

## **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE: APPROVAL FOR ACCESSION AND PRESENTATION TO PARLIAMENT FOR PARLIAMENTARY TREATY EXAMINATION PROPOSAL**

- 1 This paper seeks Cabinet agreement:
  - for New Zealand to become party to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP)<sup>1</sup> and
  - that the OPCP and the National Interest Analysis (NIA) be presented to the House of Representatives for Parliamentary treaty examination.

### **Relation to government priorities**

- 2 Becoming party to the OPCP is a 2020 Labour Party Manifesto commitment. This will support the Government to:
  - 2.1 give greater effect to the Child and Youth Wellbeing Strategy (CYWS) and the Youth Plan to make New Zealand the best place in the world to be a child or young person
  - 2.2 reinforce New Zealand's support for the human rights of children, young people, and the international human rights framework more generally by providing independent scrutiny of Government actions, thereby strengthening the protection of the rights of vulnerable groups<sup>2</sup>
  - 2.3 better honour te Tiriti principles of 'active protection' (te Tiriti, Article 2) and of 'equal outcomes' and 'participation' (te Tiriti, Article 3) that are also contained in the United Nations (UN) Convention on the Rights of the Child (Children's Convention)
  - 2.4 strengthen child and youth rights to honour our Tiriti o Waitangi obligations, which will also help make New Zealand consistent with key

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To become party to the OPCP a State can either sign and ratify later, or accede in one step. Signature constitutes a preliminary endorsement of the OPCP and intent to ratify. Ratification or Accession is an agreement to be legally bound by the OPCP. I propose that New Zealand accede to the OPCP following completion of the Parliamentary treaty examination process (rather than signing and ratifying later).

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Vulnerable groups may include young disabled people, the rainbow community, girls and women, Māori, and Pacific people.

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articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), such as equality, non-discrimination, and participation.

### Executive Summary

- 3 This paper seeks Cabinet agreement for New Zealand to become party to the OPCP.
- 4 New Zealand became party to the Children's Convention in 1993. The Children's Convention covers both civil and political rights (e.g. right to freedom of expression) and economic, social and cultural rights (e.g. rights to an adequate standard of living, education and healthcare).
- 5 The OPCP provides 'communications' (complaints) procedures for taking claims to the UN Committee on the Rights of the Child (the Committee) that State parties have violated the Children's Convention. There are three mechanisms available within the OPCP to hold State parties accountable: submissions by, or on behalf of, an individual or group of individuals; Committee inquires; or inter-State complaints.
- 6 In 2019, Cabinet accepted the UN Human Rights Council's recommendation to consider becoming party to the OPCP following New Zealand's submission of its Universal Periodic Review [CAB-19-MIN-0238]. The Children's Convention Monitoring Group (CMG) and the Committee have also consistently advocated for New Zealand to become party to the OPCP. I believe New Zealand should accede to the OPCP which would improve the protection of children's rights by providing independent scrutiny of Government actions, better honour the principles of te Tiriti, and add weight to New Zealand's existing commitment as a State Party to the Children's Convention.
- 7 Becoming party to the OPCP has potential risks which include:
  - 7.1 reputational (if complaints are upheld by the Committee)
  - 7.2 financial - given the cost and time required to respond to unknown numbers of complaints.
- 8 Although the Committee's recommendations are not legally binding, the Committee does have a follow-up mechanism for reviewing State's responses to its recommendations. The absence of an enforcement mechanism at the UN level does not mitigate the significant moral weight of its recommendations. The Committee's recommendations are taken seriously by States.
- 9 The risk of complaints being accepted by the Committee is mitigated by the following:
  - 9.1 all domestic complaints avenues must have been exhausted, unreasonably prolonged or ineffective before the Committee will accept a complaint; and

