

# **EDUCATION 2007**

**A review of New Zealand's education in the light of the  
Convention on the Rights of the Child**

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## INTRODUCTION

This report is intended as a forerunner to the NGO report ACYA will present to the UN Committee on the Rights of the Child when it considers Aotearoa/New Zealand in 2009 to assess compliance with the UN Convention on the Rights of the Child. Key issues in education are highlighted with a focus on children's rights in early education and in the compulsory sector as well as on rights-based issues for students under 18 in the tertiary sector.

Evidence for this report is sourced from government websites, current research on educational issues and through informal discussions with sector groups, including some feedback from students themselves.

The key issues raised in this section of the report concern provision, protection and participation rights of children under 18 in Aotearoa/New Zealand's education system.

Part 1 of this section considers progress made by New Zealand in responding to the recommendations of the UN Committee in its 2<sup>nd</sup> report on New Zealand dated 3 October 2003.

Part 2 updates progress made by New Zealand on the concerns raised by Action for Children and Youth Aotearoa in Children and Youth in Aotearoa 2003 the second non-government report to the UN Committee dated March 2003

Part 3 provides information on new issues which have arisen or come to notice since the 2003.

Part 4 looks at Early Childhood Services

Part 5 examines Primary and Secondary School issues

## **PART 1 Progress made on recommendations of UN Committee on Rights of the Child in its 2003 report on New Zealand**

The Committee in its October 2003 report on New Zealand made a number of recommendations in respect of the following education issues. This Part reviews the progress made since 2003 in relation to the Committee's recommendations.

**Paras 4, 5, 8 & 9** The Committee expressed concern at the failure of New Zealand to review all legislation affecting children and to harmonise domestic legislation with the provisions of the UN Convention on the Rights of the Child (UNCROC),

No attempt has been made to review or amend the Education Act 1989 to give statutory force to the rights conferred on children in UNCROC.

**Paras 18, 19** Concern was expressed by the Committee that children, professionals working with children and the general public are not sufficiently aware of UNCROC and its rights-based approach. It recommended that there be provided systematic education and training for children, teachers and other professionals working with children in UNCROC's principles and provisions.

This recommendation was echoed by the New Zealand Human Rights Commission in its *New Zealand Action Plan on Human Rights* (2005) which promoted the concept of early childhood centres and schools as human rights communities: a concept which should involve families, students, school principals and teachers and the wider community: para 2.1.

The draft new standard Curriculum circulated in 2006 includes one sentence on 'rights and responsibilities' in the draft Social Science Curricula for children in the 13 to 18 age range but there is no reference to children's rights or to UNCROC.

**Paras 25, 26** The Committee was concerned that the right of children to be heard and have their views taken into account in administrative or judicial proceedings is not systematically included in legislation and regulations. Legislation and regulations should be reviewed to ensure that they integrate and apply the right of the child to be heard and have his/her views taken into account.

There are provisions in Education Act 1989 which allow the views of the child to be heard and taken into account in administrative hearings in respect of school exclusions before a Board of Trustees but the machinery for the views of children to be ascertained and given effect to in other areas of education law and administration are weak and have not been strengthened since the UN Committee made its recommendations in 2003.

*Children and Youth in Aotearoa 2003*, the second New Zealand NGO report to the UN Committee, proposed that there be a standard mechanism by which the views of students can be ascertained in relation to school facilities, school rules and subjects

offered, pp 186, 191, 194. This might be a School Council or School Consultative Body. The *New Zealand Action Plan for Human Rights* (2005) commented that there is a need to actively promote children's participation rights and to develop and promote educational resources, guidelines and other tools to involve children and young people in decision-making processes. The Human Rights Commission recommended that priority should be given to increasing student participation in decision-making within schools.

