

Chair
Cabinet Social Policy Committee

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD WORK PROGRAMME

Proposal

- 1 This paper notes that substantial progress has been made in enhancing New Zealand's compliance with the United Nations Convention on the Rights of the Child (UNCROC) and seeks Cabinet agreement to undertake further work to make greater progress prior to our next UNCROC report in May 2015.

Executive summary

- 2 We are due to report to the United Nations Committee on the Rights of the Child (CRC) in May 2015 on the progress we have made in enhancing our compliance with the United Nations Convention on the Rights of the Child (UNCROC), including with respect to the recommendations that the CRC made following the last progress assessment in February 2011.
- 3 In the lead-up to preparing the next periodic report to the CRC, officials have been meeting with government agencies and agencies that monitor our implementation of UNCROC, to assess the progress being made to advance the CRC's February 2011 report recommendations.
- 4 Taking into account officials' assessment of progress to enhance UNCROC compliance, and the need to pay particular attention to giving priority to marginalised and disadvantaged groups of children, the Government is making substantial progress on the CRC's recommendations. This is particularly evident through the Children's Action Plan to improve protection of vulnerable children, the welfare reforms that provide extensive support for young people and single parents to acquire skills and build work capability, and the Youth Crime Action Plan initiative to prevent and reduce offending by youth.
- 5 In the assessment process, officials identified the following initiatives that could be undertaken within existing work programmes to make further progress in implementing the CRC's recommendations before May 2015.
 - 5.1 Options for improving input of children and young people's views in the formulation of legislation and policies associated with rights under UNCROC.
 - 5.2 The case for raising the age that young people leave care to 18 years.
 - 5.3 Options to facilitate consideration of children's rights in the development of major policy and legislative initiatives.
- 6 Significant progress has not been made in responding to the following CRC's February 2011 recommendations, which is likely to attract criticism from the CRC:
 - 6.1 Removing the three reservations entered into when we ratified UNCROC, relating to children unlawfully in New Zealand, the minimum age of employment of children and age mixing in detention facilities.

6.2 Implementation of UNCROC in Tokelau.

6.3 Adoption law reform to bring it in line with the CRC's recommendations.

- 7 However, some progress has been made in relation to access to services for children unlawfully in New Zealand and age mixing in detention facilities. There are good reasons why no further progress has been made in relation to adoption law reform and the implementation of UNCROC in Tokelau.
- 8 I recommend that extra work in the areas listed in paragraph 5 above be scheduled to enhance our compliance with UNCROC prior to reporting to the CRC in May 2015 and that this programme of work be published on the Ministry of Social Development (MSD) website.

Background

- 9 New Zealand ratified UNCROC in 1993, and has subsequently ratified two Optional Protocols to UNCROC.¹ UNCROC sets out a range of civil, cultural, economic and social rights for children and obligates New Zealand to progressively realise these rights.
- 10 As a State party to UNCROC, New Zealand has to report to the Committee on the Rights of the Child (CRC) every five years on its UNCROC performance. The CRC is a committee of international experts.
- 11 New Zealand submitted a consolidated third and fourth periodic report in 2008 and the CRC provided its concluding observations and recommendations on 4 February 2011. New Zealand is next due to report to the CRC in May 2015.
- 12 Better protecting and improving outcomes for vulnerable children via the Children's Action Plan, and supporting welfare, health and educational initiatives that improve outcomes for disadvantaged children, are priority focus areas in the Government's agenda. This priority focus is consistent with UNCROC obligations to pay particular attention to identifying and giving priority to marginalised and disadvantaged groups of children.