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- 9.2 New Zealand has a well-established complaints system to resolve allegations of violations of rights.
- 10 For the above reasons New Zealand has received few complaints under existing mechanisms. However, under the OPCP in addition to civil and political rights complaints, New Zealand would receive complaints over alleged breaches of economic, social and cultural rights. These tend to engage matters of policy (e.g. access to housing or healthcare) and are not usually justiciable in New Zealand's domestic courts. There is therefore a risk that the Committee would make findings and recommendations against New Zealand on matters of sensitive domestic social policy.
- 11 Our robust domestic complaints system means it is likely that many complaints will be resolved before proceeding to the UN. However, the number of individual complaints we may receive in respect of economic, social, and cultural rights is difficult to predict.
- 12 It should be noted that although there are no direct economic or social costs, the Committee can make recommendations about economic, social and cultural rights – those recommendations could have economic and social costs, particularly if meeting those recommendations required the allocation of resources in a way that takes them away from other priorities.
- 13 I believe that despite some unknowns, becoming party to the OPCP is the right thing to do for New Zealand as a developed country that has been Party to the UN Convention on the Rights of the Child for nearly 30 years.
- 14 New Zealand can also point to significant progress on policies affecting children and young people. For example, under the Child and Youth Wellbeing Strategy Programme of Action, work already underway across government is targeted at addressing child poverty, family violence, and inadequate housing, and improving early years, learning support and mental wellbeing for children, young people and their families and whānau.
- 15 In acceding to the OPCP, in addition to individual complaints, I recommend that New Zealand recognise the competence of the Committee to investigate allegations of grave or systematic breaches of the Children's Convention and accept inter-State complaints.
- 16 Following completion of the Parliamentary treaty examination process, I propose that New Zealand implement the steps to accede to the OPCP. Based on current timelines, I expect New Zealand to be in a position to deposit our Instrument of Accession by mid-2022, for entry into force by late 2022<sup>3</sup>.

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The Committee will be able to receive complaints three months after the deposit of an Instrument of Accession with the Secretary-General of the United Nations.

## Background

### **The Children's Convention and its optional protocols support States to uphold basic and fundamental rights**

- 17 The Children's Convention was adopted by the UN in 1989, and ratified by New Zealand in 1993, subject to three reservations<sup>4</sup>. In broad terms, the Children's Convention provides that States will respect and ensure certain fundamental rights to children. The Children's Convention applies to children and young people up to the age of 18.
- 18 There are three optional protocols to further achieve the purposes of the Children Convention. New Zealand is already party to two of the three optional protocols to the Children's Convention. These are:
  - 18.1 the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) (ratified in 2001); and
  - 18.2 the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) (ratified in 2011).

### **The OPCP provides a UN-based mechanism for addressing alleged breaches of children's rights under the Children's Convention, the OPAC, and the OPSC**

- 19 New Zealand has not yet become party to the third optional protocol, the OPCP (entered into force in 2014). This optional protocol provides 'communications' (complaints) procedures for taking claims to the Committee that State parties have violated the Children's Convention.
- 20 There are three mechanisms available within the OPCP to hold State parties accountable under the Children's Convention:
  - 20.1 complaints can be submitted by, or on behalf of, an individual or group of individuals;
  - 20.2 the Committee can inquire into alleged grave or systematic violations; and
  - 20.3 State parties can make complaints of violations where *both* State parties have opted into the inter-State communications process.
- 21 When a State becomes party to the OPCP, complaints from individuals and the UN inquiry mechanism are included by default (but the inquiry mechanism can be opted out of), whereas State party complaints must be opted into. The Committee may only receive complaints concerning States that have ratified the OPCP.

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These are: a general reservation allowing the Government to distinguish in its law and practice between children according to the nature of their authority to be in New Zealand (Article 2); reservation on minimum age and conditions of child employment (Article 32(2)); and reservation related to age-mixing of adults and children when deprived of liberty (Article 37(c)).

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s 9(2)(h)



**Cabinet has previously agreed to consider the implications of New Zealand becoming party to the OPCP**

- 23 In 2014, as part of New Zealand's response to the Universal Periodic Review (UPR), Cabinet agreed to consider the implications of 'signing and ratifying' the OPCP for individual communications [CAB Min (14)17/5]. In 2016, the Committee recommended in its concluding observations that New Zealand should ratify the OPCP to further strengthen its fulfilment of children's rights. In response to the UN's recommendations following New Zealand's 2019 UPR, Cabinet agreed to consider becoming party to the OPCP [CAB-19-MIN-0238].
- 24 The Children's Convention Monitoring Group<sup>5</sup>, convened by the Office of the Children's Commissioner, (OCC) has consistently advocated for New Zealand to become party to the OPCP.

**No legislative or policy changes are required to become party to the OPCP**

- 25 New Zealand's long-standing position is that we do not become party to treaties until we have made any changes to domestic law and policy necessary to comply with the obligations in the treaty.
- 26 Given that New Zealand has been party to the Children's Convention since 1993, no changes to New Zealand's domestic law and policy are required in respect of the substantive obligations that could be the subject of complaints to the Committee. However, improvements to how those obligations are implemented are always being considered.

