

PART 4 CIVIL RIGHTS AND FREEDOMS

NAME AND NATIONALITY (article 7)

New citizenship by birth provisions

- 4.1 In January 2006, new provisions of the Citizenship Act 1977 came into force. These allow a child born in New Zealand from that date to be a New Zealand citizen if at least one parent is a New Zealand citizen, or is entitled to remain in New Zealand indefinitely (for example, is a permanent resident). For citizenship purposes, New Zealand includes the Cook Islands, Niue, Tokelau and the Ross Dependency. Under the new provisions, a child born in New Zealand who is not a New Zealand citizen is deemed to hold the most favourable immigration status of either parent.
- 4.2 To ensure compliance with the United Nations 1961 Convention on the Reduction of Statelessness, the Citizenship Act provides that any child born in New Zealand will be a citizen at birth if he or she would otherwise be stateless. In addition, a child will be deemed to be a citizen by birth if he or she is found abandoned and investigations fail to establish the identity of at least one parent.

Registered births

- 4.3 The Births, Deaths, Marriages and Relationships Registration Amendment Act enters into force in January 2009 and requires both parents to sign the notification form when registering their child's birth. This will help improve the accuracy of the information provided and reduce claims that a person has been wrongly named as a parent.
- 4.4 This Act provides an exemption to allow only one parent to sign in cases where the other parent is missing, unknown, unable to sign the form because of a medical condition, has died, or where unwarranted distress would result from trying to get the second parent's signature. In most of those cases, the details of both parents can be registered but only one parent would be required to sign the form. In cases where there is only one parent at law - for example, where the child has been conceived as a result of an assisted reproductive procedure and born to a mother who does not have a partner - only the mother's details would then be registered.

PRESERVATION OF IDENTITY (articles 30 and 8)

- 4.5 New Zealand recognises the right of a child to preserve his or her identity. A wide range of legislative changes that impact on identity have been passed over the reporting period that recognise the legal, biological and cultural dimensions to identity. Encouraging and promoting the revitalisation of the Māori language has been a vital part of enhancing the cultural heritage of Māori young people and celebrating New Zealand's diverse ethnic, religious and cultural communities.

Cultural identity of Māori

- 4.6 The government is committed to fostering and protecting the cultural identity of Māori through initiatives such as Māori language revitalisation programmes and a dedicated Māori television channel. This has led to an increased number of people, particularly children and young people, speaking Māori, and also an increased awareness and positive attitude amongst Māori and non-Māori to using Māori language in public.
- 4.7 The Māori Language Strategy sets the direction for a whole-of-government approach to Māori language revitalisation and a plan of action for government agencies. Government continues to monitor the health of the Māori language with large-scale sociolinguistic surveys having been undertaken in both 2001 and 2006. This research indicates that, in that five-year period, the health of the Māori language has improved. Māori is increasingly used in day-to-day life in the home and community domain, not just in ceremonial settings. This is positive as it indicates potential for intergenerational transmission to occur, an important component of language revitalisation.
- 4.8 The Māori Language Strategy identifies broadcasting and the arts as two core functions that contribute to ongoing revitalisation of the Māori language. Over the reporting period a number of measures have been taken in these areas, including the establishment of the Māori Television Service in 2004. The Service broadcasts 21 hours a day with at least 60 percent of programming content in Māori. A specific function of the Service, as outlined in the Māori Television Act 2003, is to ensure its programming has regard for the needs and preferences of children participating in Māori immersion education.

Legal parenthood

- 4.9 The legal status of parent-child relationships needs to keep pace with increasing diversity in family form arising from social change and new birth technologies. In 2003, government asked the Law Commission to review the legal rules that determine parenthood. In 2004, the Commission published a report *New Issues in Legal Parenthood*. This report canvassed a wide range of issues and in particular noted the impact of social change and assisted human reproductive procedures on children and family forms, establishing and accessing information on genetic parentage and assigning legal parenthood. After considering the Law Commission's report, government recognised further research on these matters was required before policy decisions could be made. The Ministry of Justice is scoping a work programme to address legal parenthood issues.

Human Assisted Reproductive Technology Act

- 4.10 In November 2004, the Human Assisted Reproductive Technology Act was passed. The Act established an advisory and an ethics committee to replace the National Ethics Committee on Assisted Human Reproduction referred to in New Zealand's previous report.
- 4.11 The Advisory Committee on Assisted Reproductive Technology is guided by the following principles relevant to children and young people:
- The health and well-being of children born as a result of performing an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure.

- Donor offspring should be made aware of their genetic origins and be able to access information about those origins.
- The needs, values, and beliefs of Māori should be considered and treated with respect.
- The different ethical, spiritual and cultural perspectives in society should be considered and treated with respect.