**Paras 43, 44 The Committee voiced its concern in relation to the persistent disparities in enrolment and drop out rates among children of different ethnic groups.**

The data for 2006 in relation to school exclusions (the latest figures available) shows that:

- The number of Maori students stood down i.e. suspended for up to three days) from schools (26/1000 students) and the number of Pacific students (42/1000 students) is significantly higher than the number of NZ European students (23/1000 students) and the number and proportion has increased since 2003.
- The number of Maori students *suspended* i.e. given a longer or indefinite suspension (15/1000 students) and the number of Pacific students (10/1000 students) is significantly higher than the number of NZ European students (4/1000 students). While the number and proportion of Maori students suspended is the same as in 2003, the number and proportion of Pacific students has increased since 2003: *Report on New Zealand Student Engagement* (2006) Ministry of Education July 2007.

Students who are excluded or expelled from school and who are not able to be enrolled at another school are characterised as 'alienated students' and are often required to enrol at Correspondence School as a provider of last resort. Data provided by the Correspondence School indicates that of Year 11 alienated students 26% were Maori and 83% of those were classified as having high educational needs (ie two years or more below their year level) No figures are given for Pacific students: Information re year 2006 prepared for Parliamentary Select Committee for Education and Science provided under Official Information Act July 2007.

**Paras 43,44 The Committee is concerned that the policy on exclusions as well as increasing hidden costs of education are limiting access to education, particularly for Maori children**

While the government has taken initiatives to reduce the number of exclusions of Maori students in schools which have a high rate of exclusion of such students and while the statistics show that in such schools there is a marked reduction in the exclusion of Maori students, the number and proportion of Maori students being stood down or suspended from schools has not reduced since 2003 (see data provided above). This indicates that schools which do not have a student retention initiative for Maori students are standing down and suspending a greater proportion of Maori students than in 2003. It is noteworthy that 12% of secondary schools accounted for one third of all stand-downs (2005). In 2006 50% of schools did not stand-down any students. Nearly three quarters of all schools did not suspend any students (2005, 2006). It is quite clear that stand-down and suspension of students is used as a routine

disciplinary measure in a minority of schools. The majority of schools rely on other disciplinary measures which do not result in disruption of the student's education: data taken from Ministry of Education Annual Reports on Student Engagement.

A small number of schools have introduced restorative justice or peer mediation procedures for resolving conflict in schools. These have led to a demonstrated improvement in student behaviour and reduction in bullying and school violence. There is no compulsion on schools to introduce such processes and many school principals and Boards cling to the "tried and true" approach of excluding students from the school.

**Paras 43, 44(a) The Committee was concerned that the hidden costs of education were limiting access to education of some groups with special educational needs. It recommended that the New Zealand government ensure that all children have access to free primary education.**

While s3 Education Act 1989 gives all New Zealand children the right to free enrolment and free education from the age of five to 19 years at any state school the reality is that education is not available to all New Zealand children and is not 'free' because of hidden costs:

Free state education is not available to:

- Children born in New Zealand whose parents are neither New Zealand citizens nor permanent residents: s6 Citizenship Act 1977 as amended from 1 January 2006. This new measure has increased the number of New Zealand born children who are not entitled to free state education.
- Children of asylum seekers whose refugee status has not been determined or who have been refused refugee status;
- Children of parents who are overstayers and whose appeal has not been determined by the Appeal Authority or has been dismissed,

Free tuition is available to other children resident in New Zealand but the parents of children are required to pay hidden costs such as:

- the cost of a compulsory school uniform, sports gear etc;
- a required 'donation' to school funds which is often characterised as school fees. In some schools the requested donation is in excess of \$550 per annum. Some schools present a request for a donation as a demand for payment of fees and some schools deny opportunities to children whose parents have not paid school 'fees'. Schools have been reported as withholding a student's school report because of non-payment of school fees (2006) and of schools taking legal action to recover school fees (2005). Some integrated schools ask for payment of donations in excess of \$5000 (2006). Some schools in economically disadvantaged areas make no request for donations from parents.
- a required payment for items which are integral to the child's education such as school stationery, photocopying of educational materials, arts or woodwork materials, transport costs for school educational trips;
- parents of children with special needs and parents of gifted children are often required to pay fees for additional tuition or support of their children: Information provided by IHC and parents of a student at a one day a week class for gifted students at Owairaka.

