27 July 2022): <https://drive.google.com/file/d/1hh6jq9HGa1-oyva6EHV3vRBwvjtXVJvV/view>





its final report and recommendations, with an explicit focus on exploring how the recommendations relate to, and may require, changes to the legislation.

- The scope of the review should include a focus on the role and functions of the Children’s Commissioner, in addition to oversight of OT.
- Align the oversight system with developments within OT, so there is a move to support families and whānau and enable children to be well cared for and kept safe within their own family, whānau, hapū and iwi.

## Wider Context – Developments within Oranga Tamariki

We note the information in the Government’s report regarding OT. While largely accurate, this Report does not, however, provide full details on developments in OT over the reporting period which have had significant children’s rights implications.

### Which Children are Covered by Oranga Tamariki?

OT is primarily concerned with the statutory care, protection and youth justice services. It does not cover all children, despite its name.

Definition of the scope of OT’s responsibilities has fluctuated. The 2018 Beatie report noted that the ‘Oranga Tamariki system’ also includes the role of other agencies such as the Courts, NZ Police, Corrections and those that provide services such as Health and Education.<sup>11 12</sup> More recently, through its definition of the monitoring role for the ICM, Cabinet has agreed, for the purposes of oversight, that the OT system does not extend to services delivered by agencies to those children and young people with early risk factors for future involvement in the care, protection, or youth justice systems.<sup>13</sup> The Oranga Tamariki Action Plan published in 2021,<sup>14</sup> a legislative requirement under the Children’s Act 2014,<sup>15</sup> is described by Government as “The

---

<sup>11</sup> Beatie Report (n 2).

<sup>12</sup> Such an approach was consistent with the previous ‘vulnerable children’ model, whereby children identified as vulnerable due to involvement in the State care, protection or youth justice systems were referred to Vulnerable Children’s Teams. These teams are now called Children’s Teams and have been transitioned to community providers.

<https://www.orangatamariki.govt.nz/support-for-families/how-we-support-whanau/>

<sup>13</sup> Office of the Minister for Social Development and Employment *Cabinet Paper - Oversight of the Oranga Tamariki System and Children and Young People’s Commission Bill – Further Policy Decisions* (May 2021): <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/oversight-of-the-oranga-tamariki-system-and-children-and-young-peoples-commission-bill.html>

<sup>14</sup> *Oranga Tamariki Action Plan* (OT, Wellington, July 2022).

<https://www.orangatamariki.govt.nz/assets/Uploads/About-us/New-ways-of-working/OTAP/Oranga-Tamariki-Action-Plan.pdf>

<sup>15</sup> See Children’s Act 2014, ss 4-5 and ss 7D-13.

Children’s Agencies’ joint plan to prevent harm, and promote wellbeing, for the children and young people in the populations of interest to Oranga Tamariki.”<sup>16</sup>

It is unclear where the threshold for a child’s inclusion within the OT system lies (that is, which children fall within what the Children’s Act 2014 describes as OT’s “core populations of interest.”)<sup>17</sup> The Action Plan identifies priority populations as those children and young people who are at risk of being involved with, are already involved with, or have been involved with, the care and protection and youth justice systems.<sup>18</sup> As discussed in footnote 89 of the body of this Report, the scope of the OT system has potential implications for the domestic legal protection of children’s CRC rights.

## Establishment of Oranga Tamariki and Public Concern about Baby Removals

OT was established in 2017 following consideration of the Expert Advisory Panel’s final report *Investing in New Zealand’s Children and Families*.<sup>19</sup> Founded on a social investment approach, partly due to concern about managing the State’s future fiscal liability,<sup>20</sup> the aim was to make the legislation and operation of the OT system more “child-centred” and to deliver better long-term outcomes for children.<sup>21</sup>

