



Children's Commissioner Act 2003

Public Act 2003 No 121
Date of assent 25 November 2003
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Children's Commissioner Act 2003.

Part 1
Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purposes

The purposes of this Act are—

- (a) to continue, as the Children's Commissioner, the office of the Commissioner for Children and to state the Commissioner's functions and powers in a separate Act;
- (b) to re-enact the Commissioner's functions with modifications that are consistent with the Commissioner's primary role as an advocate for children;
- (c) to confer additional functions and powers on the Commissioner to give better effect in New Zealand to the United Nations Convention on the Rights of the Child;
- (d) to require the Commissioner to have regard to the Convention when carrying out the Commissioner's functions and powers;
- (e) to give the Commissioner express powers to obtain information and documents, and to apply for access to court records, in order to enhance the effectiveness of the Commissioner's investigative and inquiry functions;
- (f) to repeal Part IX of the Children, Young Persons, and Their Families Act 1989.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
child, except in section 13, means a person under the age of 18 years

Commissioner means the Children's Commissioner (formerly known as the Commissioner for Children) continued by this Act

Convention means the United Nations Convention on the Rights of the Child, a copy of the English text of which is set out in Schedule 2

fees framework means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest

investigation includes an inquiry undertaken under section 12(1)(l)

Minister means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989

officeholder means the individual who, for the time being, holds office as Commissioner.

- (2) Terms not defined in this Act but defined in the Children, Young Persons, and Their Families Act 1989 have the same meaning in this Act.

5 Act binds the Crown

This Act binds the Crown.

Part 2

Appointment, functions, and powers of Commissioner

Provisions relating to constitution and appointment of Commissioner

6 Office of Children's Commissioner continued

- (1) There continues to be a Commissioner called the Children's Commissioner, being the Commissioner who, immediately before the commencement of this Act, was known as the Commissioner for Children.

- (2) On and from the commencement of this section, the Commissioner is a corporation sole with perpetual succession.
- (3) The Commissioner is a Crown entity for the purposes of the Public Finance Act 1989.
- (4) The officeholder is an official for the purposes of sections 105 and 105A of the Crimes Act 1961.

Compare: 1989 No 24 ss 410(2), 421

7 Appointment of Commissioner

- (1) The Commissioner is appointed by the Governor-General on the advice of the Minister.
- (2) The Minister may only advise the appointment as Commissioner of an individual who, in the Minister's opinion, has the appropriate skills and experience to perform the Commissioner's functions.
- (3) Before advising the appointment of a Commissioner, the Minister must—
 - (a) notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified individuals to apply for appointment; and
 - (b) have regard to the desirability of consulting any organisations or persons that, in the opinion of the Minister, have a special interest in the functions of the Commissioner; including, without limitation, organisations representing children and children themselves.
- (4) The following individuals may not be appointed as Commissioner:
 - (a) an individual who is an undischarged bankrupt;
 - (b) an individual who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies Act 1993;
 - (c) an individual who is subject to a property order made under section 10, section 11, section 12, section 30, or section 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act;
 - (d) an individual who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for

any other offence, unless that individual has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the individual:

- (e) an individual who has failed to disclose any interests in accordance with section 8(c).
- (5) The appointment of a Judge as Commissioner does not affect the Judge's tenure of the judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's service as Commissioner is service as a Judge.
- (6) The acts of an officeholder are not invalid simply because—
- (a) the officeholder's appointment was defective; or
 - (b) the officeholder is not qualified to be appointed as Commissioner.

8 Appointee must consent to appointment and disclose interests

An individual may not hold office as Commissioner unless he or she has, before being appointed to the office, given the Minister a written statement completed by him or her in which—

- (a) he or she consents to being the Commissioner; and
- (b) certifies that he or she is not disqualified from holding office under section 7(4); and
- (c) discloses the details of any interest that he or she would, if he or she were the Commissioner at the time of the completion of the statement, be required to disclose at that time under clause 1 of Schedule 1.

Compare: 2000 No 91 s 29(6)

9 Term of office

- (1) An officeholder—
- (a) holds office for a term not exceeding 5 years; and
 - (b) may be reappointed; and
 - (c) continues in office after the expiry of his or her term of office until—
 - (i) the officeholder is reappointed; or
 - (ii) the officeholder's successor is appointed; or
 - (iii) the Minister informs the officeholder in writing that the officeholder is not to be reappointed.

- (2) Subsection (1) is subject to section 10 and to clause 4 of Schedule 1.