**Becoming party to the OPCP would improve the protection of children's rights in New Zealand**

**Becoming party to the OPCP would strengthen New Zealand's existing commitment to protecting children's rights under the Children's Convention**

- 27 Acceding to the OPCP will ensure the rights of all children and young people in New Zealand are reinforced and upheld. In doing so, this will enhance New

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The CMG monitors the New Zealand Government's implementation of the Children's Convention, its Optional Protocols and the Government's response to recommendations from the United Nations Committee on the Rights of the Child. The CMG is convened by the Office of the Children's Commissioner and includes members from the Human Rights Commission, UNICEF New Zealand, Children's Rights Alliance Aotearoa New Zealand, and Save the Children New Zealand.

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Zealand's credibility on international human rights issues and support our broader engagement on the rights of children in the United Nations.

- 28 Acceding to the OPCP will also add weight to New Zealand's existing commitment as a State Party to the Children's Convention. It will give New Zealanders the ability to make a communication to the Committee should the author perceive that New Zealand's obligations under the OPCP have been breached by the New Zealand Government.

### **Strengthening our commitment to the Children's Convention will support the Crown to honour Te Tiriti o Waitangi**

- 29 Acceding to the OPCP will support the Crown to honour te Tiriti principles of active protection (Article 2) and equal outcomes and participation (Article 3). The Children's Convention connects our Tiriti o Waitangi obligations and the rights of tamariki Māori. For example, Article 3.1 – welfare and best interests (protection); Article 12 – having a say (participation); and Articles 9, 10 – living with your family (recognition that tamariki wellbeing is inextricably linked to their relationships within whanau, hapū and iwi). The OPCP complaints mechanism therefore adds an additional avenue for international scrutiny of Crown actions and this could include matters related to its obligations under te Tiriti.
- 30 Māori rights and interests are also recognised and provided for in various pieces of legislation - for example, the Oranga Tamariki Act 1989, and the Education and Training Act 2020 which is explicit about te Tiriti, te reo and matauranga Māori.
- 31 Strengthening child and youth rights to better honour our Tiriti obligations will also help make New Zealand consistent with key articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), such as equality, non-discrimination, and participation.

### **There are potential risks in becoming party to the OPCP...**

- 32 Becoming party to the OPCP has potential risks which include:
- reputational (if complaints are upheld by the Committee, this may damage our international reputation on human rights)
  - financial - given the cost and time required to respond to unknown numbers of complaints.

### **...but there are mitigating factors**

*Domestic remedies need to be exhausted first...*

- 33 Complaints may usually only be submitted under the OPCP once all domestic remedies have been exhausted, been unreasonably prolonged, or ineffective. This means that, where there are effective remedies, New Zealand would have the opportunity to resolve complaints domestically before they proceed to the UN. The Committee would consider whether this requirement was met

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at the outset of its consideration of a complaint and would not proceed to consider the merits if domestic remedies had not been exhausted.

*and New Zealand has a well-developed complaints system for alleged breaches of children's rights*

- 34 New Zealand has a well-developed complaints system for alleged breaches of children's rights (refer Appendix Three), which lessens the likelihood that complaints would be accepted by the UN. These include general mechanisms such as the Courts, Human Rights Commission / Human Rights Review Tribunal, Offices of the Ombudsman, Privacy Commissioner, and the Children's Commissioner.
- 35 There are also agency or sector specific mechanisms available to address alleged violations of children's rights in respect of: law and order (the Independent Police Conduct Authority); residential care and protection, youth justice, and adoption services (Oranga Tamariki); corrections services; immigration; health services (the Health and Disability Commissioner); social services (Social Security Appeal Authority, Tenancy Tribunal); and employment (Personal Grievance Process, Employment Mediation Services, Employment Relations Authority, and the Labour Inspectorate).
- 36 Some complaint mechanisms could be more accessible or tailored to children (refer NIA and Appendix Three), but this should not impact on our readiness to ratify the OPCP.

*New Zealand's laws are robust in regard to OPAC and OPSC*

- 37 In regard to OPAC and OPSC, New Zealand's laws are robust in this area, and there are no risks here given that the laws preventing the involvement of children in armed conflict and the sale of children are well enforced.

