

## Thematic Report to the United Nations Periodic Review

### Intersex Aotearoa (New Zealand) – Advocacy Organisation

12 October 2023

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1. Intersex Aotearoa (IA) is a not-for-profit charitable trust that provides education, lobbying, advocacy, and support focused on the health and wellbeing of intersex people, or those with variations of sex characteristics (VSC). Intersex Aotearoa is the only intersex-led national organisation informed by community consultation and lived experience. Expertise includes providing high level advisory roles, consultation methodologies, implementation, and practice guideline creation. Intersex Aotearoa is the operational name for Intersex Trust Aotearoa New Zealand.

2. The Incentive Working Group (IWG) is led by Intersex Aotearoa in collaboration with representatives from the University of Waikato, the New Zealand Human Rights Commission, Healthcare representatives and academics. IWG seeks to contribute to the demedicalisation of intersex bodies in Aotearoa, NZ, through public presentations, research, lobbying and education.

3. IA acts as the primary intersex voice in multiple high-level government and non-government consultations, including developments within the Ministry of Health, The New Zealand Health Authorities; Te Whatu Ora and Te Aka Whai Ora, Ministry of Education, Department Internal Affairs, Ministry of Justice, Statistics New Zealand, and other legislative processes. Key relationships for IA continue with the Human Rights Commission, the Mental Health and Wellbeing Commission and the Health Quality and Safety Commission.

4. We note that IA has been involved in significant developments since the last UPR in 2019. Several of note include:

a) November 2016 Human Rights Round Table made recommendations which resulted in the development of the Clinical Reference Group

b) IA were part of the creation of Darlington Statement March in 2017<sup>1</sup>, a joint Australian and New Zealand initiative, updated 2018, 2020.1 This statement sets out an agenda for change that is relevant to the present report with respect to children but the document traverses lifetime issues.

c) In 2021, a petition was made to Associate Minister of Health, Dr Ayesha Verrall, for Intersex Healthcare Reform, which led to the Intersex Awareness Day statement by Associate Minister of Health Ayesha Verrall.

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<sup>1</sup> <https://darlington.org.au/statement/>

d) A 10-month long working group between IA, Incentive Working Group and Ministry of Health was conducted to advise future developments of rights-based intersex healthcare changes and improvements.

e) These working group discussions helped inform a 2022 Labour government budget<sup>2</sup> announcement that committed to developing intersex healthcare reform.

f) IA members were included in an advisory leadership group created Sep 2022 for the New Zealand Health Authority Te Whatu Ora to seek guidance from independent intersex advocates, allied stakeholders and experts to inform the implementation of the ‘Human Rights-based and Mātauranga Māori<sup>3</sup> intersex healthcare processes. This group closed Sep 2023 in line with best practice around government tender processes.

5. Awareness raising education and training programmes continue to be developed by Intersex Aotearoa and allied peers within medical training environments, healthcare, sexual and family violence sector and sexual health providers.

6. A multi-year peer support programme is being developed by IA to provide the first of its kind in Aotearoa, to those with intersex variations and their families.

## **II. New Zealand Government Response since 2019**

7. New Zealand has taken some initial steps to address issues regarding Intersex children since the Third Periodic Report on NZ in 2019. Note that The Clinical Reference Group established to review the healthcare of intersex people or those aged 0 – 18 years (as referenced in the 2019 UPR) did not complete that task.

8. Further legal and policy change is necessary to respond to The Concluding observations listed on the Sixth Periodic Report of New Zealand 2023 by the Committee on the Rights of the Child<sup>4</sup> and to give effect to the recommendations made within, to realise the right of the intersex child to be free from violence and to ensure their right to free and full development in dignity as provided for under the

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<sup>2</sup> Verrall, A. (2022). “Rainbow health gets funding boost” <https://www.beehive.govt.nz/release/rainbow-health-gets-funding-boost>

<sup>3</sup> Mātauranga Māori. (n.d.). <https://www.takai.nz/find-resources/articles/matauranga-maori/#:~:text=M%C4%81tauranga%20M%C4%81ori%20literally%20translated%20means,M%C4%81ori%20cultural%20points%20of%20view.>

<sup>4</sup> New Zealand Government. (2023). “United Nations Convention on the Rights of the Child - Sixth Periodic Review by the Government of New Zealand. <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/monitoring/uncroc/reporting/new-zealand-sixth-periodic-report-under-crc.pdf>