10 Removal of officeholder

- (1) The Governor-General may, on the advice of the Minister given after consultation with the Attorney-General, remove the officeholder from the office of Commissioner by written notice to the officeholder at any time for just cause.
- (2) Before giving advice to the Governor-General, the Minister must give the officeholder a reasonable opportunity to make written submissions or be heard on the proposal to remove him or her.
- (3) The notice of removal must state the reason for the removal.
- (4) A person who has been removed from office under this section is not entitled to any compensation or other payment or benefit relating to his or her removal from office.

Functions, powers, and duties of Commissioner

11 Matters to which Commissioner must have regard in exercising functions or powers

In performing or exercising the Commissioner's functions or powers under this Act, the Commissioner must have regard to the following matters:

- (a) the Convention;
- (b) the principle that the Commissioner should give serious consideration to the views of children and take those views into account;
- (c) the principle that the Commissioner should recognise the diversity of children in New Zealand;
- (d) the principles stated in sections 5 and 6 of the Children, Young Persons, and Their Families Act 1989, so far as they are applicable and with all necessary modifications.

12 General functions of Commissioner

- (1) The general functions of the Commissioner are—
- (a) to investigate any decision or recommendation made, or any act done or omitted (other than a decision, recommendation, or act to which section 13(1)(a) applies), in respect of any child in that child's personal capacity:

- (b) to promote the establishment of accessible and effective complaints mechanisms for children and to monitor the nature and level of complaints:
- (c) to raise awareness and understanding of children's interests, rights, and welfare:
- (d) to raise awareness and understanding of the Convention:
- (e) to undertake and promote research into any matter that relates to the welfare of children:
- (f) to act as an advocate for children's interests, rights, and welfare generally (except before any court or tribunal), and, in that regard, to advance and monitor the application of the Convention by departments of State and other instruments of the Crown:
- (g) if there are issues in proceedings before any court or tribunal that relate to the Convention or to the interests, rights, or welfare of children generally, to present reports on such issues to the court or tribunal, at the request of—
 - (i) the court or tribunal; or
 - (ii) counsel representing any party to the proceedings; or
 - (iii) counsel representing any child who is the subject of the proceedings; or
 - (iv) counsel assisting the court or tribunal:
- (h) to receive and invite representations from members of the public on any matter that relates to the welfare of children:
 - (i) to increase public awareness of matters that relate to the welfare of children:
 - (j) to promote, in relation to decisions that affect the lives of children,—
 - (i) the participation of children in those decisions; and
 - (ii) an approach to children's views that, in each case, gives due weight to those views in accordance with the age and maturity of the relevant child:
- (k) to report, with or without request, to the Prime Minister on matters affecting the rights of children:

- (1) to inquire generally into, and report on, any matter, including any enactment or law, or any practice or procedure, that relates to the welfare of children.
- (2) The Commissioner also has any other functions that are conferred on the Commissioner by this Act or by any other enactment.

Compare: 1989 No 24 s 411(1)(a), (d), (e), (f), (g), (2)

13 Functions in relation to Children, Young Persons, and Their Families Act 1989

- (1) The Commissioner has the following functions in relation to the Children, Young Persons, and Their Families Act 1989:
 - (a) to investigate any decision or recommendation made, or any act done or omitted, under that Act in respect of any child or young person in that child's or young person's personal capacity:
 - (b) to monitor and assess—
 - (i) the policies and practices of the Department; and
 - (ii) the policies and practices of any other person, body, or organisation that relate to the performance or exercise by the person, body, or organisation of a function, duty, or power under that Act or regulations made under that Act:
 - (c) to encourage the development, within the Department, of policies and services that are designed to promote the welfare of children and young persons:
 - (d) on the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter that relates to the administration of that Act or regulations made under that Act:
 - (e) to keep under review, and make recommendations on, the working of that Act.
- (2) In this section, **child** has the same meaning as in section 2(1) of the Children, Young Persons, and Their Families Act 1989.

Compare: 1989 No 24 s 411(1)(a), (b), (c), (h), (i)

14 Commissioner to develop means of consulting with children

- (1) The Commissioner must develop means of consulting with children from time to time for the purpose of ensuring the views of children are taken into account in the exercise or

performance of the Commissioner's functions (other than the Commissioner's functions under section 12(1)(a) or section 13(1)(a)).