In practice, the legislative amendments affected the grounds for removing a child into care and the process for doing so; they signalled a pendulum shift from family-led decision-making to professional decision-making about what was in the best interests of the child, not only in terms of their immediate safety and welfare, but also their long-term outcomes. Increased emphasis was placed on the participation and views of the child within the Act and a new principle was introduced requiring decision-makers to address the child’s need for a “safe, stable, and loving” home.<sup>22</sup> Simultaneously, the role of families, whānau, hapū and iwi in decision-making about a child was diminished under the legislation. The first principle listed in the previous legislation, to be applied in exercise of powers under that legislation, was that the primary role in caring for and protecting a child or young person lies with the child or young person’s family, whānau, hapū and iwi, and family group.<sup>23</sup> Taken together with the provisions establishing the Family Group Conference (FGC) as the primary

---

<sup>16</sup> *Oranga Tamariki Action Plan* (n 14), title page.

<sup>17</sup> Children’s Act 2014, ss 7D.

<sup>18</sup> *Oranga Tamariki Action Plan* (n 14), p. 4.

<sup>19</sup> Modernising Child, Youth and Family Expert Panel *Expert Panel Final Report: Investing in New Zealand’s children and their families* (Ministry of Social Development, Wellington, 2015).

<sup>20</sup> I Hyslop & E Keddell (2019) Child protection under National: Reorienting towards genuine social investment or continuing social neglect? *New Zealand Sociology*, 34(2), 93-22.

<https://search.ebscohost.com/login.aspx?direct=true&db=anh&AN=140355429&site=ehost-live&scope=site>

<sup>21</sup> Government Report, para 14 of consultation draft.

<sup>22</sup> Oranga Tamariki Act 1989, ss 14, 14A and 15.

<sup>23</sup> Children, Young Persons, and Their Families Act 1989, s5(a).

decision-making tool under the Act, the previous legislation envisaged government support for whānau, hapū and iwi led decision-making about what was in the best interests of their tamariki.<sup>24</sup> However, in the Oranga Tamariki Act 1989, the principles relating to whānau, hapū and iwi are listed below those principles relating to the child's views and wellbeing.<sup>25</sup>

After OT's establishment there was an increase in the rate of removal of babies from their families into State care, with regional variations.<sup>26 27</sup> Due to the on-going impacts of colonisation and the State care of previous generations (the parents, grandparents and tīpuna of children today), as well as the discrimination inherent in the care and protection system, a disproportionate number of babies removed into care were Māori. Other groups were also affected, including babies whose parents had intellectual disabilities.<sup>28</sup>

Media reports, including a video of a one-week-old baby being removed from her mother's care in hospital, prompted enormous public outcry and five reviews:

- A review by the Children's Commissioner.<sup>29</sup>
- A Māori-led inquiry into OT, commissioned by the Whānau Ora Commissioning Agency.<sup>30</sup>
- An investigation by the Chief Ombudsman.<sup>31</sup>
- An urgent Waitangi Tribunal inquiry.<sup>32</sup>

---

<sup>24</sup> Māori Perspective Advisory Committee *Puao-Te-Ata-Tu* (Department of Social Welfare, Wellington, 1988).

<sup>25</sup> Wellbeing includes 'welfare' but is not otherwise defined, suggesting it is more than welfare – protection from abuse and neglect.

<sup>26</sup> See <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Data-analytics-and-insights/Babies-Entering-Oranga-Tamariki-Care.pdf>; E Keddell (2019) Harm, care and babies: An inequalities and policy discourse perspective on recent child protection trends in Aotearoa New Zealand, *Aotearoa New Zealand Social Work*, 31(4), 17.

<https://doi.org/10.11157/anzswj-vol31iss4id668>

<sup>27</sup> E Keddell, L Fitzmaurice, K Cleaver & D Exeter (2022) A fight for legitimacy: Reflections on child protection reform, the reduction of baby removals, and child protection decision-making in Aotearoa New Zealand. *Kōtuitui: New Zealand Journal of Social Sciences Online*, 1-27.

<https://doi.org/10.1080/1177083X.2021.2012490> See Figures 3 and 4.

<sup>28</sup> Oranga Tamariki Act 1989, s 5(1)(c)(v).