Working with stakeholders to prepare for reporting

- 13 In the lead-up to preparing the next periodic report to the CRC, my officials have been meeting with agencies to undertake an initial progress assessment of how work across Government has enhanced our compliance with UNCROC in line with the recommendations of the CRC. The A3 entitled 'UNCROC at a Glance' (see Appendix) reflects this assessment for areas covered by the CRC's February 2011 concluding recommendations.
- 14 My officials have also been meeting with the UNCROC Monitoring Group (UMG). The UMG was established in 2011 to monitor New Zealand's UNCROC performance. The members are the Child Poverty Action Group, Action for Children and Youth Aotearoa, Save the Children NZ, Every Child Counts, the Human Rights Commission, the Office of the Children's Commissioner and UNICEF NZ.
- 15 The CRC will invite shadow reports from non-government organisations (NGOs) on New Zealand's UNCROC performance. Action for Children and Youth Aotearoa will prepare and present the NGO shadow report to the CRC. The Children's Commissioner and the Human Rights Commission will also provide reports to the CRC.
- 16 New Zealand's UNCROC performance since February 2011 will be assessed by reference to these reports, our next periodic report and by reference to the CRC's last set of recommendations issued in 2011.

¹ The Optional Protocol on the Involvement of Children in Armed Conflict (ratified 2001) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified 2011).

- 17 The meetings between my officials and the UMG have helped identify areas of close agreement on the level of progress we have made in implementing the CRC recommendations. Areas where we differ on the level of progress, and areas where more progress can be achieved by May 2015, have also been identified.
- 18 There are a small number of areas where, for good reason, we have not made any substantial progress on the CRC recommendations.

We are making substantial progress in enhancing compliance with UNCROC

- 19 This Government has made substantial progress in enhancing compliance with UNCROC through its cross-government work programme. It has maintained a strong and enduring focus on improving outcomes for vulnerable children and their families, young people at high risk of disengaging from education, training or seeking employment, and young people in conflict with the law.
- 20 Key examples of this progress are:
 - The Children's Action Plan which comprises a range of initiatives to improve outcomes for vulnerable children. Key components are:
 - a governance mechanism reporting directly to a ministerial oversight group to ensure that key agencies collectively develop, resource, support and report on the action plan to deliver the Government's priorities for vulnerable children
 - progressive establishment of multi-disciplinary teams nationwide to identify, assess, and develop an integrated single response plan to connect vulnerable children at high risk of abuse to support services at an early stage
 - a comprehensive cross-agency care strategy to improve support for, and the outcomes of, children and young people in care and transitioning from care.
 - Youth-focused welfare reform initiatives that are building the competency and self-reliance of young people and single parents at high risk of long-term welfare dependency, by investing in education, training and work-based learning to build skills and work capability.
 - Initiatives in education, such as Positive Behaviour for Learning that supports improving the learning achievement and behaviour of disruptive children and young people, and the Youth Guarantee scheme that supports and encourages at risk young people to participate and achieve in education and make an effective transition to further education and training and work.
 - Health initiative improvements, such as Community Health Service Organisation contracts with Primary Health Organisations that include a focus on providing services to disadvantaged groups, and the Primary Care Ethnicity Data Audit Toolkit to improve the delivery of services to disadvantaged children and families, Māori and Pasifika children.
 - Improved initiatives in health that also assist parents with their child-rearing responsibilities, such as additional Well Child/Tamariki Ora contacts to support families that are experiencing difficulties and need additional support, and the Well Child/Tamariki Ora Quality Improvement Framework, which seeks to address ethnicity and deprivation disparities in the outcomes and quality of this universal child health service.
 - The Prime Minister's Youth Mental Health Project which focuses on improving mental health outcomes for young people.
 - The Youth Crime Action Plan that focuses on working with communities to prevent problems, reducing escalation by ensuring that young people can be dealt with at the

lowest appropriate level, and providing support that helps young people get back on track and not reoffend.

- Initiatives in policing, such as The Turning of the Tide and aspects of Policing Excellence that support engagement with iwi and urban Māori groups to develop crime prevention action plans that reduce offending, particularly by youth.

