

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: 2008 REPORTING (SUMMARY DOCUMENT)

This paper constitutes the final progress report on the government's United Nations Convention on the Rights of the Child (UNCROC) Five-Year Work Programme 2004-2008. You are asked to:

- note the progress made in implementing UNCROC as set out in the draft consolidated third and fourth periodic report (draft periodic report, attached as Appendix Three)
- agree to limited public consultation on the draft periodic report
- agree to the public release of the *Children and Young People: Indicators of Wellbeing 2008* report (draft attached as Appendix Four)
- authorise the Ministers of Foreign Affairs, Social Development and Employment, Youth Affairs and the Associate Minister of Justice (responsible for Human Rights Treaties) to approve the final periodic report for submission to the United Nations Committee on the Rights of the Child in November.

Executive summary

New Zealand became party to UNCROC in 1993. Parties to UNCROC agree to supply an initial report to the United Nations Committee on the Rights of the Child (UN Committee) two years after ratification and periodic reports every five years after that. Governments receive country-specific recommendations from the UN Committee after each report is submitted. Subsequent reports are expected to respond directly to these recommendations and provide an account of general measures taken to implement and ensure enjoyment of the rights contained in the Convention.

To date, New Zealand has submitted two periodic reports to the UN Committee – in 1995 and 2000. Owing to a backlog of country reports, the UN Committee invited New Zealand to submit its third and fourth periodic reports in consolidated form by November 2008.

The draft periodic report provides, in line with the five years of activity associated with the *UNCROC Five Year Work Programme 2004-2008*, comprehensive information on relevant activity undertaken by the government directly responding to the UN Committee's recommendations. It also provides updated information on legislation, policy and practice that furthers compliance with the Convention's obligations.

Consultation on the draft periodic report, as is the normal convention, will take place with the public/non-government sector for a period of four weeks, beginning in mid-September. Feedback received during the consultation process will be included in the report where relevant, as will any other new information, with a final report prepared for Ministerial sign-out in October prior to sending to the UN Committee in November.

The draft periodic report provides a substantive record of activity government has undertaken to enhance the wellbeing of children and young people, showing that significant investment has been made which aligns with UNCROC across a wide range of areas. Overall, the draft periodic report notes that children and young people in New Zealand are doing well, and notes substantial work undertaken in response to 25 of the 26 UN Committee recommendations, including towards the withdrawal of the reservations to UNCROC.

Despite noting these achievements, there will always be areas where further improvement could be made. For instance, New Zealand's three reservations to UNCROC, which relate to children deprived of liberty (Article 37(c)), child labour (Article 32(2)) and services for children in New Zealand unlawfully (Article 2), are key, albeit unfinished, items on the Work Programme. While significant work has been undertaken since 2003 with a view to eventual withdrawal of all three of the reservations, as detailed in paras 33-48 of this paper, the UN Committee may take the view

that insufficient progress has been made to date to lift the reservations, and may be critical of New Zealand in this respect.

Other areas where the UN Committee is likely to continue to focus attention on are disparities between Māori and Pacific children and child poverty. The draft periodic report outlines progress made in reducing disparities across a range of settings as well as poverty and also notes the case between the Child Poverty Action Group and the Attorney-General in relation to the in-work tax credit.

The Children's Commissioner has foreshadowed that as part of her statutory function to promote UNCROC she will be releasing a report on New Zealand's compliance with UNCROC in November 2008 and will table it with the UN Committee. The Commissioner's report is likely to focus on progress in withdrawing reservations and will be provided to agencies for comment prior to publication. The UN Committee will treat the Commissioner's report in the same manner it does the shadow report provided by the non government sector with an interest in children's rights which under UN Guidelines is due six months after a State report is submitted. Action for Children and Youth Aotearoa, an umbrella organisation to which the Commissioner belongs, co-ordinates New Zealand's non government report.

This report also seeks agreement to publish the *Children and Young People: Indicators of Wellbeing in New Zealand 2008* report. It shows good progress, has been made across a range of indicators with 22 of the 36 indicators along with trend data showing improved outcomes over the last decade. Releasing this report concurrently will ensure there is good information available as part of the consultation on the draft periodic report and demonstrate the progress made in improving outcomes for children and young people over the last decade.

Background

The United Nations Convention on the Rights of the Child (UNCROC)

UNCROC is a United Nations convention that articulates the rights of, and provides a set of guiding principles for how to view, children and young people¹.

UNCROC has been ratified by every State except Somalia and the United States of America, and is one of the United Nations' core human rights instruments.