### **For the above reasons New Zealand has received few complaints under existing mechanisms**

- 38 Since 1991, under all the communications procedures we have accepted<sup>6</sup> the UN has issued 36 decisions about individual communications in respect of New Zealand (34 to the Human Rights Committee and two by the Committee Against Torture), although the annual number of complaints received has increased in recent years. There have been no individual communications to date made to the Committee for the Elimination of Discrimination Against Women or the Committee on the Rights of Persons with Disabilities.
- 39 Just over half of the individual communications about New Zealand (20) were found to be inadmissible. There are various reasons for this but a common

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These are: the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). 1991 was the first year New Zealand received a complaint.

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one is that the author has not exhausted domestic remedies. In 10 cases, New Zealand was found not to have breached its obligations under the treaty in question. New Zealand has been found in breach six times (four by the Human Rights Committee and two by the Committee Against Torture).

- 40 There are five individual communications in progress (four before the Human Rights Committee and one before the Committee Against Torture).
- 41 Most of our existing communications mechanisms relate to civil and political rights and would have been taken to the UN only after the exhaustion of domestic courts processes. The thoroughness of our domestic court processes also means that those civil and political cases that are taken to the UN are more likely to be inadmissible.

*In addition, work is ongoing to strengthen some complaints mechanisms*

- 42 Work is ongoing to strengthen some complaints mechanisms for children and young people that will support the resolution of complaints of breaches via domestic avenues. This includes:
- *Oversight of the Oranga Tamariki system*<sup>7</sup>
- 43 In March 2019, Cabinet agreed to strengthen the independent complaints oversight and investigations function for the Oranga Tamariki system, which will be undertaken by the Ombudsman [CAB-19-MIN-0013]. An enhanced complaints oversight mechanism will be in place once the Oversight of Oranga Tamariki and Children and Young Person's Commission Bill (the Oversight Bill) has been passed (planned to be enacted in 2022).
- *Dispute panels in schools*
- 44 The Ministry of Education (MoE) notes that the existing pathways are not well suited to resolve education disputes in an effective manner. Currently, if a domestic primary or secondary school student and their whānau are unhappy with a school board decision, they can seek a review by the Ombudsman or a judicial review in the High Court. These pathways may not always be readily accessible to those who need them. Judicial review in particular can be intimidating and expensive.
- 45 The Education and Training Act 2020 came into effect on 1 August 2020. Sections 216 to 236 enable the establishment of dispute panels for resolving

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The Oversight Bill proposes to broaden the scope of the Ombudsman's complaints and investigation function to include agencies and NGO custody and care providers acting under the Oranga Tamariki Act 1989.



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serious disputes<sup>8</sup> that students and their whānau have been unable to resolve with their school board.

- 46 The establishment of the new dispute panels was a 2020 Labour Party Manifesto commitment. However, there are no timeframes in the Act for their establishment, which is for Ministers to determine, and new funding is required. When funding is secured, the MoE anticipates it will take a year to implement.
- 47 The MoE notes that depending on when the disputes panels are operationalised, there may be a higher risk of complaints reaching the United Nations without having been first considered domestically. Given the range of domestic complaints mechanisms available for alleged breaches of children's rights, I do not consider that the timing of the establishment of dispute panels should impact the decision or timing to become party to the OPCP.

### **Under the OPCP New Zealand would receive complaints over alleged breaches of economic, social and cultural rights**

- 48 Becoming party to the OPCP will allow the Committee to receive complaints and make recommendations on the application of economic, social and cultural rights in respect of individual circumstances and in relation to policies such as housing, social welfare and child poverty. In particular, under article 4 of the Children's Convention: *With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*
- 49 As New Zealand's domestic courts consider that the allocation of resources is for the elected government to determine, domestic processes may not always provide an effective remedy in respect of economic, social and cultural rights. This means that complaints pertaining to such policies could proceed directly to the Committee without the opportunity to resolve them domestically, and the Committee may make findings and recommendations that our domestic courts would not consider. Compared to civil and political rights, with economic, social and cultural rights there is a greater likelihood of recommendations being made that are more difficult to implement (for example, if the complaint concerns wider national policies rather than an individual remedy).
- 50 The following are examples of complaints that could be taken to the Committee.