## A. Education.

In the Concluding observations made by the committee in 2023 referenced above, article 37, b states, “Take targeted measures to reduce the bullying of students, prioritizing students with disabilities and lesbian, gay, bisexual, transgender and intersex students, including by assessing the impact of actions taken under the bullying prevention and response work programme 2019–2022 and incorporating those outcomes in its revision;. We welcome this assessment, as we are yet to develop a functional relationship with the Ministry of Health that demonstrates a response to our recommendations. We believe the more informed all students and staff are of intersex issues, the more this would result in harm-reduction and a strength-based approach to combat bullying<sup>6</sup>.

9. The Labour Government initiated a New Zealand Law Commission enquiry into the inclusion of transgender and variations of sex characteristics, ‘Ia Tangata | A Review of the Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics<sup>7</sup>’ commissioned by the Minister of Justice Kiri Allen in 2023. This is also included in article 117 of the 2024 UNPR draft report.

10. As outlined in the Aotearoa New Zealand 2024 UPR draft report, article 114, “NZ is currently developing a rights-based approach to healthcare for intersex children and young people, to reduce unnecessary medical intervention and prevent associated harms, with NZ\$2.5 million in funding over four years. This will include appropriate information and peer support to intersex children, young people and their families to make informed decisions about their healthcare”

11. As outlined in article 115 of the 2024 Draft UPR by NZ Government, “The 2023 Census was the first to ask New Zealanders about their gender, sexual identity, and whether they have any variations of sex characteristics (also known as intersex status). Improved data collection will contribute to improved research and policy.

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<sup>5</sup> Geiringer, C. (2023). <https://www.lawcom.govt.nz/our-projects/ia-tangata-review-protections-human-rights-act-1993>

<sup>6</sup> Intersex Aoteroa (2022). Thematic Report to the United Nations Committee on the Rights of the Child, August 2022

<sup>7</sup> <https://www.lawcom.govt.nz/our-projects/ia-tangata-review-protections-human-rights-act-1993#:~:text=Scope%20of%20the%20Review,what%20amendments%20should%20be%20made.>

12. The Labour Government refused to include innate variations of sex characteristics/intersex as a protected party under the Conversion Practices Prohibition Legislation Act 2022, or to acknowledge that surgical intervention on intersex infants and young people by parents and healthcare professionals was akin to conversion practices<sup>8</sup>.
  
13. A National Strategy was implemented Eliminate Family Violence and Sexual Violence. Intersex Aotearoa was able to provide direct input into multiple recommendations directly to the Minister, and Te Puna Auni through our work in the Rainbow Violence Prevention Network and the ARC project, which resulted in the report 'Te Aorerekura includes intersex/variations of sex characteristics as a vulnerable group, where more data needed to be collected to better understand intersex community experiences of violence.'<sup>9</sup>
  
14. Other allied experts recommend the following issues and concerns must be addressed to implement the rights of the Intersex child in New Zealand.

### III. Remaining Concerns and Recommendations

The present report has been written by IA

This section of the report is organised to address the statements posed in the articles relevant to intersex human rights in the UPR 2019 and the UNCROC. The section responds to a list of issues identified prior to submission of the sixth periodic report of New Zealand (LOIPR) that have become central to defining the government budget promises and outputs in 2023 – 2026. Subsections address other intersex related aspects of the last UNCROC.

#### A. UNPR 2019

15. In the 2019 UNPR compilation report on NZ, article 14 stated, “The Committee on the Rights of the Child recommended that New Zealand strengthen its measures to combat negative attitudes among the public and other preventive activities against discrimination and, if necessary, take affirmative action for the benefit of children in vulnerable situations, such as Maori and Pasifika children, children belonging to ethnic minorities, refugee children, migrant children, children with disabilities, and lesbian, bisexual, gay, transgender and **intersex children**.
  
16. Article 151 of 2019 URP stated “There remains an elevated risk of mental health issues and suicide risk in New Zealand’s LGBTIQ population. Discrimination against LGBTIQ people was raised during UPR consultations, particularly by young people.” There is still a genuinely concerning lack of data collection of people with variations of sex characteristics/intersex

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<sup>8</sup> <https://www.legislation.govt.nz/act/public/2022/0001/latest/whole.html>

<sup>9</sup> <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>

variations in Aotearoa, New Zealand that look to address the mental health and wellbeing outcomes for this broad demographic. This should be rectified, to better understand future recommendations of service development, and respond to immediate service gaps.

