

ACCEDING TO THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE: PROPOSED GOVERNMENT RESPONSE TO SELECT COMMITTEE RECOMMENDATION

- 1 The Foreign Affairs, Defence and Trade Committee (FADTC) has conducted the parliamentary treaty examination of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP). The Committee *recommends that the Government consider ways resources can be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP.*
- 2 This paper seeks agreement to the proposed Government response: accepting the FADTC's recommendation, and adding this to the work programme of the DCE International Human Rights Governance Group (Appendix One).

Executive Summary

- 3 On 1 November 2021 Cabinet approved the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure and National Interest Analysis for presentation to the House of Representatives for Parliamentary treaty examination [CAB-21-MIN-0447 refers]. The Foreign Affairs, Defence and Trade Committee has *recommended that the Government consider ways resources can be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP.*
- 4 Currently, if New Zealand was to accede to the OPCP, there is no specific funding to support people to make a claim under the OPCP (as is the case for other United Nations (UN) human rights communication mechanisms we are party to), although NGOs and advocacy groups may be able to provide some assistance.
- 5 There are a number of benefits in agreeing to the FADTC recommendation, including it:
 - 5.1 is consistent with New Zealand's proposed accession to the OPCP
 - 5.2 aligns with the principles and legislation supporting the Child and Youth Wellbeing Strategy, including the outcome for children and young people 'to be involved and empowered'

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- 5.3 would send a positive signal to New Zealand’s human rights sector¹ and civil society
- 5.4 sends a positive message to the international community regarding New Zealand’s commitment to international human rights law.
- 6 I have also considered the following implications, including:
- 6.1 resource and time will be required to consider the FADTC recommendation
- 6.2 s 9(2)(f)(iv)
- 6.3
- 7 On balance, I recommend that Government accept the FADTC recommendation. I also recommend that consideration of the FADTC recommendation is progressed via the work programme of the DCE International Human Rights Governance Group². The Governance Group is the central point of New Zealand’s National Mechanism for Reporting, Implementation and Follow-up on New Zealand’s international human rights obligations and reporting requirements for UN Treaty bodies, and has a Cabinet mandate to consider work relating to UN Treaty Body processes.
- 8 Accepting the FADTC recommendation means agreeing to consider ways resources can be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP. It does not commit the Government to future policy changes or funding in this area. I propose further clarifying this in the response, that in accepting the FADTC’s recommendation the Government will also consider *whether* resources should be made available, and that there are a number of issues which need to be explored which will take time. However, as consideration of the FADTC recommendation is not a matter of compliance with the Children’s Convention, this will not delay New Zealand’s proposed accession to the OPCP.
- 9 Subject to Cabinet agreement, the proposed Government response to the FADTC will be presented to the House by 9 May 2022.

¹ The human rights sector includes NGOs and organisations such as the Human Rights Commission, the Children’s Commissioner, and the Children’s Convention Monitoring Group (CMG). The CMG monitors the New Zealand Government’s implementation of the Children’s Convention, its Optional Protocols and the Government’s response to recommendations from the United Nations Committee on the Rights of the Child. The CMG is convened by the Office of the Children’s Commissioner and includes members from the Human Rights Commission, UNICEF New Zealand, Children’s Rights Alliance Aotearoa New Zealand, and Save the Children New Zealand.

² Members are: the Ministries of Foreign Affairs and Trade, Justice, Social Development, and for Women; Office for Disability Issues; Te Puni Kōkiri and Statistics NZ.

Relation to Government priorities

- 10 Becoming party to the OPCP is a 2020 Labour Party Manifesto commitment. Accepting the FADTC recommendation is also consistent with our proposed accession to the OPCP and aligns with the following Government priorities:
 - 10.1 giving greater effect to the principles and legislation supporting the Child and Youth Wellbeing Strategy, including the outcome for children and young people 'to be involved and empowered'
 - 10.2 reinforcing New Zealand's commitment to strengthening and upholding children's rights by increasing independent scrutiny of Government actions under the Children's Convention and its Optional Protocols
 - 10.3 better honouring our obligations under te Tiriti, for example, under:
 - 10.3.1 article one (kawanatanga / governorship) – examining the need to strengthen the protection of the rights of vulnerable tamariki and rangatahi in New Zealand
 - 10.3.2 article two (recognising rangatiratanga / self-management) – examining the capacity and capability of Māori NGOs to support Māori to make claims under the OPCP
 - 10.3.3 article three (equality of outcomes) – ensuring Māori have equitable access to the OPCP process.