UNCROC is comprised of 54 articles, a summary of which is provided in Appendix One. Four of the articles constitute the "general principles", as summarised below:

- all children have the right to protection from discrimination on any grounds (Article 2)
- the best interests of the child should be a primary consideration in all matters affecting the child (Article 3)
- children have the right to life, survival and development (Article 6)
- all children have the right to an opinion and for that opinion to be heard in all contexts (Article 12).

These general principles apply across a comprehensive range of contexts and environments, including justice, education, health, employment, the care and protection system, and adoption.

UNCROC articles require that adults respect and provide for the best interests and welfare of children in their care, and that society as a whole recognises that children should be active participants in decision-making, rather than just recipients of services or beneficiaries of protective measures.

¹ UNCROC applies to children and young people aged 18 years and under

New Zealand became party to UNCROC in 1993. Parties to UNCROC agree to supply an initial report to the UN Committee two years after ratification and periodic reports every five years after that. Governments receive country-specific recommendations from the UN Committee after each report is submitted. Subsequent reports are expected to respond directly to these recommendations and provide an account of general measures taken to implement and ensure enjoyment of the rights contained in the Convention.

To date, New Zealand has submitted two periodic reports to the UN Committee – in 1995 and 2000. Owing to a backlog of country reports, the UN Committee invited New Zealand to submit its third and fourth periodic reports in consolidated form by November 2008. New Zealand's oral examination is expected in 2010, with a formal response from the Committee likely to follow shortly afterwards.

Preparation of New Zealand's third and fourth periodic report

In October 2003, after consideration of New Zealand's second periodic report and following an oral examination in September 2003, the UN Committee provided 26 recommendations (concluding observations) to New Zealand in respect of compliance with UNCROC (including recommendations on New Zealand's first report on the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict which was considered concurrently). In response a five year cross-government work programme was developed to assist in the preparation of the third and fourth consolidated periodic report.

The *UNCROC Five-Year Work Programme 2004-2008* initially contained 28 items, ranging from targeted work programme items such as the review of the age of criminal prosecution (item 1), to more encompassing work programme items such as reducing inequalities in social wellbeing (item 9). Each work programme item was accorded milestones to help achieve the work programme item's intent, and have been reported on regularly to authorise milestone changes and note progress.

This is the fourth report back to Cabinet on the Work Programme since receiving the UN Committee's 2003 recommendations. The last report was in March 2007 and focused on New Zealand's reservations to UNCROC. An additional Work Programme item was added at this time - placing children at the centre of policy making - bringing the total number of Work Programme items to 29. All the 2007 milestones have been achieved, with the exception of two, which are on track and will be met following submission of the periodic report to the UN Committee. Progress made with each of the Work Programme items and the 2007 milestones is summarised in the table in Appendix Two.

The draft periodic report (attached as Appendix Three²) provides, in line with the five years of activity associated with the *UNCROC Five-Year Work Programme 2004-2008*, comprehensive information on relevant activity undertaken by the government to directly respond to the UN Committee's recommendations. It also provides updated information on legislation, policy and practice that furthers compliance with the Convention's obligations. The format of the report follows guidelines issued by the UN Committee in 2005, including, as with previous reports, an appendix with supporting statistical data.

Given that the draft periodic report covers an eight-year reporting period (2001-2008), the approach taken has been to focus on the most relevant and/or current initiatives undertaken to improve outcomes for children and young people living in New Zealand, rather than to provide an exact historical record of every activity initiated during the time period.

Input for the draft periodic report has been derived from government departments and Crown Entities. A significant amount of the information contained in the draft periodic report is publicly available. Only information relating to recent Cabinet decisions is currently unknown in the public

² This document will be in edit mode until it is tabled with the UN Committee in November 2008

domain. Most relevant are the recent considerations of matters relating to the reservations on child labour and deprivation of liberty.

Although not required of human rights treaty reports, the draft periodic report has been provided for your consideration prior to public consultation. Consultation with the public is normal practice for these types of reports and is actively encouraged by the UN Committee in their guidelines for reporting.

It is proposed that consultation on the draft periodic report take place with the public/non-government sector for a period of four weeks, beginning in mid-September. Feedback received during the consultation process can then be included in the report where relevant, along with any other new information. A final periodic report will then be prepared for Ministerial sign-out in October prior to sending it to the UN Committee in November.

