

## PART 2 DEFINITION OF THE CHILD

### DEFINITION OF THE CHILD (article 1)

#### **CRC/C/15/Add.2.16: Para 21:**

The Committee recommends that the State party review the age limits set by different legislation affecting children to ensure its conformity with the principles and provisions of the Convention. The Committee also specifically recommends that the State party:

- (a) raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that it applies for all criminal offences
- (b) extend the Children, Young Persons and Their Families Act of 1989 to all persons under the age of 18
- (c) set a minimum age or minimum ages of admission to employment.

#### ***Minimum age for criminal prosecution (Article 40 (3) b)***

- 2.2 New Zealand notes the Committee's recommendation regarding the current minimum age of criminal responsibility, which is 10 years old and applies to all offences. During the reporting period consideration was given to both the age of criminal responsibility and age of criminal prosecution.
- 2.3 With the exception of the offences of murder and manslaughter, children under the age of 14 cannot be prosecuted for offending. Instead, the offending may be dealt with in the Family Court as a care and protection matter if the number, nature, or magnitude of the offences is such to give serious concern for the well-being of the child. The offending must be proved to the criminal standard of proof, and the Court must be satisfied that the child knew the act or omission constituting the offence was wrong or that it was contrary to law. Where a child aged 10-14 years is prosecuted for murder and manslaughter, the matter is dealt with in the High Court in the same manner as a charge against an adult, although the preliminary hearing takes place in the Youth Court.
- 2.4 New Zealand notes the Committee's ongoing concern about the presumption that a child aged 10 years may have the capacity to offend with criminal intent and the concern about the appropriateness of using the adult justice system to deal with serious offences committed by children, including testing capacity.
- 2.5 During the reporting period the government has reviewed the minimum ages of criminal responsibility and prosecution on several occasions. Following advice in 2003 and 2005, which included consideration of raising the minimum age of criminal prosecution for murder and manslaughter to 12 years of age, the government decided not to proceed with any adjustment. Instead work commenced on improving effective responses to children's offending and, where possible, using alternatives to prosecution. As a result, Police and Child, Youth and Family staff received joint training, and the Child Offenders Manual (a guide to successful interventions with child offenders) was revised.
- 2.6 In 2006, a Members Bill - the Young Offenders (Serious Crimes) Bill was introduced to the House of Representatives. In the case of serious offences, the Bill proposed lowering the age of criminal prosecution from age 14 to 10 and to remove the current requirement that a court

must be satisfied that the child knew either that the act or omission constituting the offence was wrong or that it was contrary to law before it may convict a child between the 10 – 13 years. The Law and Order Select Committee considered this Bill and tabled its report in November 2007. The report did not support the proposed changes as drafted. The Select Committee noted that the proposed changes could contravene New Zealand's compliance with UNCROC and the International Covenant on Civil and Political Rights. The Bill was defeated when introduced to the House for a second reading.

- 2.7 In 2007 public submissions were sought on proposed updates to the Children, Young Persons and Their Families Act 1989. The proposals also canvassed opinions on lowering the age from 14 to 12 years for criminal prosecution for serious or persistent offending. The majority of submitters who commented on this issue opposed lowering the age. Current proposals in the Children, Young Persons and Their Families Amendment Bill (No. 6) that was before the House of Representatives when Parliament was dissolved on 3 October 2008, do not change the minimum age of prosecution. However, some amendments aim to provide more effective responses to child offending.

### ***The Children, Young Persons and Their Families Act 1989***

- 2.8 Steps have been taken to align the definition of “young persons” under the Children, Young Persons and Their Families Act 1989 with UNCROC. The Children, Young Persons and Their Families Amendment Bill (No. 6) proposes to include 17 year olds within the definition of “young persons”, thus bringing it into line with UNCROC. The Bill was before the House of Representatives when Parliament was dissolved on 3 October 2008. It may be re-instated in the next Parliamentary session, should the House resolve to do so.

### ***Minimum age(s) of admission to employment***

- 2.9 As identified in Part 1 under the reservation on Child Labour, New Zealand has not legislated a minimum age for admission to employment as it considers that the current framework, which is governed by the Education Act and Health and Safety legislation and supporting regulations, is sufficient and complies with UNCROC.

### ***Age at which people can marry without consent***

- 2.10 During the reporting period, the Marriage Amendment Act 2005 lowered the age at which people can marry without parental consent from 20 years to 18 years. Prior to the passage of this Act, people who were 18 and 19 needed consent to marry. The Marriage Act 1955 does not allow a person to marry until they are 16, and 16 and 17 year olds must have parental, guardian or Family Court consent before they can marry.

### ***Age at which guardianship ends***

- 2.11 During the reporting period, the Care of Children Act 2004 set out a new framework for resolving disputes about the care of children in New Zealand, and it replaced the Guardianship Act 1968. The Act provides that parenting orders (setting out day-to-day care of the child) cease when the child turns 16. No parenting orders can be made for children over 16, unless there are special circumstances. In addition, the age at which guardianship obligations end was reduced from 20 to 18 years of age, with guardianship ending sooner if a

child aged 16-17 marries or enters a civil union or lives with another person as a de facto partner.

### ***Age to enter prostitution***

2.12 During the reporting period, the Prostitution Reform Act 2003 was passed, decriminalising prostitution. The Act makes it an offence to facilitate or receive payment for the commercial sexual services from a person under 18 years of age. It is also an offence to arrange or receive commercial sexual services from a person under 18. It is not an offence for persons under the age of 18 to engage in prostitution, rather, they are considered to be victims. A five-year review of the Act, tabled in Parliament in May 2008, found no evidence of an increase in the numbers of under-age persons used in prostitution since the Act came into force.

### ***Youth minimum wage***

2.13 During the reporting period, the youth minimum wage was abolished and replaced with a new entrants wage. The new entrants wage provides for 16 and 17 year olds to receive 80 percent of the minimum wage for the first 200 hours of work, or the first three months, whichever occurs first. However, if the 16 or 17 year old is undertaking a supervisory role they are eligible for same minimum wage adults are entitled to.

### ***Age of voluntary recruitment to the armed forces***

2.14 During the reporting period the age of voluntary recruitment to the Navy, Army, and the Air Force was reviewed. Legislation and regulations were amended to state that “No person who is under 17 years may be appointed to, or enlisted or engaged in, the Navy, the Army, or the Air Force.” Further details are outlined in Part 10 of this report, responding to the Committees’ concerns on the Optional Protocol to the Convention on the Rights of the Child Involvement of Children in Armed Conflict.

## **FACTORS AND DIFFICULTIES**

2.15 During the reporting period, the government considered a proposal to review minimum age inconsistencies in all New Zealand legislation, but considered there were significant concerns as to size, appropriateness and benefits of the task. New Zealand recognises the important role that minimum ages can play, but also acknowledges that evidence regarding teenage brain development shows that becoming an adult is ‘stage of development’ rather than an age that determines ‘readiness.’ The size and scope of the exercise was considered to be disproportionate to the benefit that a review could/would achieve. Furthermore, a number of age-related matters (e.g. the age of purchasing alcohol) are subject to conscience votes in the New Zealand Parliament. It is therefore considered appropriate to take a more cautious approach when reviewing definitions of children regarding age thresholds, and to do so in the context of the growing research evidence and subject matter as a whole. This ensures that all related issues are canvassed at once.

*“I believe it’s fair for everyone to be taxed at the same rate and I don’t think we should discriminate on the basis of age, or at all, because that just leads to problems”. {Nicholas Mitchell, 17 Youth Parliament 2007}*