Background

- 11 New Zealand became party to the Children's Convention in 1993. The OPCP provides for 'communications' (complaints) to the UN Committee on the Rights of the Child alleging a violation of any of the rights included in the Children's Convention, Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC).
- 12 On 1 November 2021 Cabinet approved the OPCP and National Interest Analysis for presentation to the House of Representatives for Parliamentary treaty examination in accordance with Standing Order 405 [CAB-21-MIN-0447 refers].
- 13 This treaty was referred to the FADTC on 12 November 2021, who met between 18 November 2021 and 10 February 2022 to consider it. The FADTC received 17 public submissions from organisations and individuals and heard oral evidence from six submitters.
- 14 In submissions to the FADTC, there was overwhelming support for New Zealand's proposed accession to the OPCP. Some submissions noted the possibility of groups of children bringing a collective complaint as an important feature of the OPCP that will benefit groups who disproportionately experience prejudice in the exercise of their rights. These groups include tamariki Māori, Pacific children, children with refugee and migrant backgrounds, disabled children, rainbow children and children from religious minorities.

FADTC findings and recommendation

- 15 In submissions to the FADTC, while there was overwhelming support for accession to the OPCP, the FADTC outlined the following concerns and recommendation in its report³:

Concerns about providing support for claimants

- 16 The FADTC is concerned that, although signing up to the OPCP would provide people with a way to bring claims to the United Nations Committee on the Rights of the Child, people may not have the resources to develop a claim. The FADTC appreciate that groups working for children's rights will be able to communicate that New Zealand has acceded to the OPCP and that people who have experienced a breach of their rights may be able to take a claim to an independent international organisation. However, the FADTC believe resources should be available to support claimants to initiate and develop claims. The process for bringing a claim to the Committee could require expert or specialist legal skills that an average New Zealander, particularly a child, may not have.

Ensuring the wellbeing of claimants throughout the process

- 17 The FADTC would also like to ensure that claimants receive health and wellbeing support when going through the OPCP process. In many cases individuals or groups will be bringing claims against Government agencies. The FADTC believe that this could be quite a daunting prospect. The FADTC are also wary of claims becoming politicised and claimants being used to make a political point or statement against the Government. The FADTC think it is important that anybody making a claim under the OPCP is protected and supported throughout the entire process.

If we accede to the OPCP, the FADTC recommended that Government consider ways resources can be made available to support claimants under this treaty

- 18 The FADTC recommends that the Government consider ways resources can be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP.

Timing of the Government response

- 19 The Government response must be presented to the House by 9 May 2022.

³ Report of the Foreign Affairs, Defence and Trade Committee, 11 February 2022: *International treaty examination of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*. See https://www.parliament.nz/en/pb/sc/reports/document/SCR_119648/international-treaty-examination-of-the-optional-protocol

Comment on the FADTC findings and recommendations

Currently there is no specific funding to support people to make a complaint under the OPCP (if New Zealand acceded), although NGOs and advocacy groups may be able to provide some assistance

- 20 On 6 December 2021, the Ministry of Social Development (MSD) provided the FADTC information on what support is available for children to make a claim under the OPCP, should New Zealand become party to this protocol to the Children's Convention. The FADTC sought clarification on whether children who wished to make a claim would be entitled to Legal Aid.
- 21 The Ministry of Justice advised that children making a claim to the UN Committee on the Rights of the Child would not be eligible for Legal Aid. Legal Aid is only available for criminal and civil proceedings in New Zealand, which are specified in sections 6 and 7 of the Legal Services Act 2011. In practice, children and young people may be supported by an adult, teacher, or non-governmental organisation or advocacy group. However, there is currently no specific funding for these groups to support children to make these claims. This is consistent with the other United Nations communications procedures New Zealand has accepted⁴. Generic support mechanisms, like Community Law Centres, may be able to provide some assistance. To support children and young people to use this communications mechanism, officials will develop a communications plan in the lead up to New Zealand's accession to the OPCP, to ensure the public is aware of their rights.
- 22 The UN states that the individual complaint mechanisms are designed to be accessible to the layperson. It is not necessary to be a lawyer or even familiar with legal and technical terms to bring a complaint under the treaties concerned⁵. The UN also provides further links to the complaint form and guidance.
- 23 Although the process of making claims under the OPCP appears straightforward, there is merit in exploring whether more should be done to ensure the process is known and more accessible to vulnerable groups in particular.