17. In article 152 of the 2019 UPR identified that, “Variable access to quality and targeted health services remains an issue for the LGBTIQ community in New Zealand, although some progress is being made.... An intersex clinical paediatric network is being developed to improve the clinical experience for intersex patients...” As discussed in point 7 of this report, the Clinical Reference group was disrupted by clinical bias and resulting in an unsuccessful outcome.
18. In article 154 of the 2019 UP states, “In 2016, the Ministry of Education released guidance for schools on supporting the inclusion and wellbeing of LGBTIQ students, providing practical strategies for developing school cultures where all students are safe, included, visible and valued.” Intersex Aotearoa staff authored the intersex inclusion into this document; however, this resource has become under some consistent critiques and attacks by gender critical groups, and many schools and educational environments working with children have been pressured to not implement such resources, citing harmful rhetoric into the national conversation. This “safer schools” resource is not mandatory<sup>10</sup>.

## **B. Violence against Children**

19. In the 2023 Concluding Observations (CRC/C/NZL/CO/6) article 23, ‘Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)’ commends the national strategy to Eliminate Violence<sup>7</sup>, but the “...Committee remains seriously concerned about the persistent rates of abuse and neglect of, and violence against, children, particularly domestic violence, noting the higher risk faced by Maori, Pasifika and lesbian, gay, bisexual, transgender and **intersex children**, and children with disabilities. It is further concerned about the limited access to child-friendly reporting channels, physical and psychological rehabilitation and health services, including mental health services, that are available to children who have suffered violence, trauma or abuse.”
20. We welcome this concern, and is noted in article 23,b of the CRC/C/NZL/CO/6 there is a need for data specific to the experiences of violence of children - specifically intersex children/ children with innate VSC. This should include a review within mental health and wellbeing services, including State run entities such as Oranga Tamariki/ Ministry for Children that house vulnerable children to better understand how all forms of violence may impact them and intersect with their bodily diversity. We know anecdotally through our peer support and community surveys that many survivors of medical interventions as children, understand their experiences of medical violence as akin to sexual violence.

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<sup>10</sup> <https://insideout.org.nz/wp-content/uploads/2021/11/Making-Schools-Safer.pdf>

### C. Harmful Practices

21. CRC/C/NZL/CO/6, Article 25 b (i), (ii), (iii) & c detail developments in the recommendations by UNCROC report, some previously considered, and others demonstrate gaps in Governments approach. Article 25,b asks to, “finalize the guidelines and protocol being developed by the **Intersex Working Group**, ensuring that it sets out guarantees for the mental and bodily integrity, autonomy and self-determination of intersex children...”
  
22. We particularly welcome point (ii) that asks that there is independent oversight of decision making. This would provide an active body to ensure that any developed guidelines over the next four years are implemented fully, and demonstrate processes and accountability that rights-based change has occurred for intersex children in Aotearoa, NZ. We again ask that the NZ Government respond to repeated requests to the Minister of Justice for redress for victims of non-urgent and non-essential treatment, which has been ignored. We acknowledge the NZ Law Commission Inquiry into IVSC inclusion to NZ Human Rights Act (HRA) as a small step, but even this would provide little promise for compensation if the HRA is amended.
  
23. We call for advisory bodies to develop appropriate human rights-based, lifetime intersex standards of care with full and meaningful participation by intersex community representatives, Māori representation and human rights organisations.
  
24. Multidisciplinary teams must operate in line with transparent, human rights-based standards of care for the treatment of intersex people. Multidisciplinary teams and hospitals must include human rights specialists, child advocates and independent intersex community representatives. Peer support must be integrated into multidisciplinary medical approaches.
  
25. We call for improved and ongoing education of health, welfare and allied professionals in issues relating to intersex, including human rights issues.
  
26. We call for the extension of free access to surgical interventions and medical treatment related to their intersex condition to intersex children between the age of 16 and 18, under the provision of their informed consent.
  
27. Intersex-led organisations must be resourced to develop patient rights and human rights toolkits for intersex people and their families, with particular focus on developing materials and approaches sensitive to the needs of whanau Māori.
  
28. These should be resourced and distributed by Government to healthcare medical colleges and relevant councils as part of any staff training and development.