- (2) The Commissioner must, where practicable, consult with children, using the means developed under subsection (1), before the Commissioner makes any significant recommendation in the exercise or performance of the Commissioner's functions under section 12(1)(f), (g), (i), or (l) or under section 13(1)(d) or (e).

15 Capacity and powers

- (1) The Commissioner has—
 - (a) full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and
 - (b) for the purposes of paragraph (a), full rights, powers, and privileges.
- (2) The Commissioner may exercise the powers conferred by subsection (1) only for the purpose of carrying out the Commissioner's functions.
- (3) Subsection (1) is subject to this Act and to any other enactment.

16 Duties

The officeholder, when acting as Commissioner, must act—

- (a) with honesty and integrity; and
- (b) in good faith; and
- (c) with the care, diligence, and skill that a reasonable person holding office as Commissioner would exercise in the same circumstances, taking into account (without limitation)—
 - (i) the nature of the office; and
 - (ii) the nature of the action.

Provisions relating to investigations

17 Commissioner's investigations must have regard to rights or interests and welfare of children

In conducting an investigation, the Commissioner must have regard to the question whether the rights or the welfare and interests of 1 or more children have been prejudiced.

18 Commissioner may not investigate courts or tribunals

- (1) Despite anything in this Act, the Commissioner may not investigate any decision or recommendation, or any act or omission, of a court or a tribunal.
- (2) If any matter is the subject of proceedings before a court or a tribunal, the Commissioner may not commence or (if the Commissioner has commenced an investigation) continue an investigation into the matter until the proceedings are finally determined.

19 Referrals of matters to certain statutory officers

- (1) If, in the course of conducting or proposing to conduct an investigation, the Commissioner considers that the subject matter of the investigation relates, in whole or in part, to a matter that is more properly within the scope of the functions of one of the statutory officers specified in subsection (4), the Commissioner must, without delay, consult with that officer in order to determine the appropriate means of dealing with the subject matter.
- (2) As soon as practicable after consulting with the officer concerned, the Commissioner must determine whether the subject matter should be dealt with, in whole or in part, under this Act.
- (3) If the Commissioner determines that the subject matter should be dealt with, in whole or in part, by one of the officers specified in subsection (4), the Commissioner must, without delay, refer the subject matter or, as the case requires, the appropriate part of the subject matter to that officer.
- (4) The statutory officers referred to in subsection (1) are—
 - (a) the Chief Commissioner under the Human Rights Act 1993:
 - (b) the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989:
 - (c) the Commissioner of Police:
 - (d) the Health and Disability Commissioner:
 - (e) the Chief Ombudsman exercising jurisdiction under the Ombudsmen Act 1975:
 - (f) the Police Complaints Authority:
 - (g) the Privacy Commissioner.

Compare: 1993 No 28 s 72

20 Special powers to call for information or documents

- (1) If the conditions stated in subsection (2) are satisfied, the Commissioner may, by notice in writing, require any person—
- (a) to provide the Commissioner or a specified employee of the Commissioner with any information the Commissioner requires; or
 - (b) to produce to the Commissioner or a specified employee of the Commissioner any document in the custody or under the control of that person, and to allow copies of, or extracts from, any such document to be made or taken; or
 - (c) to furnish to the Commissioner or to a specified employee of the Commissioner copies or extracts from documents in the custody or under the control of that person.
- (2) The conditions referred to in subsection (1) are that—
- (a) the Commissioner believes, on reasonable grounds, that the exercise of the powers conferred by that subsection are necessary to enable the Commissioner to carry out an investigation; and
 - (b) the person to whom a notice under that subsection is to be given has failed to comply with a previous request to provide the Commissioner, within a reasonable time, with the information or document or extract required by the notice; and
 - (c) the Commissioner believes, on reasonable grounds, that—
 - (i) it is not reasonably practicable to obtain the information or document from another source; or
 - (ii) for the purposes of the investigation, it is necessary to obtain the information or document to verify or refute information obtained from another source.

21 Compliance with requirement to provide information or document

- (1) A person to whom a notice under section 20 is given must, without charge, comply with the requirement stated in the notice in the manner and within a period (being not less than

20 working days after the notice is given to the person) specified in the notice.

- (2) Subsection (1) does not require a person to provide any information or produce any document that would be privileged in a court of law.
- (3) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, who, when required to comply with a notice given under section 20,—
 - (a) refuses or fails without reasonable excuse to comply with the notice; or
 - (b) knowingly or recklessly provides information that is false or misleading in any material particular.

