

# Supplementary submission on seclusion

SUBMISSION FROM THE OFFICE OF THE CHILDREN'S COMMISSIONER ON THE EDUCATION (UPDATE)  
AMENDMENT BILL SUPPLEMENTARY ORDER PAPER #250

31 JANUARY 2017



MANAAKITIA A TĀTOU TAMARIKI

**Children's  
Commissioner**

# Children's rights in education

Children's rights have been breached through use of seclusion in New Zealand schools. The Office of the Children's Commissioner supports this Supplementary Order Paper as it makes it clear that the practice of locking up children is illegal and harmful.

## UPHOLDING CHILDREN'S HUMAN RIGHTS

- 1 All children have the right to an inclusive education, and should be treated with respect and dignity in the education system. They are not to be abused while there.
- 2 All school discipline and behaviour management should be administered in a manner consistent with children's human rights and dignity. The use of seclusion is a clear breach of these rights.
- 3 We already understood locking a child away to be illegal. While this is not currently stipulated in the Education Act, it is made clear in other legislation including:
  - > the Bill of Rights Act 1990 section 22 (Everyone has the right not to be arbitrarily arrested or detained);
  - > the Health and Safety at Work Act 2015 (where anyone who manages a workplace must ensure the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person<sup>1</sup>; and
  - > the Building Act 2004 Part 2, section 116B (Offence to use building ... if it has inadequate means of escape from fire)<sup>2</sup>. In addition, building standards for schools<sup>3</sup> require certain types of locks and doors, which seclusion rooms fail to comply with<sup>4</sup>.
- 4 However, it is clear that there have been many breaches occurring through forced seclusion of children in rooms locked from the outside.

<sup>1</sup> [www.legislation.govt.nz/act/public/2015/0070/latest/DLM5976897.html?search=sw\\_096be8ed811553ab\\_buildings\\_25\\_se&p=1&sr=1](http://www.legislation.govt.nz/act/public/2015/0070/latest/DLM5976897.html?search=sw_096be8ed811553ab_buildings_25_se&p=1&sr=1)

<sup>2</sup> Building Act 2004 Part 2 s116B Offence to use building for use for which it is not safe or not sanitary, or if it has inadequate means of escape from fire:

(1) No person may—

(a) use a building, or knowingly permit another person to use a building, for a use for which the building is not safe or not sanitary; or  
(b) use a building, or knowingly permit another person to use a building, that has inadequate means of escape from fire.

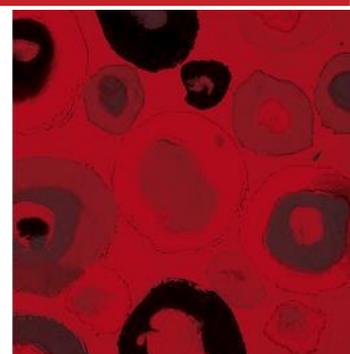
(2) A person who fails to comply with subsection (1) commits an offence.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

<sup>3</sup> C/AS4, Acceptable Solution for Buildings with Public Access and Educational Facilities, (Risk Group CA)

<https://www.building.govt.nz/assets/Uploads/building-code-compliance/c-protection-from-fire/asvm/cas4-protection-from-fire-amendment-3.pdf> Pages 57-58 (3.15.1 and 3.15.2) describe requirements of latches and locks on doors, that must be able to open from the inside.

<sup>4</sup> Compliance Schedule Handbook <https://www.building.govt.nz/assets/Uploads/building-code-compliance/handbooks/compliance-schedule-handbook/Compliance-schedule-handbook-amendment-3.pdf> Page 50 fire safety systems or features including exists



The Children's Commissioner represents the **1.1 million people** in Aotearoa New Zealand under the age of 18, who make up 24 percent of the total population.

The Commissioner has the statutory role to advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

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Time-out should never be used for 'punishment'

"I feel teachers need to steer me into the right direction" (14 year old student)

- 5 We support this part of the Bill that makes it absolutely clear the use of locked seclusion of a student at a school or early childhood service is not acceptable.
- 6 While behaviour management may include time-out space, it is never appropriate for this space to be locked. Use of seclusion as a form of punishment is not appropriate.
- 7 We also agree that physical restraint is not to be used except when the safety of the student or someone else is at serious and imminent risk, and that the physical restraint is necessary and reasonable in those circumstances (as described in the proposed Bill). This is consistent with use of physical restraint for other groups in society (for example as used by Police or Corrections on adults).
- 8 We support the sections on making rules on physical restraint and issuing guidelines on the use of physical restraint. These should ensure teachers know how and when to apply safe and reasonable physical restraint.
- 9 These rules and guidelines should be developed in line with the Convention on the Rights of the Child (UNCRC), and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In many respects this part of the Bill will progress the implementation of these conventions, upholding the Government's international human rights obligations.
- 10 We also recognise the importance of more comprehensive teacher training in behaviour management, particularly for children with severe behavioural problems, which could arise from disabilities, early childhood trauma or mental illness.
- 11 Children with behavioural problems should be treated with empathy rather than blame, including at senior levels. Teachers should be supported to deal appropriately with such students, helping the student to regulate their behaviour and develop respect for others' rights. This is one of the goals of education identified in UNCRC<sup>5</sup> that States are obliged to achieve.

## RECOMMENDATIONS

- 12 The rules and the guidelines on use of physical restraint should both be developed in line with the Convention on the Rights of the Child (UNCRC), and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- 13 The guidelines should be supported by adequate teacher training (e.g. through professional standards required by the Teacher Registration Board, or through on-going professional development). Teachers will then be fully equipped to manage the variety of behaviours they may face.

<sup>5</sup> United Nations Convention on the Rights of the Child, Article 29 Education should develop the child to their fullest potential

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;