29. We call for inclusion of intersex content in relationship and sexuality education in primary and secondary schools' curriculum.
  
30. We call for equitable access to social and welfare services for people with intersex variations, especially including ira tangata.

#### **D. Basic health and welfare**

31. In article 32,c of the CRC/C/NZL/CO/6, it lists intersex children as a vulnerable group in “Ensure an informed focus on children in the work of the Mental Health and Wellbeing Commission, address inequalities of mental health outcomes for Maori, Pasifika and lesbian, gay, bisexual, transgender and intersex children, and prioritize children’s access to affordable, quality, age-appropriate mental health and counselling services in a timely manner.
  
32. We support this and again uplift the need for evidence collection via national, intersex-led surveys and inquiries into the mental health and wellbeing of intersex people of all ages. (see Data Collection)
  
33. The UNCROC LOIPR detailed within the United Nations Convention on the Rights of the Child in 2026 asks what measures have been taken to: “Develop and implement a rights-based health-care protocol for intersex children to ensure that no child is subjected to unnecessary surgery or treatment and that the child’s free, prior and informed consent is obtained for necessary interventions and educate medical and psychological professionals on the negative consequences of unnecessary medical interventions on intersex children.”
  
34. The current NZ government has made substantive steps to signal that it intends to develop and soon implement a rights-based health-care protocol. Yet, there has not been adequate work to define which surgical and medical interventions raise human rights concerns, and there is no agreement on this between health professionals, advocates, and the State of this to date. The procurement and implementation of the 2.5 million budget over 4 years for will need include intersex-led oversight and will require measurement and outcome assessment tools to insure what additions to intersex health have been shown to benefit the community. There is no evidence of centring improved approaches to informed consent or to the education of health professionals on the negative consequences of medical interventions that raise human rights concerns.
  
35. At our recommendation, the NZ Government set up a working group in 2021 comprising the MOH, IA, key advocates and IWG members to advise any development of intersex healthcare reforms. In 2022, the Government announced that it would set aside NZD 2.5 million to support a rights-based approach health care for intersex New Zealanders. We welcome this commitment but seek further clarification on what work will be undertaken – and with whom – to progress Intersex-rights based health and well-being.

36. The Committee also recommended that New Zealand: “Extend free access to surgical interventions and medical treatment related to their intersex condition to intersex children between the age of 16 and 18”.
37. Further detail is also required as to whether – or how – the Government will action the Committee’s recommendation to extend free access to surgical interventions and medical treatment to young New Zealanders.
38. Although we welcome the recent steps taken by the Government to realise the right of the intersex child to be free from violence and to ensure their right to free and full development in dignity as provided for under the Convention (UNCROC), we are of the view that the legal and policy change needed to respond to the CRC Committee’s concerns and to give effect to the recommendations made in 2016, is lacking.

#### E. Education

39. In article 147 of the NZ UPR 2024 Draft Report, article 147 states that, “School environments are safer and more welcoming for Rainbow learners, with the introduction of gender-neutral bathrooms, school resources on sexuality, mental health and healthy relationships, and updated data management tools to include **diverse gender identities.**”
40. There is still a concerning lack of distinction or identification of intersex as a separate group that should not be included in a gender-identity framework but should sit separately alongside using the SOCIESC model. Sex characteristics is often missing from Rainbow organisations and Governments attempts of “Rainbow Inclusion”. Unless IA has capacity to advocate and educate in specific implementations. The Ministry of Education and their contracted advisory groups did not listen to Intersex Aotearoa’s recommendations and continued to exclude intersex education in a recent review and update of the Relationship and Sexuality education <sup>11</sup>resources used in for Primary and Secondary school educational teaching.
41. The UNCROC Committee recommended building and upgrading education facilities that are child, disability, and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all, and recalling its previous recommendation.<sup>15</sup>
42. In the context of the rights of the Intersex child, this means that the Government must improve Relationship and Sexuality resources in primary and secondary education to include age-appropriate examples of variations of sex characteristics as a natural aspect of development. Intersex inclusion within school curriculum should enable intersex young people and their peers to recognise that intersex is a normal part of human development.



43. The Government must continue its work to ensure that education from pre-school through secondary school is a free of discrimination and interphobia, non-violent, inclusive and effective learning environment for Intersex children.