The Human Rights Commission after a comprehensive consultation with children and parents commented in 2004 that ‘The evidence suggests that some families experience difficulty in paying the costs associated with education such as school fees, exam fees and activity fees: *Human Rights in New Zealand Today* (2004) 59. In the *New Zealand Action Plan on Human Rights* (2005) the Commission commented that “The right to free state education granted to children from age 5 to 19 has seriously been eroded by state schools asking parents to pay school fees. The Ministry of Education seemingly has no power (or no inclination) to stop schools from pressing for payment of fees. There should be a process by which parents can challenge a school’s demand for payment of fees” p187. A leading school principal has stated “The reality is that education is not free and that it is a myth to pretend that it is” Principal of Wellington College quoted in *Dominion Post* 10 March 2007. A 2003 report by Post Primary Teachers Association showed that the percentage of income received by secondary schools from school fees, donations, fund-raising and international student fees had increased from 9% of total income in 1992 to 17% in 2003.

The 2<sup>nd</sup> NGO report to the UN Committee in 2003 asserted that free state education granted to children from age 5 to 19 has been seriously been eroded by state schools asking parents to pay school fees and that the Ministry of Education seemingly has no power (or no inclination) to stop schools from pressing for payment of fees. It proposes that there be a process by which parents can challenge a school’s demand for payment of fees: *Children and Youth in Aotearoa 2003* p187. This proposal is no less relevant in 2007.

**Paras 43, 44 The Committee recommended that the NZ government enforce legislation on compulsory education and prohibit exclusions on arbitrary grounds such as pregnancy and ensure that students under 16 years who are excluded are enrolled elsewhere.**

It has been unlawful for a school to exclude a student on the grounds of pregnancy or of having the care of a child since 1993 but there have been persistent accounts of students having been told they must leave a school because of their pregnancy or childbirth. While such exclusions might be challenged through the courts under the discrimination provisions in the Human Rights Act 1993 there are no reported cases of such challenges having been made.

The *New Zealand Action Plan on Human Rights* (2005) sets priorities for action aimed at redressing the overuse of school exclusions. It proposed that the government “review the legal powers of schools to exclude, expel and fail to enrol students” and to “establish an independent mechanism to review all suspensions, expulsions and refusals to enrol students”: para 2.7. This reiterated recommendations previously made by three New Zealand Children’s Commissioners from 1997 to the present time. The government has not responded to the *Action Plan on Human Rights* and has taken no steps to review or amend education laws in response to the recommendations of the Human Rights Commission. While the Ministry of Education has powers to force a school to enrol or re-enrol a student who has been excluded from a school, there has been a noticeable reluctance to use these coercive powers. As a result, a number of excluded students end up being enrolled at Correspondence School as a provider of

last resort. The child's parents and family may not have the time, educational level or commitment to supervise the child's correspondence school assignments and children with high educational needs will fall further behind.

The Ministry of Education has in recent years provided additional funding for classes for teen parents within school grounds but outside mainstream classes. These are known as teen parent units or TPUs. An evaluation of teen parent units by Education Review Office in December 2006 found that most were effective, well managed and governed and were meeting students' needs in an appropriate learning environment. ERO identified the positive relationships between students and staff in most units as a key strength. Many students reported that they felt supported by TPU staff. ERO identified that some TPUs were investing considerable teaching time in meeting their students' pastoral needs and this may have reduced their focus on students' educational needs. ERO reported that over a third of the units needed to improve their assessment practice. The evaluation also concluded that many units did not collect information on student attendance and that there were high rates of absenteeism in some units. The ERO report found that some TPUs had not considered the particular health and safety requirements of students and their children.

