23 December 2022

# Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP)

On 23 December 2022 the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP) came into effect for New Zealand

The OPCP allows claims to be made to the United Nations Committee on the Rights of the Child (the UN Committee) if the claimant believes the Government has violated their rights under the United Nations Convention on the Rights of the Child (the Children’s Convention) and its optional protocols: the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC)[[1]](#footnote-1) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC)[[2]](#footnote-2).

## The OPCP improves protection for children's rights

The OPCP improves the protection of children’s rights by providing a claims process to the United Nations, and independent scrutiny of Government actions.

Becoming party to the OPCP will also better honour New Zealand’s obligations under Te Tiriti o Waitangi, and add weight to our existing commitment as a State Party to the Children’s Convention.

## The Children’s Convention sets out the basic and fundamental rights of every child

The Children’s Convention[[3]](#footnote-3) is a human rights treaty that was adopted by the United Nations in 1989, and ratified by New Zealand in April 1993, subject to three reservations[[4]](#footnote-4).

The Children’s Convention provides that States will respect and ensure certain fundamental rights to children. The Children’s Convention generally applies to children and young people up to the age of 18.

The Children’s Convention includes civil and political rights (e.g. protection from discrimination, and freedom of speech and assembly) and economic, social and cultural rights (e.g. rights to adequate housing and social welfare). The rights and obligations include, amongst others:

* the freedom from discrimination
* the right to life, survival and development
* the right to a name, a nationality, and preservation of identity
* the rights to education and health
* the rights to freedom of expression, thought, conscience, religion, and association
* the right to an adequate standard of living
* protection from violence, sexual exploitation, abuse and economic exploitation
* measures to protect those that are accused of, or recognised as having infringed the penal law
* entitlements for children deprived of their family environment
* protections for those belonging to minority groups
* a requirement that the best interests of the child are a primary consideration when making decisions about the child.

## Claims typically need to have exhausted domestic remedies to be accepted by the UN Committee

Typically all applicable domestic complaints avenues must have been exhausted, unreasonably prolonged or ineffective before the UN Committee will accept a claim.

Claims (or ‘communications’) to the UN Committee may be submitted by or on behalf of an individual or group of individuals.

Claims can only be made under the OPCP against New Zealand once it comes into force, which means claims can’t be made about anything that happened before 23 December 2022.

## Domestic options to address alleged violations

### There are a number of domestic mechanisms available to address alleged violations of children’s rights in New Zealand.

General complaint mechanisms include the Human Rights Commission / Human Rights Review Tribunal; Office of the Ombudsman (including oversight of the Oranga Tamariki system); Privacy Commissioner; Children’s Commissioner; and the courts.

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).

## Where can I find out more?

### Children’s Convention

<https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/uncroc/index.html>

### OPCP

### <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/uncroc/optional-protocols.html>

<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications>

<https://violenceagainstchildren.un.org/content/optional-protocols-crc>

### Child-friendly versions of the OPCP

### <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/children_declarations/child_friendly_opsc_opcp/opcp.pdf>

<https://defenceforchildren.org/20th-anniversary-of-the-optional-protocols-to-the-convention-on-the-rights-of-the-child/>

### Final report of the New Zealand Parliament select committee, and public submissions

### <https://www.parliament.nz/en/pb/sc/reports/document/SCR_119648/international-treaty-examination-of-the-optional-protocol>

### Previous papers about New Zealand joining the OPCP

### <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/optional-protocol.html>

### Link to the United Nations OPCP claims form and guidance

<https://www.ohchr.org/en/treaty-bodies/individual-communications>

## Editor’s notes

New Zealand ratified the UN Convention on the Rights of the Child (the Children’s Convention) in 1993.

New Zealand subsequently ratified two of the three Optional Protocols to the Convention: the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) (ratified in 2001); and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) (ratified in 2011).

The third, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP), entered force in 2014. In response to the UN’s recommendations following New Zealand’s 2019 UPR, Cabinet agreed to consider becoming party to the OPCP.

On 1 November 2021, Cabinet agreed for New Zealand to become party to the OPCP [CAB-21-MIN-0447 refers]. The OPCP and the accompanying National Interest Analysis (NIA) supporting New Zealand becoming a party was presented to Parliament on 11 November 2021.

The parliamentary treaty examination process was completed following public submissions and consideration by the Foreign Affairs, Defence and Trade Committee (FADTC).

New Zealand deposited its instrument of accession with the United Nations at the UN General Assembly on Thursday 22 September 3.00pm New York time (7:00am Friday 23 September NZ time), so entry into force was Friday 23 December 2022 (3 months after the date we deposited our instrument).

1. OPAC full text: <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx> [↑](#footnote-ref-1)
2. OPSC full text: <https://www.ohchr.org/en/professionalinterest/pages/opsccrc.aspx> [↑](#footnote-ref-2)
3. Children’s Convention full text <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [↑](#footnote-ref-3)
4. 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 in detention facilities (Article 37(c)). [↑](#footnote-ref-4)