22 Commissioner and staff must maintain secrecy

- (1) The Commissioner and every employee of the Commissioner must maintain secrecy in respect of all matters that come to the knowledge of the Commissioner or the employee in the course of any investigation.
- (2) Despite anything in subsection (1), the Commissioner or any employee of the Commissioner acting with the authority of the Commissioner may disclose any matter that, in the Commissioner's opinion, ought to be disclosed for the purposes of giving effect to—
 - (a) this Act; or
 - (b) the Commissioner's obligations under any other enactment; or
 - (c) information privacy principle 6 of the Privacy Act 1993.
- (3) The power conferred by subsection (2)(a) does not extend to—
 - (a) any matter that might prejudice—
 - (i) the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation); or
 - (ii) any interest protected by section 7 of the Official Information Act 1982; or
 - (iii) the maintenance of the law, including the prevention, investigation, or detection of offences; or
 - (b) any matter that might involve the disclosure of the deliberations of Cabinet; or

- (c) any information, answer, document, paper, or thing obtained by the Commissioner by reason only of compliance with a requirement made under section 20(1).
- (4) The power conferred by subsection (2)(c) is subject to sections 27 to 29 of the Privacy Act 1993.

Compare: 1993 No 28 s 116

23 Consultation with other statutory officers

- (1) Despite anything in section 22, the Commissioner may consult with any of the statutory officers specified in subsection (3) about any matter that relates to the functions of the Commissioner, including (without limitation) consultation—
 - (a) for the purposes of making a determination under section 19:
 - (b) in relation to any matter that arises out of, or in the course of, an investigation conducted by the Commissioner:
 - (c) in relation to any matter that relates to the interests, rights, or welfare of children, whether or not the matter arises out of an investigation conducted by the Commissioner.
- (2) For the purposes of any consultation under subsection (1), the Commissioner may disclose to the officer concerned any information the Commissioner considers necessary for that purpose.
- (3) The statutory officers referred to in subsection (1) are—
 - (a) the Chief Commissioner under the Human Rights Act 1993:
 - (b) the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989:
 - (c) the Commissioner of Police:
 - (d) the Health and Disability Commissioner:
 - (e) the Chief Ombudsman exercising jurisdiction under the Ombudsmen Act 1975:
 - (f) the Police Complaints Authority:
 - (g) the Privacy Commissioner.

Compare: 1993 No 28 s 117

24 Access to court records

- (1) If the Commissioner believes on reasonable grounds that access to a record of a court is required for an investigation, the Commissioner may apply to the court to inspect the record.
- (2) An application under subsection (1) is dealt with in accordance with the applicable rules of court governing the inspection of court records.
- (3) This section does not limit—
 - (a) section 15; or
 - (b) any other enactment that—
 - (i) enables the Commissioner to access court records; or
 - (ii) restricts access to court records.

25 Commissioner must not make adverse comment unless opportunity to be heard is given

Despite anything in this Act, the Commissioner must not, in any report or statement made under this Act, make any comment that is adverse to a person if the Commissioner has not given the person an opportunity to be heard.

Compare: 1989 No 24 s 414

26 Commissioner may regulate procedure for investigations

The Commissioner may regulate the procedure for any investigation under this Act in any manner, not inconsistent with this Act, that the Commissioner thinks fit.

*Immunities and privileges***27 Proceedings privileged**

- (1) Neither the officeholder nor an employee of the Commissioner is personally liable for any liability of the Commissioner by reason only of being an officeholder or employee.
- (2) No civil or criminal proceedings may be brought against the officeholder or a former officeholder or against a person who is or has been an employee of the Commissioner for anything done or omitted in the course of the exercise or intended exercise of functions under this Act unless it is shown that the person concerned acted in bad faith.

- (3) Neither the officeholder nor a former officeholder nor a person who is or has been an employee of the Commissioner may be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything that comes to the knowledge of the person concerned in the exercise of functions or powers under this Act.
- (4) Nothing in subsection (2) or subsection (3) applies in respect of proceedings for—
 - (a) an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
 - (b) the offence of conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
 - (c) the offence of attempting to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961.
- (5) Nothing in subsection (3) applies to any report made by the Commissioner to a court under section 12(1)(g).
- (6) Anything said or any information supplied or any document, paper, or thing produced by a person in the course of an investigation by the Commissioner under this Act is privileged in the same manner as if the investigation were a proceeding in a court.
- (7) For the purposes of clause 3 of Part 2 of the First Schedule of the Defamation Act 1992, any report made by the Commissioner under this Act is to be taken to be an official report.