**Paras 43, 44 The Committee recommended that New Zealand move to strengthen bilingual education as a means of reducing disparities in education and school drop-out.**

The Ministry of Education has made huge strides over the last two decades in providing Maori language education through kohanaga reo (Maori language early childhood education) and kura kaupapa Maori (Maori language primary and secondary schooling). Despite this progress, the Human Rights Commission in 2005 reported that "participation and achievement rates for Maori, Pacific peoples and those from poor communities are disproportionately low" and added that "Education in te reo Maori based on kaupapa Maori is one way to increase educational participation and achievement." The Action Plan identified as a priority for action the need to improve the quality and quantity of resources for kaupapa Maori education: *New Zealand Action Plan on Human Rights (2005) para 2.7.*

Research shows that achievement levels for Maori have improved but are still well below achievement levels of non-Maori students. An AIMHI Programme initiated by the Ministry of Education in 1996 aimed to improve the achievement levels of students in eight decile one schools with high ratios of Pacific Island and Maori students. The improvement in achievement of Pacific students was the largest, followed by students at low decile schools and Māori students. Education Review Office reports on the achievement of Maori and Pacific students in June 2006 found that the majority of schools had taken some action to improve the achievement of these students but that there was a wide range of performance across the schools reviewed, ranging from schools that were highly effective to schools that were ineffective across all criteria.

**Paras 43, 44 A further recommendation of the UN Committee was that New Zealand take all necessary measures including quality counselling programmes in schools to address behavioural problems of students while respecting their right to privacy.**

Nearly all secondary schools have a school counsellor as part of the school staff. The precise role of the school counsellor has never been clearly defined. Some school counsellors see their primary role as dealing with personal problems experienced by individual students whether at home or at school. Some school principals see the primary role of school counsellors is to deal with students who exhibit behavioural problems. Others see school counsellors as providing pastoral care for all students. School counsellors may struggle to deal with all the demands on their professional expertise and their time. There may also be complex issues around their roles as an employee of the Board of Trustees and their role as a counsellor with a duty of confidentiality to the students seeking counselling.

Some schools (mainly schools from economically disadvantaged areas) also have social workers attached to the school. There are also questions as to the proper role of these social workers who are not employees of the school and work on contract.

There is a strong perception that behaviour of students in schools is deteriorating and that student violence towards fellow students and towards teachers is escalating out of control.

## **PART 2 Progress made on issues raised by ACYA in its 2003 NGO report to the UN Committee on the Rights of the Child**

Action for Children Aotearoa in the 2<sup>nd</sup> NGO Report to the Committee made a number of observations and recommendations in relation to New Zealand's progress towards full implementation of the rights in UNCROC. In this Part progress since 2003 in respect of these recommendations is considered.

**Pages 184, 186 The principles of UNCROC have not been incorporated into New Zealand's Education Acts and have had relatively little influence on educational policy and provision in this country. Education Act 1989 should be amended to include basic principles: p184. Section 3 should be amended to give all New Zealand a right to free primary and secondary school education of good quality: p186.**

There have been no changes to the Education Act 1989 since 2003 which import rights from UNCROC into the Act. Unlike other legislation affecting children (ie Care of Children Act 2004, Human Assisted Reproductive Technology Act 2004, Intellectual Disability (Compulsory Care) Act 2003, Children, Young Persons and their Families Act 1989 the Education Act has no statutory objects or principles.

**Page 186 There should be significantly higher staff to student ratios in lower decile schools and schools with a disproportionate number of indigenous, cultural minority and English as a second language students, and there should be additional funding for students with special needs and those in institutional care.**

Further information on this issue is needed.

**Page 186 There should be forward planning to ensure adequate supply of teachers. Teachers from overseas should be required to attend a course in Maori language and culture.**

More information is sought regarding whether there has been progress on these issues

**Page 186 Research should be undertaken into the quality of education received by and the educational attainment of children in care (including children in residential care).**

The Education Review Office reports on education provided to children in residences administered by Child, Youth and Family (CYF) a service unit of Ministry of Social Development (MSD). There are now 7 residences run by .CYF and a further 2 residences administered by CYF but operated by private contractors.