The UNCROC Advisory Group³ has been involved in the development of the draft periodic report and has had an opportunity to comment on format and content. The sector, under the auspices of Action for Children and Youth Aotearoa Incorporated (ACYA), has undertaken considerable preparatory work for the non-government report, which is due, according to UN Guidelines, six months after New Zealand submits its report. This will be the vehicle for the sector to express any concerns they may have in relation to New Zealand's compliance with UNCROC. ACYA also co-ordinated the last non-government report and met with the UN Committee in 2003⁴.

The UNCROC Advisory Group has had the opportunity to provide comments on this paper. While appreciative of the opportunity to engage, the Advisory Group would like to note they have some variance of interpretation, and there is no one collective view on some of the issues raised in this paper. Nevertheless, individual members of the Advisory Group have the following comments. They:

- accept that work has been undertaken to progress Work Programme items, although the milestones undertaken are not always as substantive as the Work Programme item
- feel that while the UN Committee may note the complexities and issues surrounding the removal of New Zealand's reservations, the UN Committee is likely to be critical of New Zealand for not withdrawing any reservation
- endorse the recommendation to undertake public consultation on the draft periodic report. While noting that NGOs are given a separate opportunity to comment directly to the UN Committee, the Advisory Group is concerned that the time and process for consultation is insufficient for some members of the sector
- prefer an approach whereby a new government Work Programme is developed prior to the UN Committee's next issued recommendations, as opposed to the paper's recommended continuation of residual activity and formulation of a new Work Programme following recommendations issued in or around 2010.

The Children's Commissioner Act 2003 provides that it is a function of the Commissioner to promote UNCROC in New Zealand. The Commissioner has foreshadowed that she will be releasing a report on New Zealand's compliance with UNCROC, following submission to the UN Committee in November 2008. The report will be based on information solicited in 2006, and will be likely to have a focus on New Zealand's maintenance of reservations. Government agencies will be provided with an opportunity to comment on the draft report four weeks prior to its publication. Like the ACYA report, it will also be submitted to the UN Committee.

³ The UNCROC Advisory Group includes representation from members of Action for Children and Youth Aotearoa Incorporated (ACYA), UNICEF, Save the Children, Youthlaw, the Office of the Children's Commissioner and the Human Rights Commission.

⁴ The themes from ACYA's 2003 report were discrimination and inequality, child poverty, violence, participation and the co-ordination of funding services. It is likely that the next ACYA report will also highlight similar themes.

Key Points

The draft periodic report provides a substantive record of activity that the government has undertaken to enhance the wellbeing of children and young people. Overall, the draft periodic report notes that children and young people in New Zealand are doing well, and notes that substantial work has been undertaken in response to 25 of the 26 UN Committee recommendations, including demonstrable progress towards withdrawing New Zealand's three reservations to UNCROC.

In addition, the draft periodic report notes institutional reform that better aligns the provision of policy advice and resourcing of programmes and services for children and young people. For example, the Department of Child, Youth and Family Service becoming a service line of the Ministry of Social Development, and the creation of the Ministry of Youth Development, which is administered by the Ministry of Social Development.

Key initiatives noted in the draft periodic report, which respond to the Committee's 2003 recommendations include:

- a range of legislation that improves alignment with UNCROC and takes account of the best interests of the child (Care of Children Act 2004, Prostitution Reform Act 2003, Crimes (Substituted Section 59) Amendment Act 2007)
- strengthening and improved resourcing of the Human Rights Commission and Children's Commissioner functions
- budgetary measures, for instance, investments in early childhood education, and in secondary school retention and achievement with a focus on education outcomes for Māori and Pacific students and children with disabilities, and investments in health with free or highly subsidised access to primary healthcare and a range of targeted initiatives to improve health outcomes
- improved data collection, for instance the *Children and Young People: Indicators of Wellbeing* 2008 report
- greater responsiveness and professionalism in relation to care and protection services
- increased and enhanced parenting programmes and a range of universal and targeted support services with a focus on eliminating violence in families
- Working for Families financial assistance
- New Zealand Defence Force provisions that respond to the Committee's specific recommendations in relation to the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict.

Despite these achievements, there will always be areas where further improvement could be made. The draft periodic report identifies:

- although progress has been made, there continues to be a disparity between Māori and Pacific children when compared with others across a range of settings, including health, education and justice
- limited progress in relation to adoption law reform. Reform was signalled in the second periodic report to the UN Committee and identified on the Work Programme (item 18). Changes to adoption law are also required in order for New Zealand to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

The draft periodic report also notes the case between the Child Poverty Action Group and the Attorney-General in relation to the in-work tax credit. The hearing of evidence and legal

submissions has been concluded but no indication has been given by the Human Rights Review Tribunal of when its decisions will be released.