Matters of administration

28 Annual report

- (1) Without limiting the right of the Commissioner to report at any other time, as soon as practicable after the end of each financial year the Commissioner must give the Minister a report on the exercise of the Commissioner's functions under this Act during that year.
- (2) Subsection (1) is subject to section 25.
- (3) The report must state—
 - (a) the total value of the remuneration and other benefits received by the officeholder in the financial year; and

- (b) the number of employees who, during the financial year, received remuneration and other benefits in their capacity as employees, the total value of which exceeded \$100,000, and the number of those employees in brackets of \$10,000; and
 - (c) the number of employees of the Commissioner, who, during the financial year, received any compensation or other benefits on termination, and the total value of the compensation or other benefits; and
 - (d) if the Commissioner has established any committee, the number of members of the committee who, during the financial year, received—
 - (i) fees or other benefits, or both, in their capacity as members, and the total value of those fees and other benefits; and
 - (ii) any compensation or other benefits on termination of their membership, and the total value of the compensation and other benefits.
- (4) Information need not be included in the report if it could properly be withheld if a request for information were made under the Official Information Act 1982.
- (5) The Minister must present a copy of the report to the House of Representatives in accordance with section 44A of the Public Finance Act 1989.

29 Money to be appropriated for purposes of this Act

All fees, salaries, allowances, and other expenditure payable or incurred under, or in the administration of, this Act is payable out of money appropriated by Parliament for the purpose.

30 Provisions applying to Commissioner

The provisions in Schedule 1 apply to the Commissioner.

Part 3

Transitional and miscellaneous provisions

31 Continuation of office, appointment of Commissioner, and employment of employees

- (1) The office continued by section 6 is the office of Commissioner for Children as established by section 410 of the Children, Young Persons, and Their Families Act 1989, and, accordingly, every reference to the Commissioner for Children in an enactment or document made before the commencement of this Act is a reference to the Children's Commissioner continued by section 6.
- (2) On the commencement of this Act, the person who, immediately before that commencement, held office as Commissioner for Children under the Children, Young Persons, and Their Families Act 1989 is to be taken to have been appointed as Commissioner under section 7(1)—
 - (a) for a term that, immediately before that commencement, represented the remainder of the person's term as Commissioner for Children; and
 - (b) subject to the conditions of employment, determined under section 417 of that Act, that applied to the person immediately before that commencement; and
 - (c) subject to any determination made under clause 5 of Schedule 1 (with any such determination prevailing if, and to the extent that, it is more favourable to the person than any of the conditions of employment referred to in paragraph (b)).
- (3) The Remuneration Authority is not obliged to make a determination under clause 5 of Schedule 1 of the salary and allowances of the person to whom subsection (2) applies before the time that that person's salary and allowances would have been next reviewed under the conditions of employment referred to in subsection (2)(b).
- (4) This Act does not affect the employment of any person who, immediately before the commencement of this Act, was an employee of the Commissioner for Children.

32 Application of Act to matters commenced under Children, Young Persons, and Their Families Act 1989

- (1) The Commissioner may continue or complete any act, matter, or thing commenced by the Commissioner for Children under

the Children, Young Persons, and Their Families Act 1989 but not completed on the commencement of this Act.

- (2) The provisions of this Act apply with all necessary modifications to the continuation or completion of any act, matter, or thing referred to in subsection (1).

33 Review of Commissioner's operations and performance

- (1) The Minister may review the operations and performance of the Commissioner at any time.
- (2) This section does not limit powers of review in any other Act, for example, in the following Acts:
 - (a) Public Audit Act 2001:
 - (b) State Sector Act 1988.

34 Power to request information in connection with review

- (1) The Commissioner must supply to the Minister any information reasonably required by the Minister, and requested by the Minister, in connection with the exercise of his or her powers under section 33.
- (2) This section is subject to section 35, and does not limit section 45B of the Public Finance Act 1989.

35 Good reasons for refusing to supply requested information

- (1) A request for information under section 34 may be refused if—
 - (a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person); or
 - (b) the supply of the information would limit the Commissioner's ability to act independently in—
 - (i) making decisions about a particular person; or
 - (ii) carrying out the Commissioner's statutorily independent functions.
- (2) The reason in subsection (1)(a) applies only if it is not outweighed by the Minister's need to have the information in order to discharge the Minister's ministerial duties.