In addition to the ERO reports an annual *Compliance Audit Report* is completed each year by internal inspectors who are MSD staff. The purpose of these reports is to identify any areas of non compliance with the Children and Young Persons (Residential Care) Regulations. Reg 15 states that all school aged residents shall have

access to educational activities inside and outside the residence for not less than five hours on any school day. In practice, education is provided by teachers contracted by the Ministry of Education (MOE) at the residence. Until recently, Compliance Audit reports have not paid much attention to this requirement. Since CYF merged with MSD in 2006 these reports have become more rigorous. The reports for 2006 disclose that in some residences only 4.75 hours education a school day is being provided which means that residents are missing out on one and a quarter hours a week of education.

While it is well known that there are tensions between MOE teachers in residences and MYD residential care staff there appears to be no interagency protocol setting out the responsibilities of teachers and residential staff and some uncertainty about the procedure to be followed when a resident makes a complaint about a teacher.

In the last three or four years special Youth Units have been constructed in several prisons and these units contain both under-18s who have been sentenced to imprisonment and 18 and 19 year who are imprisoned. Under 18s in these units are subject to the Corrections Act 2004 which states in s78(1) that prisoners are entitled to access to further education information that in the opinion of the prison manager will assist in the prisoner's rehabilitation, a reduction of re-offending, or reintegration into the community. The Act places no specific duty on prison managers to arrange education for children of compulsory school age or 17 year olds who are entitled for continuing education under the Education Act. At 3 May 2007 there were 86 prisoners under 18 years in Youth Units. There is a dearth of information available about the education provided to these 86 young people or the other under-18s who are contained in adult prisons or police cells.

The Human Rights Commission in its *New Zealand Action Plan for Human Rights* identified a priority for action the need to develop an integrated dataset to record the numbers, characteristics and experiences of children in institutional care: para 2.5.

There remains a need for a comprehensive review as to the education entitlement of children in residences and those in prisons.

**Page 187 Children with English as a second language should be provided with special support to ensure they benefit from education provided by state schools.**

More information will be provided on this issue

**Page 187 Parents of children from low income families should be exempted from paying fees for NCEA exams.**

The fee structure for exams taken by secondary school students is complex. The domestic fee for sitting NCEA exams or up to three scholarship exams is \$75 but financial assistance is available to secondary school candidates sitting NCEA or scholarship exams. The purpose is to ensure that the fees are not a barrier to participation for students in low to middle income families. To qualify for assistance the fee payer must:

- be receiving a Work and Income benefit or a Study Link benefit (reduced fee of \$20); or

- have a joint family income that entitles the applicant to receive a community services card (reduced fee of \$20); or
- have more than one child sitting these exams in the same year (reduced fee of \$30).

This is a positive move that supports participation in national examinations.

**Page 187 Funding for private schools should be more tightly tied to the quality of education provided and not be at a level which encourages a move from the public to private sector.**

Integrated schools receive government funding in return for acceptance of a degree of regulation. They are subject to review by Education Review Office in the same way as state schools. Failure to provide an adequate standard of education for students can result in an integrated school losing its grant.

**Page 189 A centralised national student database should be established to enable monitoring of school enrolment and attendance.**

This is about to happen as a result of an amendment to the Education Act by which all students will be allocated a National Student Number.

**Page 189 Effective programmes should be established for chronic absentee students and for students who have been excluded from schools.**

The current legal rules relating to exclusion of students from school enable some schools to shed students who are seen as troublesome or non-achieving. This allows such schools to gain a reputation for a disciplined and high-achieving school, thus attracting more middle class students and students of academic ability. Such schools abdicate their responsibilities towards slow learners and children from minority cultural groups.

It is claimed that a Student Exclusion Initiative established by Ministry of Education reduced the number of Maori students suspended from participating schools by 23% in 2000 to 2006. Unfortunately this welcome reduction has been counterbalanced by an increase in suspensions of Maori students from non-participating schools because the number and proportion of Maori suspensions has remained steady.

While some money is allocated by the Ministry to programmes to reduce absenteeism recent effectiveness audits of services aimed at reducing absenteeism of Maori students were highly critical of the services. It found that the truancy officers had become disconnected from the local Maori community and that their tasks were largely set by the school. No data was kept as to truancy rates and it was impossible to judge whether the programme had had any impact on absenteeism: *Effectiveness Audit of Tauranga District Truancy Service (2005)*; *Contracting Out of School Support Services*.(2005) a joint initiative of Ministry of Education and Te Puni Kokiri.