<b>Examples of potential complaints under the Children's Convention, and likely domestic</b>
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A 'serious dispute' has been defined in the Act as a dispute between a student and the board of their school involving their rights to education, including enrolment and attendance at the school, learning support, and stand-downs, suspension, exclusion or expulsion from school. It also refers to disputes about any racism or other form of prohibited discrimination, the student's physical or emotional safety while at school, and any physical restraint used on a student by a staff member.

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<b>mechanism</b>		
<b>Complaint</b>	<b>Relevant article under the Children's Convention</b>	<b>Domestic complaints mechanism</b>
Complaint that a cancer drug is not funded or available in New Zealand	<i>Article 24 - States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.</i>	A child or their representative could take this complaint to the Human Rights Review Tribunal, or the Health and Disability Commissioner. If not resolved, the courts are likely to view this as a matter for the elected government to determine regarding allocation and priority of health funding,
A respiratory infection due to damp mouldy living conditions in a rented house.	<i>article 27 (1) - States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development); article 27 (3) - States Parties... shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing</i>	Through the Tenancy Tribunal compensation may be awarded.
Homelessness due to unlawful eviction	<i>article 27 (3)</i>	Is likely to be resolved through the Tenancy Tribunal or courts.
If the complaint was that homelessness was due to poverty (for example inadequacy of benefit levels),	<i>article 27 (3)</i>	The complainant may be able to challenge MSD's assessment of their benefit eligibility under the relevant legislation through the Review of Decision process which includes having the matter considered by a Benefit Review Committee or (if that is unsuccessful), the Social Security Appeal Authority and the High Court (on points of law). If this was not resolved, as above, and the concern is more about the adequacy of the eligibility criteria itself as prescribed by legislation, the courts are likely to view this as a matter for the elected government to determine, and the complaint could be accepted by the UN.
A complaint alleging physical or sexual abuse by staff while in the care of Oranga Tamariki	<i>Article 3 (3) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.</i>  <i>Article 19 (1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence,</i>	Firstly, this complaint would automatically trigger Police involvement. In addition, the Ombudsman has powers to subpoena people such as witnesses, and Oranga Tamariki has independent grievance panels for children and young people. While this type of complaint would be heard and resolved domestically and therefore unlikely to proceed to the UN, New Zealand would receive criticism regardless in UN Periodic Reports for example.

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	<i>injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child</i>	
Complaint that a baby was unnecessarily uplifted from its parents into state care without the parents' consent	<i>Article 9 (1) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.</i>	The judicial review process means this is likely to have been heard before proceeding to the UN.

- 51 To date, none of New Zealand’s human rights cases at the UN have involved economic, social or cultural rights, so there is no precedent in terms of the likely impact of such cases. New Zealand is not party to the Optional Protocol under the International Covenant on Economic and Social Rights (ICESCR). The Convention on the Rights of Persons with Disabilities (CRPD) is the only UN mechanism where complaints over economic, social, and cultural rights can be made against New Zealand. However, there has not been enough time since ratification (2016) for any issues to make their way through domestic complaints procedures.
- 52 The courts of other common law countries take a similar approach to economic, social and cultural rights. Of the 48 states that are party to the OPCP, only Ireland is a developed, common law country. Australia, Canada and the United Kingdom are not party to the OPCP. Since the OPCP came into force in 2014, the Committee has issued decisions in 58 cases in respect of 12 of the 48 states who are party to the OPCP. With differing socio-economic conditions, comparisons are hard to make.
- 53 Although the Committee’s recommendations are not legally binding, the Committee does have a follow-up mechanism for reviewing State’s responses to its recommendations. The absence of an enforcement mechanism at the UN level does not mitigate the significant moral weight of its recommendations. The Committee’s recommendations are taken seriously by States.

**Overall, I consider that New Zealand should become party to the OPCP**

- 54 Our robust domestic complaints system means it is likely that many complaints will be resolved before proceeding to the UN. However, the

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number of individual complaints we may receive in respect of economic, social, and cultural rights is difficult to predict.