#### **F. Data Collection**

44. The UNCROC LOIPR includes a request for data on: “The number of intersex children who have undergone surgery or treatment related to their sexual characteristics.”
45. Those data have not been provided, to date. Our own investigation of data made available by New Zealand’s MOH website reveals that, every year, children and young people undergo surgery to address non-life-saving issues in relation to intersex variations, with no clear change or downward trend in the numbers. This is a clear indication that the recommendations of the Committee have not been taken up.
46. Data should be collected and made available, making it explicit how many minors undergo gonadectomy in the context of a variation in sex characteristics, and how many undergo surgery on their sexual and reproductive organs under circumstances where that surgery could be delayed until the person is old enough to meaningfully consent.
47. The Committee recommended that New Zealand develop a comprehensive mechanism for the data collection and an information system on all areas of the Convention to facilitate analysis of vulnerable child populations, such as Intersex/Ira Tangata children. To date, this has not been done.
48. The Government should engage IA and IWG in determining how best to collect and organise data giving priority to Māori data, sovereignty and to individual and collective privacy.
49. As the Government body charged with giving effect to the Convention on the Rights of the Child, the Children’s Commissioner must be provided with resources to effectively to gather data and work with the key organisational bodies including IA to ensure Intersex children can achieve free and full development and achieve their potential.
50. We call for public disclosure of accurate data on all medical interventions intended to modify the sex characteristics of children, and the disclosure of historical data.

#### **G. Redress**

51. The Committee asked New Zealand to: Develop a rights-based child health care protocol for Intersex children.

52. IA and IWG not aware of any progress in the area of redress. Our conversations to date with the MOH have made it clear there is no intention to adopt legal provisions or consider redress or compensation.
53. Because Intersex was deemed ‘out of scope’ for both the Conversion Practices Prohibition Legislation Bill 2022 and Female Genital Mutilation Amendment Bill 2020. Minister Kris Faafoi committed to addressing the NZ Human Rights Act for the inclusion of Innate Variation of sex characteristics.
54. Investigating and rectifying past medical interventions is an important move forward for the community.
55. The UNCROC *“Committee recalls its previous recommendation and recommends that the State party ensure full protection against discrimination on any ground, including by: ... “[s]trengthening its measures to combat negative attitudes among the public as well as other preventive activities against discrimination and, if necessary, taking affirmative action for the benefit of children in vulnerable situations, such as [...] intersex children ...*
56. We call for prompt investigation of incidents of surgical and other medical treatment of intersex children without informed consent and adopt legal provisions to provide redress to victims of such treatment, including adequate compensation.

#### H. Best Interests of the Child

57. As noted in UNCROC “Right to Identity,” Māori children have a right to preserve their indigenous identity.
58. The child’s right to preserve their Māori identity, including the embodiment of Ira Tangata<sup>11</sup> and how that is provided for and accepted within Te Ao Māori (Māori world view) and according to tikanga (customary law). The importance of Tuakiritanga (Identity) is critical in an Indigenous context. Whakapapa (Genealogy); is the Mauri (life force) that defines Māori existence. These are fundamental aspects that enable Māori full Mana Motuhake (self-determination) over their rights and privileges as Tangata Whenua and as provided for under international law.
59. New Zealand has not put any specific measures in place to uphold the right to identity or to protect intersex children (or adults) against discrimination, and this can be understood as a

60. The Committee encouraged New Zealand to develop procedures and criteria to provide guidance to all relevant professionals for determining the best interests of the child in every area and for giving it due weight as a primary consideration.<sup>13</sup> New Zealand law stipulates that the welfare and best interests of a child in their circumstances ‘must be the first and paramount consideration we do not see clear evidence that procedures and guidance informed by the best interests of the intersex have been developed.
  
61. When it comes to Intersex children, what is in their ‘best interests’ is still viewed in light of how they would participate in society as their assigned gender. Though we don’t advocate for a child to be assigned ‘Intersex’ at birth, the child should be aware of being intersex and have services and life choices available for that child accordingly.
  
62. Early developmental stages of a child's life have been widely proven to be sensitive to traumatic experiences, affecting both mental and physical development, a matter that States Parties are obliged to ensure to the maximum extent possible under article 6 of the Convention.
  
63. Life preserving surgical interventions will be in the best interests of the intersex child. It is in the best interests of the intersex child is to limit all cosmetic surgical interventions until the child is competent to give informed consent.