The lack of alternative facilities for the education of students who are excluded or alienated from school or refused enrolment has meant that students are required to

enrol at Correspondence School which for many of these students means an end to their education.

**Pages 189, 190 Boards of Trustees should develop strategies to assist children at risk of school failure. School principals and Ministry should have greater accountability for finding suitable alternative education for children who are suspended or excluded. The Education Act should be amended so that suspension, exclusion or expulsion of a student is a matter of last resort after the child has received warnings and measures have been put in place to deal with the offending behaviour**

A strong message came from the Human Rights Commission in its *New Zealand Action Plan for Human Rights* (2005) which commented that specific measures need to be taken to comprehensively assess rates of participation in education and to remove barriers to full participation: para 2.7. The Commission recommended that persistent barriers to free primary and secondary education should be challenged – by litigation if necessary and that the legal powers of schools to suspend, exclude or expel students and to refuse to enrol students should be reviewed: para 2.7.

The current competition between schools (which was encouraged by changes made in the Education Act 1989) increased disparities of participation and achievement. While the Ministry of Education has put in place some measures to reduce absenteeism and exclusions these have had little overall effect on disparate participation rates. Legal obligations need to be imposed on school principals and Boards of Trustees to ensure all children enrolled in their school have access to alternative quality education before suspending or excluding a student under the age of 18 years. Suitable alternative education centres should be established to cater for the needs of students who are alienated from the mainstream school system but have the capacity to learn in a different education environment.

**Page 190 A system of in-school exclusions should be introduced**

Such a system operates in some Australian states. The students are excluded from their normal class and are required to attend another class under teacher supervision. This gives the student and the class teacher a ‘cooling off’ period and allows the school to put in place counselling, behaviour management, peer mediation or pastoral care services to deal with the behaviour that resulted in the student’s exclusion. Return to the child’s classroom could be arranged at an appropriate time. The danger of excluding students from school is that it is likely to enhance the student’s sense of alienation from the school and will often leave the student in an unstructured environment which experience has shown often leads to future absenteeism and criminal offending.

**Page 190 Before a student is excluded, suspended or expelled a conference should be held involving the student, the parents and extended family members, the principal, the teacher and a school counsellor to discuss ways in which the problem can be resolved without removing the student from the school. No student should be excluded without being offered counselling and advocacy support at the Board of Trustees hearing**

The Family Group Conference model has been successful in care and protection and youth justice in New Zealand and is widely acclaimed in this country and overseas. There is no reason why it should not be made a condition precedent to a school suspending, excluding or expelling a student under 18 years. Restorative justice processes have received some financial support from Ministry but have not been widely adopted by schools. An Education Review Tribunal should be established so that students who are refused enrolment at a school or are suspended, excluded or expelled can seek an independent review

Education Act 1989 Act requires that students be offered counselling but there is anecdotal evidence that this seldom occurs. It is hard to arrange counselling when the student is out of school. In Auckland and Wellington there are organisations that provide free legal advice and advocacy for students facing suspension, exclusion or expulsion but schools do not encourage students to use these services and some students and parents feel concern that having a lawyer may further alienate the school principal and the Board of Trustees.

**Page 191 School curriculum should be broadened.**

The Human Rights Commission in the *New Zealand Action Plan on Human Rights* (2005) set as a 'priority for action' the need to develop the school curriculum to include democratic rights and responsibilities: para 2.3. A new draft curriculum was circulated by the Ministry of Education in 2006 and is expected to be introduced in Sept 2007.

Whether the recommendations from the the Human Rights Commission have been incorporated will be reassessed when the new Curriculum is released.