There are benefits in agreeing to the FADTC recommendation

Agreeing to the FADTC recommendation is consistent with our proposed accession to the OPCP

⁴ The communications procedures New Zealand has accepted are the: International Covenant on Civil and Political Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of Persons with Disabilities, Convention on the Elimination of all forms of Discrimination Against Women.

⁵ Refer to: <https://www.ohchr.org/en/treaty-bodies/individual-communications>

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- 24 Accepting the recommendation to consider whether support should be made available to claimants under the OPCP, and possible ways to do this, is consistent with our proposed accession to this treaty. In particular, further work needs to be done in order to better understand the capacity and capability of New Zealand’s human rights sector to support individual claims in this area.
- 25 Accepting the recommendation also aligns with the principles and legislation supporting the Child and Youth Wellbeing Strategy, including the outcome for children and young people ‘to be involved and empowered’.

Accepting the FADTC recommendation would also send a positive signal to New Zealand’s human rights sector and civil society

- 26 Organisations in the human rights sector such as NGOs and the Human Rights Commission, the Children’s Commissioner, and the Children’s Convention Monitoring Group have consistently advocated for New Zealand to become party to the OPCP, and would welcome Government’s acceptance of the FADTC recommendation.
- 27 Also, as consideration of the FADTC recommendation is not a matter of compliance with the Children’s Convention, this will not delay New Zealand’s proposed accession to the OPCP. However, the UN would likely see acceptance of the FADTC recommendation as a positive step.

While there are benefits to accepting the recommendation, I have also considered the following implications

The likely expectation Government will also consider supporting claimants under other UN communication mechanisms New Zealand is party to

- 28 By accepting the recommendation, there is likely to be the expectation for the same consideration to be given to the support available for claimants utilising the other UN communications procedures New Zealand has accepted, for example, under the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities. There is a valid argument for this to ensure consistency and equity. However, further work would be required to understand the support needs for these groups and the implications of a universal support approach.

Resource and time will be required for this work

- 29 Resource and time will be required to consider the FADTC recommendation and scope of a review. Further work will be required to determine the priority of this issue, and alignment to other work underway.

s 9(2)(f)(iv)

30 s 9(2)(f)(iv)

- 31 I propose that clarifying in the Government's response, that in accepting the recommendation the Government will consider *whether* support should be made available, as well as possible ways to do this, will also help to manage expectations.

I recommend that the Government accept the FADTC recommendation

- 32 On balance, I recommend that Government accept the FADTC recommendation. Accepting the recommendation means agreeing to consider ways resources can be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP. I propose to further clarify in the Government's response, that in accepting the recommendation, the Government will also consider *whether* support should be made available.
- 33 Accepting the FADTC recommendation does not commit the Government to future policy changes or funding in this area, although it may raise expectations.

I recommend adding the FADTC recommendation to the work programme of the International Human Rights Governance Group

- 34 On 14 December 2021, the Cabinet External Relations and Security Committee endorsed the establishment of a Human Rights National Mechanism including a Deputy Chief Executive/Deputy Secretary Inter-agency Governance Group (the Governance Group) [ERS-21-MIN-0047 refers].
- 35 The Governance Group has already been established and is the central point of New Zealand's National Mechanism for Reporting, Implementation and Follow-up on New Zealand's international human rights obligations and reporting requirements for UN Treaty bodies. Member agencies are: the Ministries of Foreign Affairs and Trade, Justice, Social Development, and for Women; Office for Disability Issues; Te Puni Kōkiri and Statistics NZ.
- 36 The Governance Group has confirmed that the FADTC recommendation is broadly in scope of its mandate, and could be added to its work programme.
- 37 The Governance Group's Terms of Reference states: The Governance Group takes a collective approach to policy advice about the implementation of New Zealand's international human rights obligations, including:
- 37.1 the incorporation of the core human rights treaties into domestic law and policy, including any gaps, inconsistencies or systemic issues;
 - 37.2 responses to *individual communications to UN treaty bodies, including addressing any policy or systemic issues arising from those communications or decisions of the treaty bodies; and*
 - 37.3 withdrawal or narrowing of reservations to the core human rights treaties and possible ratification of new international human rights instruments.