- 4.12 The Act established a register (operating since 22 August 2005) so that people born from donated embryos, sperm or eggs can find out about their genetic heritage and other genetically-related siblings born from the same donor. Donors, donor offspring and their guardians involved in embryo, egg or sperm donation at a fertility clinic on or after this date are automatically named on the register. Donors, offspring and guardians involved prior to 22 August 2005 can opt to have their information included on the register. Access to information held on the register is restricted. Generally, only the people named on the register, or the guardians of offspring under 18 years, can access the information. A donor offspring who is 16 or 17 can apply to the Family Court to be treated as though they were an 18 year old where they want to include their information on the Register, or access information about a donor or related donor offspring who share the same donor. Approval is only given if the Judge is satisfied it is in their best interests to provide or access Register information.
- 4.13 The Human Assisted Reproductive Technology Act 2004 also introduced protection against commercialising surrogacy, human embryos, sperm and eggs.

FREEDOM OF EXPRESSION (article 13)

- 4.14 New Zealand recognises a child's right to freedom of expression, and the importance of ensuring children can express their views. Refer to Part 3 for an outline of government initiatives aimed at supporting children to express their opinions on matters that affect them.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (article 14)

- 4.15 New Zealand's National Statement on Religious Diversity is a project of Te Ngira, the New Zealand Diversity Action Programme. It is a response to New Zealand's increased religious diversity and the wider context of regional and global conflicts involving religion. The statement was endorsed by the National Interfaith Forum in 2007 and emphasises:
- that all faiths and beliefs should be treated equally before the law
 - the right to freedom of expression of faith and belief
 - the right to safety and security for those of all faiths and beliefs
 - the need for our public services and workplaces to accommodate diverse beliefs and practices
 - the importance of education in promoting understanding.

FREEDOM OF ASSOCIATION AND OF PEACEFUL ASSEMBLY (article 15)

- 4.16 Children and young people have the same rights as adults to assemble and protest.

PROTECTION OF PRIVACY (article 16)

Review of privacy law

- 4.17 The Law Commission is proceeding with a comprehensive review of issues relating to privacy in New Zealand, scheduled to be completed in 2009. In a study paper already released, the Commission noted particular issues regarding young people's privacy and has noted new issues arising from young people's increasing use of communications technologies. Government awaits the Law Commission's report with interest and will respond after the report has been tabled in Parliament. The government has already taken steps to protect children and young people's privacy in light of concerns raised by new technologies, including legislative measures and a broadcasting code of practice.

The Crimes (Intimate Covert Filming) Amendment Act 2006

- 4.18 The Crimes (Intimate Covert Filming) Amendment Act 2006 applies to the intimate visual recording of all people, including young persons. The Act helps protect the interests of young persons in light of their vulnerability. It states that everyone is liable to imprisonment for a maximum of three years who intentionally or recklessly makes an intimate visual recording of another person, or who knowingly possesses such a recording and publishes, imports, exports or sells it.

Unsolicited Electronic Messages Act 2007

- 4.19 The Unsolicited Electronic Messages Act 2007 is New Zealand's response to the worldwide proliferation of spam. An objective of the Act is to promote a safer and more secure environment for using information and communications technologies in New Zealand. Spam is a delivery mechanism for objectionable material and fraudulent activity and, it is anticipated that children and young people as major users of technology will benefit from any reduction in spam. The Department of Internal Affairs is responsible for enforcing this legislation.

Broadcasting Standards Authority: code of practice

- 4.20 In 2006, the privacy principles in the Broadcasting Standards Authority's code of practice were updated to provide increased protection for children and young people's privacy. The code now includes the following statement about children:

"Children's vulnerability must be a prime concern to broadcasters, even when informed consent has been obtained. Where a broadcast breaches a child's privacy, broadcasters shall satisfy themselves that the broadcast is in the child's best interests, regardless of whether consent has been obtained."

- 4.21 Under these Principles, a 'child' is defined as someone under the age of 16 years. For a person aged 16 years or over, their evolving capacity is recognised and they can give consent to broadcasts that would otherwise breach their privacy, whereas younger children cannot consent.

ACCESS TO APPROPRIATE INFORMATION (article 17)

4.22 New Zealand recognises the importance of access to information and the valuable role it can play in promoting a child's social and educational development. With the rising use of the internet as an electronic source of information, internet safety has become increasingly important in protecting children from inappropriate information and material.

Internet safety

4.23 Investment has been made in developing education resources for children and young people regarding inappropriate information from electronic sources such as the internet. The most significant suite of tools is available from NetSafe, which provides cybersafety education for all New Zealanders including children, parents, schools, community organisations and businesses. NetSafe's aim is to educate all New Zealanders about safe, secure and responsible use of information and communication technology, with their website containing a wealth of information.

4.24 NetSafe provides a specific range of internet safety resources for children and schools:

- an interactive website, **Hector's World**, which teaches children how to stay safe online through practical guidance on mitigating risks while positively reinforcing the importance of ethical and responsible behaviour. The website has a safety button that encourages them to get adult help when they feel threatened or uncomfortable with a website's content.
- the **NetSafe Kit** for schools sets out a comprehensive programme of cybersafety for schools based on an infrastructure of policies, procedures and agreements, an effective electronic security system and a comprehensive cybersafety education programme.