**Page 192 All schools should be encouraged to provide education and opportunities for children of cultural minorities to enjoy their own culture and use their own language. In developing school rules and dress codes schools should be required to make allowance for national and cultural differences.**

Section 61(3)(a) Education Act 1989 requires every school's charter to include a section that includes "(i) the aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of the Maori culture; and (ii) the aim of ensuring that all reasonable steps are taken to provide instruction in tikanga Maori (Maori culture) and te reo Maori (the Maori language) for full-time students whose parents ask for it. There is no similar requirement that schools with a significant number of students of other nationalities or cultures provide opportunities for students to enjoy their own culture and language. Some schools have made good progress in this respect but generally schools are pervaded by an anglo-European mindset. Schools have excluded Maori students for wearing a traditional carved pendant and for having a tattoo with a Maori motif. An African student was suspended for a having braided hair.

**Page 194. Students should have equitable representation on school Boards of Trustees currently there is only one student representative on Boards of Intermediate and Secondary schools.**

Currently there will normally be five parent representatives on the Board and the principal of the school and one staff member. The one student representative is heavily outnumbered. Parent representatives are appointed for three years while student representatives are only elected for one year. This means that parent representatives are likely to have more experience of working with the Board than student representatives. As a result student representatives on Board of Trustees have very little power to influence decisions of the Board.

**Page 196. It is recommended that the Children's Commissioner carry out an urgent review of the situation of international students and especially young unaccompanied students.**

There has been no review by the Children's Commissioner but a revised (and greatly improved) *Code of Practice for the Pastoral Care of International Students* was published in August 2003. It sets standards for marketing, recruitment and enrolment of international student, immigration requirements and requires that education providers must designate a person with responsibility for providing information regarding pastoral care of students and a person to provide assistance with accommodation of students. Providers must arrange support services for students and there must be Police vetting of accommodation providers and of other students in the same accommodation. The Code establishes Grievance Procedures and an International Education Appeal Authority is established to receive and adjudicate on complaints.

## **PART 3 New issues of concern that have arisen or come to notice since 2003**

### ***Bullying of students***

A number of surveys of students shows that bullying in schools is a serious problem and that certain groups of children are particularly vulnerable to bullying- especially Maori and ethnic minority children, children with a disability and children of refugees: *Human Rights in New Zealand Today* Human Rights Commission (2004) The Commission recommended in 2005 that the government support schools and early childhood centres to promote non-violent conflict resolution and to combat bullying, harassment and abuse: New Zealand Action Plan for Human Rights (2005) paras 2.4, 2.8. 60.

A recent Education Review Office report analysed the measures being taken by schools to prevent bullying based on 297 ERO reports. It found that strategies and programmes to prevent bullying are most effective when implemented within school cultures that emphasise student safety and well-being. ERO's findings highlight the need for schools to acknowledge bullying behaviour as a risk to be managed. ERO findings also emphasised the responsibility that schools have to provide both targeted and school-wide strategies and programmes that equip staff and students to manage their relationships with others in a way that supports learning. The report recommends that all schools regularly evaluate, through their self-review programmes, the effectiveness and impact of the range of programmes and strategies they are implementing to prevent bullying and that schools should review:

- the extent to which school-wide approaches to preventing bullying are working for all students;
- the impact of targeted approaches for individuals and groups of students that focus on preventing bullying;
- the implementation of policies, procedures and plans that set out guidelines for how incidents of bullying will be managed; and
- the effectiveness of professional development in supporting staff to provide a safe physical and emotional environment for students.

The report recommends that schools undertake regular anonymous surveys of students, parents and whānau, and staff to seek their views, on the incidence and nature of bullying in schools as a means of assessing the impact of specific programmes and strategies.

New forms of bullying are of concern. In 2003 the suicide of teenager with a disability that had caused his permanent facial disfigurement was attributed to his distress at being ridiculed by text messages from other students: Sunday Star Times 30 November 2003. A 12 year old committed suicide in March 2005 after being bullied by text messages and emails which included death threats. Sunday Star Times 12 March 2006. This article states that the Education Minister has asked the Ministry for a paper on this issue. Requests for further information have been set in motion.

An incident occurred in a secondary school in 2007 where several boys set out to beat up another boy and arranged for the incident to be captured on a student's cell phone.