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- 38 Although the Governance Group focuses on domestic law and policy under human rights treaties, it is also concerned with wider related issues, such as under the FADTC recommendation.
- 39 The Governance Group notes it also maintains a strong working relationship with the New Zealand Human Rights Commission, and works closely with other Government human rights groups that are the designated coordinating mechanism for specific human rights conventions, including the Children's Convention DCE group.
- 40 The Governance Group agreed recently to look at the process for responding to individual communications. While this would mostly focus on policy and systemic issues raised by adverse findings from a treaty body, it could also look at other aspects of the process. This could include guidance provided to people considering making a communication and the types of informal support that could be appropriate for example for the Human Rights Commission, the Children's Commissioner, or NGOs to provide (e.g. health and wellbeing support).
- 41 In accepting the FADTC recommendation be added to the Governance Group work programme, it should be noted that the Governance Group would have a broad stewardship role, and may recommend specific work be delegated to relevant groups or agencies with specific expertise in that area.

In considering the FADTC recommendation, there are a number of issues needing to be explored, which will take time

- 42 Following presentation of the Government response to the House, key issues that need to be considered may include:
 - 42.1 determining the priority of this issue raised by the FADTC, and alignment to other work underway
 - 42.2 what NGOs have expertise and capacity to support individuals or groups to make claims under the OPCP, or what funding may be required (e.g. capacity may be impacted by the general challenges and increased burden on health care providers experienced during the COVID-19 pandemic)
 - 42.3 whether, and what, funding for legal advice and other support should be made available to individuals or groups to make claims under the OPCP
 - 42.4 whether there should be consistent application of support for claimants utilising individual communications procedures under other human rights treaties New Zealand has ratified
 - 42.5 the role of agencies in promoting and raising awareness about the Children's Convention in general, and their responsibilities and expectations in supporting those making claims under the OPCP
 - 42.6 in addition to legal representation, provision of health and wellbeing support for claimants (particularly children) during the communications process.

- 43 Detailed analysis of these issues, including any possible cost implications of any proposed changes, cannot be undertaken before the Government is required to report back to the House by 9 May 2022, under Standing Order 256. This work will require some time and will need to be considered alongside other Government priorities and work programmes. I propose that accepting the FADTC recommendation is an interim step and will allow us the time to fully consider all the issues.

Financial Implications

44 s 9(2)(f)(iv)

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Legislative Implications

46 s 9(2)(f)(iv)

Impact Analysis

Regulatory Impact Statement

- 47 A regulatory impact statement is not required as no changes to legislation are required at this stage.

Climate Implications of Policy Assessment

- 48 A Climate Implications of Policy Assessment (CIPA) is not required.

Population Implications

- 49 Accepting the FADTC recommendation aligns with the principles and legislation supporting the Child and Youth Wellbeing Strategy, including the outcome for children and young people 'to be involved and empowered' (through consultation on this issue, and if support was found to be needed and met, through improved access to making claims under the OPCP).

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- 50 Identifying support needs by accepting the FADTC recommendation could also benefit particular vulnerable groups of children and young people, and potentially all ages under other individual communications procedures we are party to. For example, some people may not have the personal resources to pursue a claim, e.g. those experiencing inadequate living conditions or homelessness. This would align with a human rights based approach to housing signalled in the Government Policy Statement on Housing and Urban Development. Others may be less likely to engage in these mechanisms without greater awareness of this, or the existing support available.
- 51 Population implications for key groups are outlined below in the context of accepting the FADTC recommendation, and how this would strengthen our human rights framework under our proposed accession to the OPCP.