- (3) Information may not be withheld under this section if it could not properly be withheld under the Official Information Act 1982.

Compare: 1989 No 44 s 45B(2)

36 Convention set out in Schedule 2 for information and reference only

- (1) The Convention is set out in Schedule 2 for public information and reference purposes only.
- (2) For the avoidance of doubt, the inclusion of the text of the Convention in this Act does not affect the legal status of the Convention.

37 Consequential amendments

The enactments specified in Schedule 3 are amended in the manner indicated in that schedule.

s 30

Schedule 1

Provisions applying to Commissioner

Terms and conditions of appointment

1 Concurrent offices and disclosure of interests

- (1) The officeholder must not, without the approval of the Minister, hold any office of trust or profit, other than his or her office as Commissioner, or engage in any occupation for reward outside the duties of that office.
- (2) The officeholder must disclose any private or business interest or matter that would conflict with any functions of the Commissioner or would otherwise compromise the integrity of the office of the Commissioner.
- (3) The officeholder must disclose any interest or matter referred to in subclause (2) to the Minister in writing as soon as practicable after it arises.

Compare: 1975 No 9 s 4

2 When officeholder has private or business interest

- (1) For the purposes of clause 1(2), the officeholder (A) has a private or business interest in a transaction of, or other matter relating to, another person (B) if A—
 - (a) is a party to, or will or may derive a benefit from, the transaction or matter; or
 - (b) has a financial interest in another party to the transaction or in a person to whom the matter relates; or
 - (c) is a director, officer, board member, or trustee of another party to, or a person who will or may derive a financial benefit from, the transaction or matter; or
 - (d) is the parent, child, spouse, or de facto partner of another party to, or a person who will or may derive a financial benefit from, the transaction or matter; or
 - (e) is otherwise directly or indirectly interested in the transaction or matter.
- (2) However, A does not have a private or business interest in the transaction or other matter—
 - (a) merely because he or she is a board member, director, or an officer of a wholly-owned subsidiary of B; or
 - (b) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence

him or her in carrying out his or her duties and responsibilities as Commissioner.

3 Consequences of private or business interest or matter

- (1) If, under clause 1(2), the officeholder discloses, or is required to disclose, an interest or matter, then the officeholder must not participate in any activity of the Commissioner that relates to the interest or matter.
- (2) However the Minister may, by prior written notice to the Commissioner, permit the officeholder to do anything otherwise prohibited by this clause, if the Minister is satisfied that it is in the public interest.
- (3) The permission may state conditions that the officeholder or Commissioner must comply with.
- (4) The Minister may amend or revoke the permission in the same way as it may be given.

4 Resignation

- (1) The officeholder may, at any time, resign from office by sending a written notice to the Governor-General and a copy to the Minister.
- (2) Unless the officeholder is sooner removed from office, a notice under subclause (1) takes effect on the later of—
 - (a) the day the Governor-General receives it; and
 - (b) a day the officeholder states in it for the purpose.

5 Salaries and allowances

- (1) The officeholder is entitled to payment of—
 - (a) a salary at a rate determined by the Remuneration Authority; and
 - (b) any allowances determined by the Remuneration Authority.
- (2) Any determination made under subclause (1) may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination.
- (3) Subclause (2) is subject to the Remuneration Authority Act 1977.

- (4) If no date is specified in a determination under subclause (2), the determination comes into force on the date it is made.
- (5) This clause is subject to section 31(3) (which relates to the timing of a determination in respect of the person who, immediately before the commencement of this Act, held office as the Commissioner for Children under the Children, Young Persons, and Their Families Act 1989).
- (6) A Judge is not entitled to any remuneration for services as Commissioner in addition to his or her remuneration as a Judge.
- (7) In addition, the officeholder is entitled, in accordance with the fees framework, to be reimbursed, out of the funds of the Commissioner, for actual and reasonable travelling and other expenses relating to the performance of his or her functions and duties as Commissioner.

6 Superannuation or retiring allowances

- (1) For the purpose of providing a superannuation fund or retiring allowance for the officeholder or any employee of the Commissioner, sums by way of subsidy or contribution may be paid into any superannuation scheme that is registered under the Superannuation Schemes Act 1989 and approved by the Minister of Finance for the purposes of this clause.
- (2) Despite anything in this Act, any person who, immediately before being appointed as the Commissioner or as an employee of the Commissioner, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is considered, for the purposes of that Act, to be employed in the Government service so long as that person continues to hold office as the Commissioner or as an employee of the Commissioner, and that Act applies to that person in all respects as if service as or for the Commissioner were Government service.
- (3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) entitles a person to become a contributor to the Government Superannuation Fund after the person has ceased to be a contributor.
- (4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as the Commissioner or as an employee of

the Commissioner and is a contributor to the Government Superannuation Fund, the term **controlling authority**, in relation to any such person, means the Commissioner.