Areas where we could do more to further enhance compliance with UNCROC

- 21 In the assessment process, officials identified the following initiatives that could be undertaken to make further progress in enhancing compliance with UNCROC before May 2015:
- Options for improving input of children and young people's views in the formulation of legislation and policies associated with rights under UNCROC. The outcome of this work would be a process that agencies could use to facilitate the input of children and young people's views, that is, child-friendly, informative, respectful, transparent, safe and sensitive to risk.
 - Investigating raising the age that young people leave care to 18 years. The outcome of this work would help build the evidence base on the benefits of increasing the age of leaving care, to better inform future policy development and decision-making.
 - Options to facilitate consideration of children's rights in the development of major policy and legislative initiatives, to ensure that New Zealand's obligations under UNCROC are taken into account. The outcome of this work could be a process to assist agencies to take children's rights under UNCROC into account at the policy formulation stage of advice to Cabinet on major policy or legislative issues.
- 22 These work items align with Better Public Services targets and respond to some of the UMG's priorities for implementing CRC recommendations. Officials have advised me that they would fit with existing work programmes.

There are a few areas where we have not made significant progress in enhancing compliance with UNCROC

- 23 There are three areas where we have not made significant progress in responding to the CRC's recommendations and are unlikely to make further progress before reporting to the CRC. While there are sound reasons for this, lack of progress in these areas is likely to attract criticism from the CRC.
- 24 Comparable jurisdictions to New Zealand often receive a similarly strict assessment of progress, despite having various rights and protections in place for children. For example, Australia, Canada and the United Kingdom of Great Britain and Ireland have all previously received recommendations similar to New Zealand, including:
- bringing their domestic legislation in line with UNCROC
 - implementing a national plan of action for children
 - designating a co-ordination mechanism for implementing UNCROC
 - improving dissemination and awareness-raising of UNCROC.
- 25 Often these countries are also criticised for failing to implement recommendations stemming from previous reports. The February 2011 concluding observations issued to New Zealand are not unusual in this regard.

Removing UNCROC reservations

26 New Zealand retains the following three reservations entered into when we ratified UNCROC:

Reservation	Reason for maintaining the reservation
General reservation related to children unlawfully in New Zealand	Although we allow access to a number of services for children unlawfully in New Zealand, some restrictions remain.
Reservation on minimum age and conditions of child employment	The minimum age of employment is not regulated because there is a legal requirement for children and young persons to remain in education to 16 years old.
Reservation related to age mixing in detention facilities	There are still some detention facilities that do not support the separation of juveniles and adults.

27 The CRC asked us to withdraw these reservations in its last report and in previous reports.

28 Although the reservations cannot be removed until we are certain that we are fully compliant, progress is being made that improves alignment with the objectives of UNCROC in the following two reservation areas:

- Access to education for children unlawfully in New Zealand has been improved. The Ministry of Education introduced criteria in 2013 that provides for such children aged five to 19 years old to be considered for approval as domestic students.
- The Ministry of Justice is progressively upgrading detention facilities in court to support separation of juveniles and adults. This is occurring as part of the Ministry's ongoing building programme.

Implementation of UNCROC in Tokelau

29 Tokelau is a dependent territory of New Zealand, a non-self-governing territory for the purposes of the Charter of the United Nations and "part of New Zealand" under the Tokelau Act 1948. Tokelau is also part of the Realm of New Zealand (together with Niue and the Cook Islands). While substantially self-governing in practice, it does not have its own international legal personality. Any treaty-making with respect to Tokelau is carried out by the New Zealand Government, in consultation with the Government of Tokelau. New Zealand does occasionally enter into treaties on behalf of Tokelau. However, this is generally only done with the consent of the Government of Tokelau, assessed on a case-by-case basis.

30 New Zealand supports Tokelau to ensure that the provisions and protections afforded to children in Tokelau match those guaranteed to New Zealand children under the Convention. New Zealand's instrument of ratification allows for the future extension of the Convention to Tokelau and preparations are underway to consult with the Government of Tokelau on extending the Convention and its Optional Protocols to Tokelau. At the present time, New Zealand's focus in this area relates to improving the education provided to Tokelau's children – following a recent Education Review Office report which indicated that "significant and urgent action is necessary" to improve the quality of education in Tokelau.

Adoption law reform

31 In February 2011, the CRC recommended that the Government revise adoption law to bring it in line with the CRC recommendations, ensure that a child's consent is required for adoption, and lower to at least 18 years the age at which adopted children have access to their files.