<sup>29</sup> Office of the Children's Commissioner *Te Kuku O Te Manawa — Moe ararā! Haumanutia mgā moemoeā a ngā tūpuna mō te oranga o ngā Tamariki* (Final Report, OCC, Wellington, 23 November 2020).

<sup>30</sup> Whānau Ora Commissioning Agency (2020) *Ko Te Wā Whakawhiti, It's Time for Change: A Māori Inquiry into OT*.

<sup>31</sup> Chief Ombudsman *He Take Kōhukihuki: A Matter of Urgency - Investigation report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki, Ministry for Children* (The Office of the Ombudsman, Wellington, 6 August 2020).

<sup>32</sup> Waitangi Tribunal (2021) *He Pāharakeke, He Rito Whakakīkinga Whāruarua: OT Urgent Inquiry*

<https://www.waitangitribunal.govt.nz/news/tribunal-releases-report-on-oranga-tamariki/>

- An internal review by OT.<sup>33</sup>

The former Chief Executive of OT resigned in January 2021.<sup>34</sup> <sup>35</sup> That same month, a Ministerial Advisory Board was appointed by the Minister for Children to provide him with advice and assurance across relationships, social work and organisational culture.<sup>36</sup> The Board's report *Hipokingia ki te Kahu Aroha Hipkingia ki te Katoa*<sup>37</sup> was released in September 2021 and recommended that:

- Decision making and resources be shifted to communities, with children and whānau at the centre of the system.
- A new operating model be formed, with better support and training for social workers.
- The power to remove children from their whānau, should only be utilised in extreme situations and not as a go-to solution for complex circumstances.

While *Te Kahu Aroha* contains many positive recommendations, particularly relating to improving social work practice, it largely ignored the findings of the four external reports mentioned above. This included the Waitangi Tribunal inquiry, which found that Government had breached the principles of the Te Tiriti o Waitangi and, in respect of tamariki and rangatahi Māori, recommended the devolution of the system away from the Crown and towards Māori. This recommendation does not feature in the Government's response to *Te Kahu Aroha*. Nevertheless, Government has accepted all the recommendations of *Te Kahu Aroha* and developed a plan for the future direction of OT.<sup>38</sup>

Government, through OT, has begun working in partnership with Māori, in an effort to be consistent with Te Tiriti o Waitangi, so that tamariki Māori in need of care and protection can be cared for within their whānau, hapū and iwi.<sup>39</sup> To date, Government has entered into eight strategic partnerships with Māori.<sup>40</sup>

---

<sup>33</sup> Oranga Tamariki *Professional Practice Group Practice Review into the Hasting Case* (Oranga Tamariki, Wellington, November 2019).

<sup>34</sup> See: <https://www.stuff.co.nz/national/300212679/timeline-oranga-tamariki-chief-executive-grainne-moss-road-to-resignation>

<sup>35</sup> It should be noted that the Chief Executive was appointed to the role from senior positions in the elder care sector, not from a background in child welfare. This seems inconsistent with Government's priority at the time on improving the State care system for children.

<sup>36</sup> See: <https://www.orangatamariki.govt.nz/about-us/reports-and-releases/cabinet-papers/oranga-tamariki-ministerial-advisory-board/>

<sup>37</sup> See: <https://www.orangatamariki.govt.nz/about-us/performance-and-monitoring/reviews-and-inquiries/ministerial-advisory-board-report/>

<sup>38</sup> *Oranga Tamariki Future Direction Action Plan* (OT, Wellington, September 2021): <https://www.orangatamariki.govt.nz/about-us/how-we-work/new-ways-of-working/>

<sup>39</sup> See, for example, <https://www.stuff.co.nz/pou-tiaki/126753087/govt-funds-trailblazer-nqi-tahu-programme-to-keep-mori-kids-out-of-state-care>

<sup>40</sup> <https://www.orangatamariki.govt.nz/about-us/how-we-work/strategic-partnerships-with-maori/>

The vision for the Royal Commission is “transforming the way we, as a nation, care for children, young people and vulnerable adults in our communities.”<sup>41</sup> <sup>42</sup> The work and recommendations of the Royal Commission, and the experiences and views of survivors of abuse in state care, and the children who have experienced state care, must be central to shaping change to OT.