Population group	How the proposal may affect this group
Māori	<p>In 2018 there were approximately 293,000 tamariki and rangatahi Māori under the age of 18 in New Zealand, around 38 percent of the Māori population. Tamariki and rangatahi Māori face poorer outcomes for wellbeing, and are over-represented in state care.</p> <p>Acceding to the OPCP will strengthen the protection of the rights of tamariki and rangatahi Māori by providing independent scrutiny of Government actions and providing further impetus to honour the Crown's obligations under Te Tiriti o Waitangi.</p> <p>Considering the FADTC recommendation in particular would honour the Crown's obligations under the articles of Te Tiriti o Waitangi in the following ways:</p> <ul style="list-style-type: none"> • <i>Article One</i> gives expression to the right of the Crown to make laws and its obligation to govern (kāwanatanga) in accordance with constitutional process. This kāwanatanga is qualified by the promise to accord the Māori interests specified in the second Article an appropriate priority. In considering the FADTC recommendation, this may mean examining the need to strengthen the protection of the rights of vulnerable tamariki and rangatahi in New Zealand. • <i>Article Two</i> guarantees Māori tino rangatiratanga. The preservation of a resource base, restoration of iwi self-management, and the active protection of taonga, both material and cultural, are necessary elements of the Crown's policy of recognising rangatiratanga. In this context, this may include examining the capacity and capability of Māori NGOs to support Māori to make claims under the OPCP. • <i>Article Three</i> constitutes a guarantee of equality between Māori and other citizens of New Zealand, as well as equity of outcomes. This means that all New Zealand citizens are equal before the law. In context of considering the FADTC recommendation, this underlines the Crown's duty to consult Māori to ensure Māori (including whānau, hapū, iwi and communities) participate in the process, including on implementation of any recommendations. It also means that the review should ensure that Māori will have equitable access to the OPCP mechanism, as they are over-represented in the care system, and likely to seek / access this mechanism more.

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	<p>In terms of understanding support needs for Māori to take claims to the UN, these considerations will be taken into account as part of the work programme of the Governance Group.</p> <p>In addition to individuals, the OPCP allows groups of individuals to bring a collective claim, which may benefit whanau/hapū/iwi in particular.</p> <p>Regarding the proposed accession to the OPCP, MSD will also develop a Communications Plan to disseminate information to ensure the public, particularly Māori, are aware of their rights to take a claim to the UN under the OPCP.</p>
<p>Disabled people</p>	<p>In 2013, it was estimated that twelve per cent of children and young people under the age of 18 (approximately 131,000) were disabled⁶.</p> <p>Although New Zealand has already ratified the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), acceding to the OPCP will further strengthen the protection of disabled children's rights, and empowering their voice.</p> <p>Acceptance of the FADTC recommendation will create issues which need to be explored, for example if supports were developed how best to meet the needs of children who may require additional support including disabled children. Further questions may also arise as to how to support other groups raising communications under similar UN communication mechanisms we have ratified. For example, a learning disabled adult as a claimant under the Convention on the Rights of Persons with Disabilities is also less likely to have knowledge of the process and available resources.</p>
<p>Pacific</p>	<p>In 2018 there were approximately 152,000 Pacific children and young people under the age of 18 in New Zealand, around 40 percent of the Pacific population.</p> <p>Pacific children in New Zealand experience significant disparities in wellbeing statistics including child poverty, health, and education outcomes. As the youngest and fastest growing population group, this work has particular significance for the rights of Pacific children.</p> <p>Acceding to the OPCP will strengthen and protect their rights through providing independent scrutiny of Government's actions to improve outcomes for Pacific children.</p> <p>Acceptance of the FADTC recommendation may highlight certain barriers that some Pacific people may face in making a claim under the OPCP, such as language or lack of awareness of this mechanism, or existing support available.</p>
<p>Women and girls</p>	<p>In 2018 females made up just over half (50.7 percent) of the population of New Zealand. There were approximately 538,000 females under the age of 18 in New Zealand, around 23 percent of the female population.</p>

⁶ From Disability Survey 2013. Note this is only conducted every 10 years.