32 In November 2013, the Human Rights Review Tribunal heard a claim of discrimination in relation to the Adoption Act 1955 and the Adult Adoption Information Act 1985. The Tribunal is likely to release its findings later in 2014. A review of New Zealand's adoption law is on hold because of other priorities in the justice sector. Any future review of adoption legislation will

include consideration of the matters raised by the CRC and the findings of the Human Rights Review Tribunal.

- 33 The child's views are an important consideration of any adoption. Before making an adoption order, the Judge must be satisfied that the welfare and interests of the child will be promoted by the adoption. This includes considering the wishes of the child, allowing for the child's age and maturity. A social worker provides the court with a report on whether the adoption will promote the welfare and interests of the child, including the child's views where available.
- 34 Progress is being made in alternative care. In particular, there have been significant improvements in alternatives to adoption that can provide a permanent, loving home for a child without completely severing the legal and familial ties to their birth parents. Through "Ways to Care", Child, Youth and Family provide a range of options, including "Home for Life", which achieves permanency for a child through additional guardianship orders and a three-year support package.

Next Steps

- 35 MSD will prepare New Zealand's next periodic UNCROC report to the CRC. The following timetable identifies the key project reporting and decision timelines.

Date	Action
August 2014	Publish UNCROC work programme on the MSD UNCROC website
February 2015	Draft UNCROC Periodic Report: Cabinet approval of draft report and statistical annex, and public consultation
February 2015	Public consultation on Draft UNCROC Periodic Report
April 2015	Cabinet approval of UNCROC Periodic Report to the CRC
May 2015	CRC receives UNCROC Periodic Report

Consultation

- 36 The Accident Compensation Corporation, Department of Corrections, Department of Internal Affairs, New Zealand Police, Te Puni Kōkiri, the Ministry of Business, Innovation and Employment, and the Ministries of Education, Foreign Affairs and Trade, Health, Pacific Island Affairs, and Justice have been consulted in the preparation of this paper.

Financial implications

- 37 This paper does not have any financial implications.

Human rights implications

- 38 This paper deals with UNCROC which is a significant human rights instrument for children up to 18 years. New Zealand retains three reservations because we have assessed that it is not fully compliant with Article 2 of UNCROC relating to children unlawfully in New Zealand, Article 32(2) relating to the minimum age and conditions of child employment and Article 37(c) relating to the age-mixing of children with adults in police and court detention facilities.

Legislative implications

- 39 This paper does not have any legislative implications.

Regulatory impact and compliance cost statement

40 This paper does not require a regulatory impact and compliance cost statement.

Gender implications

41 This paper does not have any gender implications.

Disability perspective

42 This paper is consistent with the New Zealand Disability Strategy.

Publicity

43 Approval is sought to publish the UNCROC work programme on the MSD website.

Recommendations

44 It is recommended that the Committee:

- 1 **note** that we are due to report to the United Nations Committee on the Rights of the Child (CRC) in May 2015 on the progress we have made in enhancing our compliance with the United Nations Convention on the Rights of the Child (UNCROC) since the last progress assessment was made in February 2011
- 2 **note** that the government has made substantial progress since February 2011 in enhancing compliance with UNCROC
- 3 **note** there has been little progress in enhancing compliance with UNCROC in the areas listed below, that this has been for good reason but is likely to attract criticism from the CRC:
 - 3.1 removing the three reservations entered into when we ratified UNCROC, relating to children unlawfully in New Zealand, the minimum age of employment of children and age mixing in detention facilities
 - 3.2 implementation of UNCROC in Tokelau
 - 3.3 adoption law reform to bring it in line with the CRC's recommendations
- 4 **agree** that work on the following initiatives be undertaken to make further progress to enhance compliance with UNCROC before May 2015 (the UNCROC work programme):
 - 4.1 options for improving input of children and young people's views in the formulation of laws and policies associated with rights under UNCROC
 - 4.2 the case for raising the age that young people leave care to 18 years
 - 4.3 options to facilitate consideration of children's rights in the development of major policy and legislative initiatives
- 5 **agree** that the UNCROC work programme be published on the Ministry of Social Development website

6 **note** that I will seek Cabinet approval of the UNCROC Periodic Report to the CRC in April 2015.

Hon Paula Bennett
Minister for Social Development

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