It is possible that the UN Committee will be critical of New Zealand where it considers progress has been too slow. The draft periodic report notes in detail the status of the reservations where, although significant work has taken place to progress these - including four reports to Cabinet in 2007 and two further reports in 2008, none are able to be withdrawn as yet.

Progress on New Zealand's Reservations to UNCROC

On ratification of UNCROC, New Zealand entered three reservations. The reservations to UNCROC are key, albeit unfinished, items on the Work Programme (items 3, 5, and 6). Cabinet has previously stated that work on their removal be afforded high priority because of the importance of ensuring compliance with the spirit of UNCROC.

Although there remains a risk that the UN Committee will reiterate previous criticisms with respect to New Zealand's maintenance of the reservations, significant improvements have been made since the last report to the UN Committee to improve the rights afforded to children and young people, and this should be acknowledged by the UN Committee. An overview of the recent work and the current status of each reservation is presented below.

Article 37(c) – Deprivation of Liberty

Article 37(c) requires that "every child [aged 17 and below] deprived of liberty be separated from adults unless it is considered to be in the child's best interest not to do so".

Following investigation of all contexts in which children and young people may be deprived of liberty, it was identified that New Zealand is compliant with Article 37(c) in situations of detention in prisons, at New Zealand borders, under military law, and for children in mental health facilities and compulsory care for children with intellectual disabilities. New Zealand will be compliant with regard to detention of minors for immigration purposes on the passing of the Immigration Bill later in 2008, which will raise the age of a minor for the purposes of immigration detention from 17 years or under, to 18 years or under.

Further work is required, however, in relation to Police transportation and custody for court appearances, before the reservation can be lifted. A report back to Cabinet in July 2008 identified that the work required to be compliant in all Police and court-based situations is more substantial than originally anticipated. Cabinet noted that while work would continue towards the removal of the reservation, it will not be lifted in the short-to-medium term because of the excessive cost of full compliance. Despite this, a number of measures are either in place or will be progressed to manage age mixing in these settings.

Australia, Canada, Iceland, Japan, Switzerland, the United Kingdom and the Netherlands all entered similar reservations to Article 37(c) upon ratification. Australia's draft periodic report, which is available for consultation and is scheduled to be submitted later this year, notes they have no plans to withdraw their reservation. Similarly, the United Kingdom, which submitted its periodic report to the UN Committee in 2007, notes that while they believe they are compliant, has withdrawn their reservation.

Article 32(2) – Child Labour

Article 32(2) requires governments to put in place mechanisms for a minimum age or minimum ages for admission to employment, regulation of hours, conditions of employment and appropriate sanctions for the enforcement of those regulations.

A Department of Labour-led work programme of activity (the Children's Employment Work Programme) to improve young people's understanding of their employment rights and health and safety is being actively pursued.

The International Labour Organisation (ILO) Convention 138 is considered a proxy for Article 32(2). Following consideration of a paper on ILO Convention 138 and the Children's Employment Work Programme in June, Ministers deferred making a decision with respect to ratification of ILO Convention 138. At this time Ministers also noted that the Minister of Labour would write to the Director-General of the ILO to explore options for New Zealand's compliance with ILO Convention 138 within the current legislative and policy framework.

A response has not yet been received from the ILO, and it is understood that the Minister of Labour does not expect a response in the short-term. As part of the Children's Employment Work Programme, further regulatory changes to the health and safety regime are proposed during 2009, at which time an update on progress can be provided to the Minister of Labour.

Article 2 – Children unlawfully in New Zealand

Article 2 of UNCROC requires State parties to "respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Concepts that surround human rights issues and the commentary of United Nations treaty bodies in this respect are somewhat fluid. Following recent consideration of these issues and associated commentary by officials, it seems that previous advice to Cabinet in 2002 - that in order to lift the reservation the eligibility settings for social assistance and housing may not need to be amended - may no longer be accurate.

Consequently, advice provided to Cabinet in 2007, that the reservation would be able to be withdrawn following increased compliance in education settings, and on enactment of a new Immigration Act, whereby children in the process of regularising their immigration status can access education services now needs further consideration.

Lifting the reservation may require extending eligibility for some social assistance payments and possibly a change to the social allocation system for state housing, both of which may have budgetary implications.

It is proposed that the Minister for Social Development and Employment, in consultation with the Ministers for Housing and Revenue report back to the Cabinet Social Development Committee by March 2009, on the implications for social assistance and housing policy settings and budgets should the reservation be withdrawn. It is also proposed that this report back include an update from the Minister of Education on access to education for children unlawfully in New Zealand.