Employees

7 Employees

- (1) The Commissioner may appoint any employees (including acting or temporary or casual employees) necessary for the efficient carrying out of the Commissioner's functions, powers, and duties under this Act.
- (2) The Commissioner, in making an appointment under this clause, must give preference to the person who is best suited to the position.
- (3) Employees appointed under this clause are employed on any terms and conditions of employment that the Commissioner determines.

8 Chief executive

- (1) Subclause (2) applies if the Commissioner appoints a chief executive for the office of the Commissioner.
- (2) The Commissioner—
 - (a) must not determine or modify the chief executive's remuneration or other terms and conditions of appointment without having consulted the State Services Commissioner; and
 - (b) if the remuneration or other terms and conditions of appointment proposed to be determined or modified by the Commissioner are not in accordance with the guidance given by the State Services Commissioner during consultation under paragraph (a), must not determine or modify it or them without having consulted the Minister.

9 Commissioner to be good employer

- (1) The Commissioner must—
 - (a) operate a personnel policy that complies with the principle of being a good employer; and
 - (b) report on his or her compliance with that policy (including his or her equal employment opportunities programme) in his or her annual report.

- (2) For the purposes of this clause, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of Maori; and
 - (ii) the employment requirements of Maori; and
 - (iii) the need for involvement of Maori as employees of the Crown entity; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this clause, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

10 Application of certain Acts to Commissioner and employees

No person is considered to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as the Commissioner or a person appointed under clause 7.

Delegations

11 Ability to delegate

- (1) The Commissioner may delegate any of the functions and powers of the Commissioner, either generally or specifically, to any employee of the Commissioner.
- (2) The Commissioner may not delegate—
 - (a) the power to call for information and documents under section 20; or
 - (b) the power to delegate under this clause; or
 - (c) the power to appoint attorneys under clause 15.
- (3) Despite subclause (2), the Commissioner may, with the prior approval of the Minister, delegate to any employee of the Commissioner 1 or more of the powers referred to in that subclause.
- (4) A delegate may exercise a power delegated under subclause (3) only during a vacancy in the office of the Commissioner or during the absence for any reason of the Commissioner.

12 Effect of delegation

- (1) If any functions or powers of the Commissioner are delegated, the delegate may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the Commissioner.
- (2) A delegate who purports to perform a function or exercise a power under a delegation is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation.
- (3) The Commissioner may, at any time, revoke a delegation by written notice to the delegate.
- (4) A delegation does not prevent the Commissioner from performing the function or exercising the power.
- (5) A delegation does not cease to have effect merely because the officeholder by whom it was made ceases to hold office.

Transactions

13 Services for Commissioner

The Crown, acting through any department, may, at the request of the Commissioner, execute any work or enter into

any arrangements for the execution or provision by the Department for the Commissioner of any work or service, or for the supply to the Commissioner of any goods, stores, or equipment, on and subject to any agreed terms and conditions.

14 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by the Commissioner as provided in this clause.
- (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of the Commissioner in writing, signed under the name of the Commissioner, by—
 - (a) the officeholder; or
 - (b) 1 or more attorneys appointed by the Commissioner in accordance with this Act.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of the Commissioner in writing by the officeholder or a person acting under the Commissioner's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of the Commissioner in writing or orally by the officeholder or a person acting under the Commissioner's express or implied authority.
- (5) The Commissioner may, in addition to complying with sub-clauses (2) to (4), affix its common seal (if he or she has one) to the contract or document containing the enforceable obligation.
- (6) This clause applies to a contract or other obligation—
 - (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.

15 Attorneys

- (1) The Commissioner may, by an instrument in writing executed as a deed, appoint a person as his or her attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds the Commissioner.

16 Presumptions and saving of certain transactions

- (1) The validity or enforceability of any deed, agreement, right, or obligation entered into, or incurred, by the Commissioner is not affected by a failure of the Commissioner to comply with any provision of this Act.
- (2) A person purporting to execute any documentation on behalf of the Commissioner under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with that authority.