## Conclusion

The Oversight Bill 2021 raises a myriad of issues to do with the rights and wellbeing of children. This period in the evolution of Aotearoa’s care, protection and youth justice systems has revealed crucial questions about the adequacy of successive government efforts to understand and address the underlying social and economic determinants of risk leading to child abuse, neglect and youth offending, and the tendency of governments and the public service to see themselves at the heart of solving social problems. This fails to recognise the critical role of whānau, hapū and iwi, and of families and communities themselves, taking the lead in shaping solutions that uphold their rights.<sup>43</sup>

Giving effect to the statutory requirement to take children’s rights into account in decision-making in OT will require strong, respectful relationships, collaboration and a collective approach between Government, Māori and community organisations. This needs to be based on a shared understanding of children’s rights and an holistic approach when embedding children’s rights in OT practice, to strike a balance between protection, provision and participation rights. For tamariki Māori and their whānau, this needs to include active implementation of both children’s rights (under the CRC and UNDRIP, among other international instruments) and Te Tiriti o Waitangi. In its seventh report *A duty to care: me manaaki te tangata*, the Family Violence Death Review Committee (FVDRC) explored the factors that have pushed Aotearoa away from caring for people who experience family violence. The FVDRC posed a series of reflective questions for government agencies seeking to work as

---

<sup>41</sup> See paras 134-137 in the body of this report about that Royal Commission.

<sup>42</sup> The Royal Commission is considering and making findings on “the circumstances that led to individuals being taken into, or placed into care ... the factors, including systemic factors, which caused or contributed to abuse... and the lessons learned and what changes were made to prevent and respond to abuse” (clause 31 of the Terms of Reference). In 2021, it made recommendations on redress (see n 8) and is still to make recommendations in relation to “changes to be made in the future to ensure that the factors that allowed abuse to occur during the relevant period in State care and in faith-based institutions do not persist” (clause 32A, Terms of Reference). Although the scope period ends at 1999, the Royal Commission can consider issues and experiences after 1999 for the purpose of informing any recommendations made under clause 32A (clause 15A, [Terms of Reference](#)).

<sup>43</sup> This point was made eloquently by former Children’s Commissioner, Dr John Angus, in his 2014 submission on ‘More effective Social Services’ to the New Zealand Productivity Commission, where he noted “the hubris of central government, its ministers and senior officials, in thinking that they are at the heart of solving social problems that arise within families and will ultimately be solved within families.”

<https://www.productivity.govt.nz/assets/Submission-Documents/e56565d613/Sub-109-John-Angus.pdf>

good partners with hapori/community.<sup>44</sup> These questions should underpin the development of OT policy and practice development.

The Bill has also, unfortunately, been a missed opportunity to strengthen the Children's Commissioner's Office so that it continues to be an effective, authoritative and independent voice for all children in Aotearoa, grounded in evidence, research and maatauranga about children and their lives, and with the independence, mandate and resources needed to effectively monitor, protect and promote children's rights in accordance with the Committee's General Comment No. 2 and previous recommendations.<sup>45</sup>

We hope that when the legislation comes up for review over the next three years, the opportunity is seized to design, in consultation with children, a Children's Commissioner's Office with the structure and functions to be a true champion for all children in Aotearoa, and all their rights, in all circumstances, now and into the future.

---

<sup>44</sup> <https://www.hqsc.govt.nz/assets/Our-work/Mortality-review-committee/FVDRC/Publications-resources/Seventh-report-transcripts/FVDRC-seventh-report-exec-summary-web.pdf>

<sup>45</sup> [UN Committee on the Rights of the Child \(2002\) General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child.](#)



# CHILDREN'S RIGHTS ALLIANCE

AOTEAROA  
NEW ZEALAND

**W:** <https://www.childrensrightsalliance.org.nz/>

**E:** [info@childrensrightsalliance.org.nz](mailto:info@childrensrightsalliance.org.nz)