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	<p>Girls and young women continue to face discrimination, violence and sexual harassment, exploitation and abuse – both online and offline. In addition, girls may face multiple and intersecting forms of discrimination, such as due to the combination of ethnicity and gender.</p> <p>Acceding to the OPCP will complement New Zealand’s ratification of the Children’s Convention by strengthening the protection of the rights of girls and young women in New Zealand.</p> <p>Acceptance of the FADTC recommendation may identify some barriers deterring women/girls from making a claim under the OPCP, as well as tailored support needs under this process.</p>
<p>Rainbow young people</p>	<p>The Rainbow community face disproportionate levels of inequity and discrimination compared to other population groups. For example, research shows that Rainbow young people in New Zealand are significantly more likely to experience anxiety, depression, self-harm, homelessness, addiction and risk of suicide than their non-rainbow peers.</p> <p>Acceding to the OPCP will uphold and recognise the rights of young people in the Rainbow community. It will also support actions under the Youth Plan, where Rainbow youth are a priority group, particularly by prioritising their voice and perspectives.</p> <p>Acceptance of the FADTC recommendation may identify some barriers for this group such as stigma and discrimination need to be addressed that would deter them from making a claim under the OPCP, as well as wider support needs under this process.</p>
<p>Migrant and refugee children</p>	<p>Children with refugee and migrant backgrounds are a group who disproportionately experience prejudice in the exercise of their rights under the Children’s Convention. They are especially vulnerable, for example:</p> <ul style="list-style-type: none"> • Ensuring their rights under the Children’s Convention are upheld through a complex immigration, refugee, or migrant process can be difficult. • This group generally have less access to resources that are tailored to meeting their needs than the other population groups listed in this table. <p>Considering recent humanitarian crises with Afghanistan and Ukraine we would also expect this population group to grow.</p> <p>Acceptance of the FADTC recommendation may identify that barriers such as language need to be addressed, as well as wider wellbeing support needs as part of making a claim under the OPCP.</p>

Human Rights

52 Accepting the FADTC recommendation to consider ways support could be made available to claimants under the OPCP is consistent with our proposed accession to this treaty. In particular, investigation in this area will add to our knowledge of existing capability or gaps in this area, as well as alignment to other work underway, strengthening our human rights framework under the

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OPCP and potentially other individual communications procedures we are party to.

Consultation

- 53 MSD has developed and consulted on this Cabinet paper with Government agencies. These agencies include the Ministries of Foreign Affairs and Trade, Justice, Health, Education, Business Innovation and Employment, Housing and Urban Development, Environment, Transport, Youth Development, Defence; Oranga Tamariki–Ministry for Children, Ministries for Women, and Pacific Peoples; the Departments of Internal Affairs, Corrections, and Inland Revenue; Crown Law, Te Puni Kōkiri, New Zealand Police, Treasury, Statistics NZ, the New Zealand Defence Force, New Zealand Customs Service, Social Wellbeing Agency, Te Arawhiti, Kainga Ora, Accident Compensation Corporation; the Office for Disability Issues, and the Child Wellbeing and Poverty Reduction Group in the Department of the Prime Minister and Cabinet.
- 54 The Department of Prime Minister and Cabinet has been informed of the paper.

Publicity / Proactive Release

- 55 This Cabinet paper will be published on the MSD website. I intend to proactively release this Cabinet paper as required by Cabinet Office Circular, CO (18) 4, subject to the Official Information Act 1982.
- 56 Within 30 days of Cabinet approval I intend to make a public statement that Cabinet has agreed to the FADTC recommendation, and been presented to the House. This response and future communications will need to manage expectations in the human rights sector by emphasising that while Government is considering the issue, that does not commit the Government to future policy changes or funding in this area.
- 57 Regarding the proposed accession to the OPCP, MSD will also develop a Communications Plan to disseminate information to ensure the public are aware of their rights to take claims to the UN under the OPCP. As the Government agency responsible for the Children's Convention, MSD is already responsible for promoting and raising awareness about the Children's Convention in general.