*Financial matters***17 Funds of Commissioner**

The funds of the Commissioner consist of—

- (a) any money appropriated by Parliament for the purposes of the Commissioner and paid to the Commissioner for the purposes of the Commissioner; and
- (b) all other money lawfully received by the Commissioner for the purposes of the Commissioner; and
- (c) all accumulations of income derived from that money.

18 Bank accounts

- (1) The Commissioner must open at any bank or banks any accounts necessary for the exercise of the Commissioner's functions and powers.
- (2) All money received by the Commissioner, or by any employee of the Commissioner, must, as soon as practicable after it has been received, be paid into bank accounts of the Commissioner designated by the Commissioner.
- (3) The withdrawal or payment of money from any such account must be authorised in a manner the Commissioner thinks fit.

19 Investment of money

Any money that belongs to the Commissioner and that is not immediately required for expenditure by the Commissioner may be invested under section 25 of the Public Finance Act 1989.

20 Commissioner must not borrow without consent of Minister of Finance

The Commissioner must not borrow or contract to borrow any money, or renew any loan made to the Commissioner, without the prior written consent of the Minister of Finance.

21 Commissioner must not hold shares without consent of Minister of Finance

The Commissioner must not hold any shares or interests in a body corporate or in a partnership, joint venture, or other association of persons without the prior written consent of the Minister of Finance.

22 Auditor-General is auditor of Commissioner

The Commissioner is a public entity as defined in section 5 of the Public Audit Act 2001, and, in accordance with that Act, the Auditor-General is the auditor of the Commissioner.

23 Exemption from income tax

The income of the Commissioner is exempt from income tax.

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Schedule 2
**United Nations Convention on the Rights of
the Child**

CONVENTION ON THE RIGHTS OF THE CHILD

PREAMBLE

The States Parties to the present convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular

in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognising the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall 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.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or

community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 6

1. States Parties recognise that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the

child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;

- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity of a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation

opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventative health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, or profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the

provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

- (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - i To be presumed innocent until proven guilty according to law;
 - ii To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - iii To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular taking into account his or her age or situation, his or her parents or legal guardians;
 - iv Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - v If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - vi To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - vii To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

- (a) The law of a State party; or
(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realisation of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognised competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialised agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialised agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialised agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Convention.

Schedule 3

Consequential amendments

s 37

Children, Young Persons, and Their Families Act 1989

(1989 No 24)

Repeal paragraph (d) of the Title.

Repeal the definition of **Commissioner** in section 2(1) and substitute:

“**Commissioner** means the Children's Commissioner appointed under section 7(1) of the Children's Commissioner Act 2003”.

Repeal Part IX (sections 410 to 422).

Health and Disability Commissioner Act 1994 (1994 No 88)

Omit from section 14(2)(b) and also from section 23(b) the words “the Commissioner for Children”, and substitute in each case the words “the Children's Commissioner”.

Ombudsmen Act 1975 (1975 No 9)

Omit from Part II of the First Schedule the item “The Commissioner for Children.”, and substitute, in its appropriate alphabetical order, the item “The Children's Commissioner.”

Public Finance Act 1989 (1989 No 44)

Omit from the Fourth, Fifth, and Seventh Schedules the item “Commissioner for Children.”, and substitute in each case, in its appropriate alphabetical order, the item “Children's Commissioner.”

Remuneration Authority Act 1977 (1977 No 110)

Insert in the Fourth Schedule, after the item relating to the Chairman of the Broadcasting Corporation of New Zealand:

“The Children's Commissioner.”

Children, Young Persons, and Their Families (Residential Care) Regulations 1996 (SR 1996/354)

Omit from regulations 10(1)(l), 29(2)(c), 31(5)(d), 37(6), and clause 10(4) of the Schedule the words “Commissioner for Children”, and substitute in each case the words “Children's Commissioner”.

Family Courts Rules 2002 (SR 2002/261)

Omit from rule 427(3)(f) the words “Commissioner for Children” in both places where they appear, and substitute in each case the words “Children's Commissioner”.

Legislative history

29 August 2001	Introduction (Bill 153-1)
10 September 2001	First reading and referral to Social Services Committee
5 April 2002	<i>Reported from Social Services Committee (Bill 153-2)</i>
6 November 2003	Second reading
11 November 2003	Committee of the whole House (Bill 153-3)
18 November 2003	Third reading
25 November 2003	Royal assent

This Act is administered in the Ministry of Social Development.