- 55 It should be noted that although there are no direct economic or social costs, the Committee can make recommendations about economic, social and cultural rights – those recommendations could have economic and social costs, particularly if meeting those recommendations required the allocation of resources in a way that takes them away from other priorities.
- 56 I believe that despite some unknowns, becoming party to the OPCP is the right thing to do for New Zealand as a developed country that has been Party to the UN Convention on the Rights of the Child for nearly 30 years.
- 57 The main risk to New Zealand is of a further delay in becoming party to the OPCP, i.e. reputational (creating the impression that we have a reason to avoid scrutiny) as we are likely to continue to receive further criticism on this from the Committee, the Children’s Convention Monitoring Group, and NGOs.
- 58 New Zealand can also point to significant progress on policies affecting children and young people. For example, under the Child and Youth Wellbeing Strategy Programme of Action, work already underway across government is targeted at addressing child poverty, family violence, and inadequate housing, and improving early years, learning support and mental wellbeing for children, young people and their families and whānau.

### Implementation Process to become party to the OPCP

- 59 I propose the accession process be implemented over an estimated twelve month period (2021/2022) by the Ministry of Social Development (MSD), as the lead agency responsible for the Children’s Convention. This will allow for managing resource demands on MSD, consultation with the child/youth sector, and any delays from Select Committee consideration.
- 60 Subject to Cabinet agreement and under the Parliamentary treaty examination process, the Minister of Foreign Affairs will sign New Zealand’s instrument of accession. The timing process for New Zealand to become party to the OPCP is outlined below:

Milestone/Activity	Estimated timeframe
Preparation for accession process	Completed
Cabinet approval to submit a NIA to the House of Representatives	November 2021
Parliamentary examination	Nov 2021 to Feb 2022
Government action on any issues or legislation	March to April 2022
New Zealand accedes to the Optional Protocol	May to June 2022
<b>OPCP enters into force for New Zealand and the Committee can receive complaints</b>	<b>October 2022</b>

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*In acceding to the OPCP, I recommend that New Zealand recognise the competence of the Committee to investigate allegations of grave or systematic breaches of the Children's Convention and accept inter-State complaints*

### *UN inquiry communications*

- 61 In acceding to the OPCP, New Zealand will recognise the Committee's competence to inquire into grave or systematic violations. On balance, the benefits of including UN inquiry communications (the default when signing or ratifying) are considered to outweigh any risks.
- 62 The benefits of including UN inquiry communications are that:
- it would demonstrate our commitment to protecting children's rights under the Children's Convention by also being open to these types of complaints
  - there could be adverse national and international reactions if New Zealand opted out of UN inquiry communications – particularly after we included this mechanism when we acceded to the optional protocol to the CRPD in 2016
  - if there were a grave or systematic breach of children's rights by New Zealand in the future, this would provide an extra measure to ensure the protection of those children. Further, under Article 15, the Committee could transmit its views to UN specialised agencies who could provide technical advice or assistance to New Zealand following an inquiry.
- 63 The risks of including UN inquiry communications are that:
- s 9(2)(h) [REDACTED]
  - an inquiry could potentially take place before issues are resolved domestically. This may raise the risk of pre-emptive lobbying to the Committee which could impact on the Government's economic and social budget resourcing<sup>10</sup>.

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s 9(2)(h) [REDACTED]

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It is possible that a UN inquiry procedure about budget allocations would investigate and question the budgetary process (the Committee recommend that State parties specifically allocate a budget to all children's rights associated services). The Government considers the relative priority of all government programme financial resourcing during the annual budget process. This takes into account the Government's obligations under all UN conventions. Vote Ministers are responsible for prioritising budget bids within their area of responsibility, informed by departmental advice and input from other interested parties.

*Inter-State party complaints*

- 64 Several human rights treaties and optional protocols (including the OPCP) contain provisions that allow State parties to complain to the relevant treaty body (Committee) about alleged violations of the treaty by another State party.
- 65 These procedures are rarely used. The only examples across all the UN human rights bodies are three complaints taken to the Committee on the Elimination of Racial Discrimination in 2018: Qatar brought complaints against Saudi Arabia and the United Arab Emirates and Palestine brought a complaint against Israel. In respect of the Children’s Committee, inter-state complaints can only be brought by a state party that has also accepted inter-state communications in respect of itself.

66 s 9(2)(h) [Redacted]

67 s 9(2)(h) [Redacted] It is recommended that New Zealand accept inter-State complaints as this would signal our confidence in our implementation of the Children’s Convention.

**Responsibility for responding to communications received**

- 68 As the lead agency for the Children’s Convention, MSD will have lead responsibility, in collaboration with Crown Law, and the Ministry of Foreign Affairs and Trade, together with any other agencies as required, in responding to any communications that are received under this mechanism<sup>11</sup>. The relevant agencies will also keep the International Human Rights Governance Group and the Children’s Convention DCE Group informed.