Belgium, Australia, Canada, Sweden and the United Kingdom have all entered similar reservations allowing them to discriminate against persons according to their authority to be in the country. None of these countries have been able to lift their reservations yet.

Children and Young People Indicator Report (Work Programme Item 11 – assessing the impact of economic reforms on children)

In direct response to Work Programme item 11 which in itself responds to the UN Committee's concern on the impact of the 1980s economic reforms on children, in 2004 the Ministry of Social Development produced a report entitled *Children and Young People: Indicators of Wellbeing in New Zealand*. The report sets out the status of children and young people across a range of

indicators. In preparation for reporting to the United Nations, the Ministry of Social Development has produced an updated version of this report (draft attached as Appendix Four) that looks at 42 indicators (including 11 new indicators, four discontinued), monitoring improvements over the last decade and where possible offering international comparisons. This updated report was identified as a new milestone in the 2007 UNCROC Work Programme report back.

The report *Children and Young People: Indicators of Wellbeing in New Zealand 2008* shows that good progress has been made across a range of indicators, with 22 of the 36 indicators along with trend data showing improved outcomes over the last decade. New Zealand's outcomes are better than the OECD median in 9 of the 17 indicators for which internationally comparable data is available. These findings demonstrate the positive impact of the government's recent investments in education, health and income support.

It would be appropriate to release this report now (on the Ministry of Social Development's website), as it provides statistical information to back up the periodic report. The indicator report will allow the public, and more specifically the children's rights sector, to base their comments to government and to the UN Committee on robust information. The children's rights sector contributed to the selection of indicators contained in this report as part of consultation in the preparation stages of the report in 2003 and again in 2008. A hard copy version of the report will be produced in due course.

Next Steps

We propose that Ministerial approval to submit the finalised periodic report to the UN Committee, following public/non-government consultation, be by the Ministers of Foreign Affairs, Social Development and Employment, Youth Affairs and the Associate Minister of Justice (responsible for Human Rights Treaties). The amended final report will be sent to these Ministers during October, prior to sending to the UN Committee in November.

A separate consultation process, wider than the public consultation and seeking input from children and young people on how they view life in New Zealand generally is proposed. This process will be led by the non-government sector and supported by the Ministry of Youth Development with the Office of the Children's Commissioner and the Human Rights Commission. It is proposed that the results of this consultation be sent as a separate resource from children and young people to the United Nations, alongside the non-government report in late 2009/early 2010.

As the current *UNCROC Five-Year Work Programme 2004-2008* is set to expire, this will be the final annual update on this Work Programme and it is anticipated that it will be formally retired. In its place, it is proposed that the Ministry of Youth Development continue to engage with key stakeholders and co-ordinate New Zealand's UNCROC related activity including the monitoring of on-going work programme items (such as reducing inequalities in social well-being and addressing education disparities), as well as the provision of second tier advice to agencies. The aim is to develop a more targeted Work Programme following, and in response to, the UN Committee's next issued recommendations to New Zealand, in or after 2010.

Summary of Cabinet Recommendations

Cabinet noted New Zealand's obligation to report to the United Nations Committee on the Rights of the Child in November 2008.

Cabinet noted New Zealand's reservations to UNCROC, and further that none of these are able to be withdrawn at present. The Minister of Labour has written to the Director General of the ILO to explore options for New Zealand's compliance with ILO Convention 138, considered a proxy for Article 32 of UNCROC, within the current legislative and policy framework.

Cabinet invited the Minister for Social Development and Employment, in consultation with the Ministers of Housing, Revenue and Education, to report back to the Cabinet Social Development Committee by March 2009 on the policy and budgetary implications for social assistance and housing settings as well as an update on the settings for education in relation to the reservation to Article 2 of UNCROC.

Cabinet noted that a draft periodic report had been prepared and in accordance with UN Committee guidelines for reporting, agreed that public consultation on that draft report should occur.

Cabinet agreed to the release of the report *Children and Young People: Indicators of Wellbeing 2008* on the Ministry of Social Development's website at the same time as the draft periodic report is released for public consultation.

Cabinet agreed that sign-out on the finalised periodic report be by the Ministers of Foreign Affairs, Social Development and Employment, Youth Affairs and the Associate Minister of Justice (responsible for Human Rights Treaties) in October 2008

Cabinet agreed that following the expiration of the UNCROC Five-Year 2004-2008 Work Programme, the Ministry of Youth Development undertake any residual activity in respect of UNCROC prior to the UN Committee issuing their next recommendations and a new work programme developed.