Recommendations

- 58 The Minister for Children recommends that the Cabinet Legislation Committee:
- 1 **note** that on 11 February 2022 the Foreign Affairs, Defence and Trade Committee (FADTC) presented its report to the House entitled: *International treaty examination of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* [OPCP]

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- 2 **note** that the FADTC recommends that: *the Government consider ways resources can be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP*
- 3 **note** that the DCE International Human Rights Governance Group is the central point of New Zealand's National Mechanism for Reporting, Implementation and Follow-up on New Zealand's international human rights obligations and reporting requirements for United Nations (UN) Treaty bodies
- 4 **note** that the DCE International Human Rights Governance Group has a Cabinet mandate to consider work relating to UN Treaty Body processes
- 5 **approve** the proposed Government response (Appendix One), to the report of the Foreign Affairs, Defence and Trade Committee, accepting their recommendation
- 6 **note** that in accepting the recommendation, the Government response clarifies the Government will also consider *whether* resources should be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP
- 7 **agree** that the FADTC recommendation be added to the work programme of the DCE International Human Rights Governance Group
- 8 **note** that accepting the FADTC recommendation does not commit the Government to future policy changes or funding in this area
- 9 **note** that the Government response must be presented to the House by 9 May 2022
- 10 **invite** the Minister for Children to present the Government response to the House in accordance with Standing Order 252
- 11 **invite** the Minister for Children to provide the Government response to the Foreign Affairs, Defence and Trade Committee, after the response has been presented to the House.

Authorised for lodgement

Hon Kelvin Davis

Minister for Children

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**Appendix One: Select Committee Report on Acceding to the OPCP
– proposed Government response**

**Government Response to
Report of the Foreign Affairs, Defence and Trade Committee
on
International treaty examination of the Optional Protocol to the
Convention on the Rights of the Child on a Communications
Procedure**

Presented to the House of Representatives

In accordance with Standing Order 252

Government response to Report of the Foreign Affairs, Defence and Trade Committee on: International treaty examination of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

Introduction

- 1 The Government has carefully considered the Foreign Affairs, Defence and Trade Committee's (FADTC) report on the International treaty examination of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP).
- 2 The Government welcomes the FADTC report, which highlights a potential area for improvement under New Zealand's broader human rights framework.

Background

- 3 New Zealand became party to the UN Convention on the Rights of the Child (Children's Convention) in 1993. The Children's Convention covers both civil and political rights (e.g. right to freedom of expression) and economic, social and cultural rights (e.g. rights to an adequate standard of living, education and healthcare).
- 4 We are not yet party to the OPCP - this provides for 'communications' (claims) to the UN Committee on the Rights of the Child alleging that State parties have violated any of the rights included in the Children's Convention, Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). There are three mechanisms available within the OPCP to hold State parties accountable: claims by, or on behalf of, an individual or group of individuals; Committee inquires; or inter-State complaints.
- 5 In 2019, Cabinet accepted the UN Human Rights Council's recommendation to consider becoming party to the OPCP following New Zealand's submission of its Universal Periodic Review [CAB-19-MIN-0238]. The Children's Convention Monitoring Group (CMG) and the UN Committee on the Rights of the Child have also consistently advocated for New Zealand to become party to the OPCP.
- 6 Becoming party to the OPCP is a 2020 Labour Party Manifesto commitment. On 1 November 2021 Cabinet approved the OPCP and NIA for presentation to the House of Representatives for Parliamentary treaty examination in accordance with Standing Order 405 [CAB-21-MIN-0447 refers].
- 7 The OPCP treaty was referred to the FADTC on 12 November 2021, who met between 18 November 2021 and 10 February 2022 to consider it. The FADTC received 17 public submissions from organisations and individuals and heard oral evidence from six submitters.

FADTC concerns and recommendation

- 8 The FADTC supported New Zealand's proposed accession to the OPCP, but outlined the following concerns:

Concerns about providing support for claimants

- 9 The FADTC is concerned that, although signing up to the OPCP would provide people with a way to bring complaints to the United Nations Committee on the Rights of the Child, people may not have the resources to develop a complaint. The FADTC appreciate that groups working for children's rights will be able to communicate that New Zealand has acceded to the OPCP and that people who have experienced a breach of their rights may be able to take a claim to an independent international organisation. However, the FADTC believe resources should be available to support complainants to initiate and develop complaints. The process for bringing a complaint to the committee could require expert or specialist skills that an average New Zealander may not have.

