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## **18<sup>th</sup> Session of the Human Rights Council – UNIVERSAL PERIODIC REVIEW**

### **2<sup>nd</sup> UPR Report on Aotearoa New Zealand’s Human Rights Performance**

**June 2013**

Dingwall Trust is a not-for-profit residential care provider in South Auckland. Dingwall have been providing care to children in need of care and protection for over 80 years.

Dingwall Trust also has over 10 years experience in providing support to young people aged 15 – 20 years as they transition from care to independent living.

This submission covers New Zealand's failure to protect, promote and implement children's human rights by recognising those human rights in legislation and policy. It specifically highlights the lack of human rights recognition for arguably one of the most vulnerable groups in our society, children and young people in the care of the state.

Currently under New Zealand legislation and policy frameworks these children do not have their rights upheld, as per New Zealand's obligations under the United Nations Convention on the Rights of the Child (UNCRC).

This is particularly important for the care and protection of children needing state care as the government has the responsibility as a state body to ensure their rights are upheld, alongside their direct responsibilities as the "corporate parent". It is vital that New Zealand's obligations under UNCRC inform and guide legislative and policy development in the area of child protection.

Under New Zealand legislation the 17<sup>th</sup> birthday of a young person is when they are regarded as no longer being a child and no longer in need of care and protection<sup>1</sup>. As former Principal Family Court Judge Peter Boshier identifies they are deemed too old to fall under the protective arm of our youth legislation, but too young to be appropriately assisted via adult legislation. Guardianship orders can continue until a young person turns 20 however the reach of the Act has been interpreted to exclude care arrangements from being made for people who have celebrated their seventeenth birthday<sup>2</sup>.

Children in New Zealand are not even old enough to have completed their secondary education before being discharged to care for themselves. Being discharged at 17 years and suddenly having to become responsible for all their own needs and living costs whilst still at secondary school is a barrier to them recognising their right to education (UNCRC Article 28), which in turn affects their chances at better quality or meaningful employment.

Young people leaving care are often pushed into poverty, barely surviving if they wish to study and with high accommodation costs. The Youth Payment<sup>3</sup> along with an accommodation supplement often barely covers the cost of basic living, leaving no money for health needs, education or saving. The lack of money and capacity to provide the basics for themselves is a shock to a 17 year old leaving care who has had everything supplied for them in the past.

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<sup>1</sup> The Children Young Persons and Their Families Act 1989

<sup>2</sup> Boshier, P. And Wademan, J. (2010). *Youth aging out of foster care – international perspectives*. Family Court Review, Vol. 48 No.2, April 294 – 304.

<sup>3</sup> The Youth Payment is a financial support benefit available to 17 years olds through Ministry of Social Development, [www.workandincome.govt.nz](http://www.workandincome.govt.nz)

The lack of income along with difficulty in finding accommodation is a barrier to children leaving state care realising the right to an adequate standard of living (UNCRC Article 27). Children leaving care do not have a rental history and are often not seen as desirable tenants in a rental market that is demand driven, allowing landlords to be selective with the tenants they rent to. At 17 years of age children leaving care are not eligible for Housing New Zealand<sup>4</sup> homes. Once they do turn 18, they are caught in the waiting lists and are not seen as a priority group.

For many leaving care, the costs of bond and rent in advance are outside what they can afford, further limiting their options. The \$800 available from Work and Income often does not cover the full cost of this, and as it is recoverable, pushes children into debt just to get into secure accommodation. Where their income does not adequately cover basic living expenses the debt mounts and the cycle of poverty and transience (often motivated by a bid to escape debt) is established.

Children are frequently forced to live in undesirable circumstances due to their lack of options. These include unsuitable domestic relationships maintained in order to gain shelter; hostels or boarding houses alongside older homeless people with their own issues; living on and working the streets to survive day to day and returning to abusive or unhealthy family situations. Children who were more often than not uplifted due to being victims of abuse are pushed back into abusive situations just to have a roof over their heads, which is a violation of their right to freedom from all forms of violence (UNCRC Article 19).

Article 39 of UNCRC outlines that states should take appropriate measures to promote physical and psychological recovery and social reintegration to victims of abuse and neglect. Our care system is not providing this to children who have been removed from their families for the very reasons of abuse and neglect. By discharging suddenly without support whilst still a vulnerable child and not providing adequate preparation for their transition from care the state is not providing adequate measures for social reintegration. There are numerous overseas studies that identify the poor outcomes suffered by young people that have experienced the care system<sup>5</sup>. In New Zealand although more limited the research also points to poor outcomes and difficult transitions<sup>6</sup>.

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<sup>4</sup> Housing New Zealand Corporation manages New Zealand's state homes and tenancies [www.hnzc.co.nz](http://www.hnzc.co.nz)

<sup>5</sup> See for example Broad (2005), Cashmore and Paxman (1996 and 2006), Collins (2001), Stein (2005)

<sup>6</sup> See for example Coote (2007), Fitzgerald, Mortlock and Jeffs (2006), Leoni (2007), Ward (2000), Yates (2000)

One of the General Principles for implementing children's rights is the principle of non-discrimination. It would seem that in New Zealand a child who has been removed from their family by state intervention is being discriminated against as they do not get the same care and support as would be expected from a reasonable parent, and their rights under UNCRC are not upheld.

**Dingwall Trust recommends that New Zealand review the care and protection legislation in light of its obligations under UNCRC. It is vital this include raising the age of discharge from care to 18 years. It is recommended that New Zealand develop detailed legislation to provide transition planning and support for all young people leaving care for independent living.**

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