**Financial Implications**

- 69 The main financial implication is the cost of responding to complaints. Crown Law has indicated that responses could be managed within their baseline if the volume is low, and comparable to other communications mechanisms New Zealand has already accepted. If the cost of responding to communications is higher than anticipated, officials may need to seek funding in future years.

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Note that as the OPCP process is about an alleged breach of a specific person’s rights by the Government, we do not take a partnership approach as such to responding to that person’s complaint. However, Individual communications can raise questions of broader policy in which Māori will be involved as Treaty partner, and the Committee can choose to pursue the matter as part of the normal periodic reporting process (which also has avenues for involvement).

70 Responding to the Committee’s recommendations may have financial consequences if they recommend financial reparations or if financial resources are required to address them. This can include compensation for harm suffered, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration. As with other UN human rights bodies, fair and adequate compensation can be recommended where rights are found to have been breached but the amount is left for the State to determine.

**Legislative Implications**

71 There are no legislative implications arising from the recommendations in this paper.

**Impact Analysis**

**Regulatory Impact Statement**

72 A regulatory impact statement is not required as no changes to legislation are required for New Zealand to become party to the OPCP.

**Climate Implications of Policy Assessment**

73 A Climate Implications of Policy Assessment (CIPA) is not required.

**Population Implications**

74 Becoming party to the OPCP would provide greater protections for vulnerable groups, as outlined in the table below.

Population group	How the proposal may affect this group
Māori	<p>In 2018 there were approximately 293,000 tamariki and rangatahi Māori under the age of 18 in New Zealand, around 38 percent of the Māori population. Tamariki and rangatahi Māori are over-represented across poor child wellbeing outcomes, and in state care.</p> <p>Acceding to the OPCP will strengthen the protection of the rights of tamariki and rangatahi Māori by providing independent scrutiny of Government actions and providing further impetus to honour the Crown’s obligations under Te Tiriti o Waitangi.</p>
Disabled people	<p>In 2013, it was estimated that twelve per cent of children and young people under the age of 18 (approximately 131,000) were disabled<sup>12</sup>.</p> <p>Although New Zealand has already ratified the Optional Protocol</p>

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From Disability Survey 2013. Note this is only conducted every 10 years.

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	to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), acceding to the OPCP will further strengthen the protection of disabled children’s rights.
Pacific	<p>In 2018 there were approximately 152,000 Pasifika children and young people under the age of 18 in New Zealand, around 40 percent of the Pasifika population.</p> <p>Pacific children in New Zealand experience significant disparities in wellbeing statistics including child poverty, health, and education outcomes. This work has particular importance for the rights of Pacific communities in New Zealand who have a fast-growing, young population compared to the general population</p>
Women	<p>In 2018 females made up just over half (50.7 percent) of the population of New Zealand. There were approximately 538,000 females under the age of 18 in New Zealand, around 23 percent of the female population.</p> <p>Girls and young women continue to face discrimination, violence and sexual harassment, exploitation and abuse. Acceding to the OPCP will strengthen the protection of the rights of girls and young women in these areas and provide independent scrutiny of Government actions to improve outcomes for girls and young women.</p>
Rainbow young people	<p>The Rainbow community face disproportionate levels of inequity and discrimination compared to other population groups. For example, research shows that Rainbow young people in New Zealand are significantly more likely to experience anxiety, depression, self-harm, homelessness, addiction and risk of suicide than their non-rainbow peers.</p> <p>Acceding to the OPCP will uphold and recognise the rights of young people in the Rainbow community. It will also support actions under the Youth Plan, where Rainbow youth are a priority group, particularly by prioritising their voice and perspectives.</p>

**Human Rights**

- 75 Acceding to the OPCP will reinforce both New Zealand’s support for the human rights of children and the international human rights framework.
- 76 New Zealand may become more vulnerable to complaints on economic, social and cultural rights. Examples and mitigating factors are covered in the paper above, as well as in more detail in the NIA in Appendix Two.