4.25 The Department of Internal Affairs has the role of investigating New Zealand internet websites and newsgroups to enforce censorship legislation. It takes a proactive role in prosecuting New Zealanders who trade objectionable material via the internet. If a publication is categorised as 'objectionable' it is automatically banned by the Films, Videos and Publications Classification Act 1993. The Department of Internal Affairs has a range of information to guide and monitor safe internet use and to inform users of what constitutes objectionable material, or breaches censorship.

Broadcasting and children

4.26 The Television New Zealand Act 2003 sets out a Charter for State-funded broadcasting by Television New Zealand. The Charter requires Television New Zealand to feature programmes that provide for children and young people's informational, entertainment and educational needs and participation.

4.27 New Zealand's Free-to-Air Television Code was revised in December 2004. The code sets out specific guidelines for public and private free-to-air broadcasting regarding children. The guidelines relate to the appropriateness of content and the rights of children not to be exploited, humiliated or unnecessarily identified. Guidance is also provided under the revised pay-television code (2006) that "broadcasters should ensure that child viewers are protected from unsuitable content."

Advertising and marketing to children: health issues

- 4.28 The Advertising Standards Authority's Code for Advertising to Children was updated in April 2006. Under its Code for Advertising of Food, Principle 3 states that advertisements directed at children should observe a high standard of social responsibility.
- 4.29 The Health Select Committee presented its final report to Parliament in August 2007 on its "Inquiry into Obesity and Type 2 Diabetes in New Zealand". The Committee's report contained recommendations about advertising unhealthy foods to children and young people, setting targets for reducing advertising, marketing and promotion of unhealthy foods and the need to monitor the current self-regulation model for the advertising industry.
- 4.30 In anticipation of the Select Committee Inquiry's recommendations, the Ministers of Health and Broadcasting agreed to a five point plan with the New Zealand Television Broadcasters' Council aimed at promoting children's health, nutrition and exercise through regulating the food products that can be advertised during children's programming and producing programming aimed at healthy eating and exercise practice.
- 4.31 The new Children's Food Classification system will be phased in from 1 July 2008. It is based on the Ministry of Health's Food and Beverage Classification system which was developed as guidelines for food catering in schools.

THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT, OR PUNISHMENT (article 37(a))

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- 4.32 New Zealand submitted its fifth periodic report to the Committee against Torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in January 2007. This provides an outline of New Zealand's compliance with the obligation to ensure that no-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- 4.33 A significant development since the submission of New Zealand's fifth periodic report is that New Zealand ratified the Optional Protocol to the Convention. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 13 April 2007, is primarily concerned with preventing torture for people detained in New Zealand.
- 4.34 When New Zealand ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it set up National Preventive Mechanisms to monitor places of detention. A number of bodies have specific monitoring responsibilities and have been designated as National Preventive Mechanisms under section 26 of the Crimes of Torture Act 1989, including the Office of the Children's Commissioner.
- 4.35 The Office of the Children's Commissioner is responsible for monitoring Child, Youth and Family residences and youth justice facilities. It has two primary functions: to examine detention conditions and treatment of children and young people, and make recommendations

for improvements where necessary. The Office has completed two, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment monitoring visits to Child, Youth and Family residences and has a full monitoring programme planned for the 2008/2009 financial year.

Detention in police cells

- 4.36 As part of the focus on young people in police custody, Child, Youth and Family convenes a regular meeting with key agencies and interested parties including the Office of the Children's Commissioner to monitor young people's length of stay in police cells. In addition to actively monitoring the data and identifying any trends, the purpose of these meetings is to remedy bottlenecks and assist in addressing any cases of concern. The impact of actively managing this process has been to reduce the length of time youth spend in cells.

FACTORS AND DIFFICULTIES

Preservation of identity

- 4.37 A wide range of legislative changes that impact on identity, have been passed since last reporting. There are legal, biological and cultural dimensions to identity, and New Zealand has been doing a great deal of work to ensure young people's rights across all these dimensions. In the New Zealand context, the challenges come as much from the preservation of cultural identity as they do from assuring the child's legal or biological identity. Encouraging and promoting the revitalisation of the Māori language has been a vital part of enhancing the cultural heritage of Māori young people.

Freedom of expression and association and protection of privacy

- 4.38 Maintaining the balance between protecting young people's rights and ensuring their (and others') safety is an ongoing challenge. Governments often deal with calls from sections of the population to curtail young people's rights – particularly rights to associate. Balancing community concerns with the appropriate level of response is an issue that stimulates much debate. Enabling children and young people to explore their worlds while protecting them from exploitation and manipulation is an ongoing challenge in an increasingly sophisticated society. New Zealand continues to monitor advertising standards and internet safety and provide support to parents to improve the safety of children and young people.