Ensuring the wellbeing of claimants throughout the process

- 10 The FADTC would also like to ensure that complainants receive health and wellbeing support when going through the OPCP complaints process. In many cases individuals or groups will be bringing claims against government agencies. The FADTC believe that this could be quite a daunting prospect. The FADTC are also wary of claims becoming politicised and complainants being used to make a political point or statement against the Government. The FADTC think it is important that anybody making a claim under the OPCP is protected and supported throughout the entire process.

Comment on existing support for claimants under the OPCP

- 11 On 6 December 2021, the Ministry of Social Development (MSD) provided the FADTC information on what support is available for children to make a claim under the OPCP, should New Zealand become party to this treaty. The FADTC sought clarification on whether children who wished to make a claim would be entitled to Legal Aid.
- 12 The Ministry of Justice advised that children making a claim to the UN Committee on the Rights of the Child would not be eligible for Legal Aid. Legal Aid is only available for criminal and civil proceedings in New Zealand, which are specified in sections 6 and 7 of the Legal Services Act 2011. In practice, children and young people may be supported by an adult or non-governmental organisation or advocacy group. However, there is currently no specific funding for these groups to support children to make these complaints. This is consistent with the other United Nations (UN)

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communications procedures New Zealand has accepted⁷. Generic support mechanisms, like Community Law Centres, may be able to provide some assistance. To support children and young people to use this communications mechanism, officials will develop a communications plan in the lead up to New Zealand's accession to the OPCP, to ensure the public is aware of their rights.

Committee recommendation and Government response

- 13 The Foreign Affairs, Defence and Trade Committee recommends that the Government consider ways resources can be made available to support individuals or groups that may wish to bring a claim to the United Nations Committee on the Rights of the Child if New Zealand accedes to the OPCP.
- 14 The Government responds to the report in accordance with Standing Order 252.
- 15 The Government accepts the recommendation of the Foreign Affairs, Defence and Trade Committee, which will be added to the work programme of the DCE International Human Rights Governance Group.

Comment on scope and nature of Government response

- 16 The Government does think the FADTC recommendation is an area which merits further consideration in terms of New Zealand's broader human rights framework, in addition to our domestic children's rights complaint mechanisms.
- 17 It should be noted that accepting the FADTC recommendation does not commit the Government to future policy changes or funding in this area. However, the Government will consider whether support should be made available and possible ways to do this.
- 18 The DCE International Human Rights Governance Group is the central point of New Zealand's National Mechanism for Reporting, Implementation and Follow-up on New Zealand's international human rights obligations and reporting requirements for UN Treaty bodies. Member agencies are: the Ministries of Foreign Affairs and Trade, Justice, Social Development, and Women; Office for Disability Issues; Te Puni Kōkiri and Statistics NZ.
- 19 In accepting the FADTC recommendation, it should be noted that the Governance Group would have a broad stewardship role and may

⁷ The communications procedures New Zealand has accepted are the: International Covenant on Civil and Political Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of Persons with Disabilities, Convention on the Elimination of all forms of Discrimination Against Women.

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recommend specific work be delegated to other relevant groups or agencies with specific expertise in that area.

- 20 The Governance Group's role and approach to the matter would include determining the timing of the review, scope of this issue raised by the select committee, alignment to other work underway, and potentially budget implications.
- 21 In considering the FADTC recommendation, there are a number of issues needing to be explored, which will take time. Although to be agreed, issues that may fall into scope could include:
- current expertise and capacity of NGOs to support individuals or groups to make claims under the OPCP, and what funding may be required
 - whether, and what, funding for legal advice and other support should be made available to individuals or groups to make claims under the OPCP
 - whether there should be consistent application of support for claimants utilising individual communications procedures under other human rights treaties New Zealand has ratified
 - the role of agencies in promoting and raising awareness about the Children's Convention in general
 - in addition to legal representation, provision of health and wellbeing support for claimants (especially children) during the communications process.

Conclusion

- 22 The Government is aware of the interest and support for New Zealand's proposed accession to the OPCP. The planned review of support for claimants under the OPCP is consistent with this. It will add to our knowledge of existing capability or gaps in this area, potentially strengthening our human rights framework under the OPCP and other individual communications procedures we are party to.
- 23 The Government would like to thank the Foreign Affairs, Defence and Trade Committee and those who provided submissions for highlighting this important issue.

Office of the Minister for Children
Chair, Cabinet Legislation Committee