**Consultation**

- 77 MSD has developed and consulted on this Cabinet paper with government agencies. These agencies include the Ministries of Foreign Affairs and Trade, Justice, Health, Education, Business Innovation and Employment, Housing and Urban Development, Environment, Transport, Youth Development, Defence; Ministries for Women and Pacific Peoples; the Departments of



## IN CONFIDENCE

Internal Affairs, and Corrections; Crown Law, Oranga Tamariki–Ministry for Children, Te Puni Kōkiri, New Zealand Police, Treasury, Stats NZ, the New Zealand Defence Force, New Zealand Customs Service, Social Wellbeing Agency, Te Arawhiti, Kainga Ora; and the Child Wellbeing and Poverty Reduction Group in the Department of the Prime Minister and Cabinet.

- 78 Given the child and youth sector's consistent advocacy for New Zealand to become party to the OPCP, MSD undertook limited consultation with key stakeholders. These include the Office of the Children's Commissioner, Human Rights Commission, and the Children's Convention Monitoring Group.
- 79 The Department of Prime Minister and Cabinet has been informed of the paper.

### **Publicity / Proactive Release**

- 80 This Cabinet paper and the attached NIA will be published on the MSD website. I intend to proactively release this Cabinet paper as required by Cabinet Office Circular, CO (18) 4, subject to the Official Information Act 1982.
- 81 Within 30 days of Cabinet approval I intend to make a public statement indicating that accession to the OPCP has been agreed by Cabinet. This statement will indicate that the NIA has been lodged for Select Committee consideration.
- 82 MSD will also develop a Communications Plan to disseminate information to ensure the public are aware of their rights to take complaints to the UN under the OPCP. As the government agency responsible for the Children's Convention, MSD is already responsible for promoting and raising awareness about the Children's Convention in general.

## Recommendations

- 83 The Minister for Children recommends that the Cabinet Social Wellbeing Committee:
- 1 **note** that acceding to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP) was a 2020 Labour Party Manifesto Commitment
  - 2 **note** that Cabinet agreed to consider becoming party to the OCP in 2019, following a recommendation from the UN Human Rights Council [CAB-19-MIN-0238]
  - 3 **note** that the OCP provides a communications (complaints) mechanism for the UN Committee on the Rights of the Child (the Committee) to consider allegations that a State party has breached the Children's Convention or its two related optional protocols
  - 4 **note** that by becoming party to the OCP, complaints that New Zealand has breached its obligations under the Children's Convention or optional protocols could be taken to the Committee through three mechanisms:
    - 4.1 complaints can be submitted by, or on behalf of, an individual or group of individuals (compulsory)
    - 4.2 the Committee can inquire into alleged grave or systematic violations; (default inclusion, can be opted out of) and
    - 4.3 State parties can make complaints of violations where *both* State parties have opted into the inter-State communications process (not compulsory, must be voluntarily be opted into)
  - 5 **note** that no changes to domestic legislation are required to give effect to the obligations set out in the OCP
  - 6 **note** that becoming party to the OCP would improve protection of children's rights in New Zealand by:
    - 6.1 strengthening the Crown's commitment to honour its Tiriti o Waitangi obligations
    - 6.2 providing independent oversight of New Zealand's complaints mechanisms
    - 6.3 increasing New Zealand's human rights compliance and international human rights reputation
    - 6.4 supporting the improvement of outcomes for Māori, disabled people, Pacific peoples, girls and women, and rainbow youth
  - 7 **agree** that the OCP and the National Interest Analysis be presented to the House of Representatives for Parliamentary treaty examination in accordance with Standing Order 405;

**Agree / Disagree**

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8 **agree** that in acceding to the OPCP, New Zealand will submit a declaration stating that New Zealand:

8.1 recognises the competence of the Committee to inquire into allegations of grave or systematic violations of the rights in the Children's Convention and its two optional protocols;

**Agree / Disagree**

**AND**

8.2 opts into the inter-State communications process to accept communications from other State parties;

**Agree / Disagree**

9 **approve** the content of the appended National Interest Analysis;

**Agree / Disagree**

10 **note** that the OPCP would enter into force for New Zealand three months after the deposit of an Instrument of Accession with the Secretary General of the United Nations;

11 **note** that based on current timelines, I expect New Zealand to be in a position to deposit our Instrument of accession to the OPCP by mid-2022 and the OPCP would enter into force in late 2022;

12 **authorise** the Minister of Foreign Affairs to sign New Zealand's instrument of accession.

**Agree / Disagree**

Authorised for lodgement

Hon Kelvin Davis

Minister for Children