The images were then circulated to other students. The boys involved are facing serious criminal charges.

Ministry of Education data shows that in 2005 and 2006 24% of stand downs were for physical assaults. Physical assaults accounted for 15% of suspensions in 2003, 16% of suspensions on 2005 and 18% in 2006 which is indicative that physical bullying in schools is increasing.

### ***Children in prisons, residences and other institutions***

There are serious implications for UNCROC from the recently proposed Young Offenders (Serious Crimes) Bill (first reading in March 2006). This bill will increase the legal responsibility for young people downwards to age 10 for many offences, and further reduce the limits on sentencing that protect young people under age 17 in New Zealand. Such a bill might endanger our obligations under UNCROC, particularly regarding Article 37 (ensuring that young people are not incarcerated with adults or in a way that hinders their contact with family) and Article 40 (that argues against prison for children except under the most serious circumstances).

Changes to the Young Offenders Bill will necessarily alter the Children, Young Persons, and their Families Act 1989 by reducing the age for responsibility for serious offences from 14 down to 10 years. At present 10-year-olds in New Zealand are held accountable as adults only for the serious offences of murder and manslaughter. Similarly the Crimes Act 1961 would be altered by this new bill to increase the age of criminal responsibility for 10- to 13-year-olds, removing the protection that children must understand that their actions were wrong in order to be tried as an adult. The Sentencing Act 2002 would also be changed along the same lines to increase the possibility that young offenders aged 10 to 16 could be given prison sentences.

While the proposed bill might seem to fit the letter of the UNCROC articles, there are serious problems with this proposal to reduce the age of criminal responsibility down to 10 years. First, it is not clear that incarceration is the best option for pre-adolescent children. Australian research indicates that most young adolescents who engage in offending do not continue to offend in their post-teenage years (White and Wyn, 2004; see also Farrington, 1987, 1996). Further, there is concern about the residential environment to which 10- to 14-year-olds might be exposed, given the lack of resourcing at present for developmentally appropriate, high level interventions for this group. Instead, young offenders may be exposed to older offenders with more long-term histories of offending, without the mediating effects of their extended families, at a time in their lives of rapid growth in their cognitive and emotional skills.

Two recent doctoral research projects in New Zealand have findings relevant for this discussion. Sutherland (2006) interviewed 19 young men and 6 young women, aged between 14 and 16 years, on remand or under residential supervision. In a separate project, Shirley Roberson (Victoria University thesis currently undergoing examination) interviewed 7 young men aged between 14 and 17 years remanded under either Child, Youth and Family Services or the Department of Corrections. Findings of both studies indicated a diversity of patterns in young people's offending and their understanding of offending, and both emphasized in their recommendations

the importance of early identification of problems and more age-appropriate intervention. While Sutherland emphasised the importance of educational innovations around anti-bullying work, Roberson emphasised therapeutic interventions that help young boys and their families to see alternative ways to do "man" in contemporary New Zealand society. In both cases interventions at an early age were seen to be crucial in terms of the developmental understandings of young people.

Greater residential incarceration without the resourcing required to greatly enhance the delivery of developmentally appropriate intervention, would be a likely outcome of the Young Offenders Bill were it to be passed into legislation. Such an outcome is one unlikely to assist New Zealand in meeting our obligations to children under UNCROC.

### ***Refugee children and asylum seeking children and youth in New Zealand.***

In the 2003 report to the UN we strongly recommended that:

The Government ensures that refugee and asylum seeker children enjoy equal rights with New Zealand children through development and implementation of a comprehensive national resettlement and integration policy, which establishes special protection for refugees and asylum seekers and targets obstacles to equality. It must be devised in consultative and participatory process with these groups and the children and children and youth and contain specific and well targeted actions aimed at eliminating discrimination and promotion of positive settlement and integration outcomes, and ensuring that resettlement process reflects partnership between Government and non-governmental agencies and the refugee communities. (ACYA 2003) *Children and Youth in Aotearoa 2003*, Wellington: ACYA).

Some changes to operations and procedures such as website and leaflet dissemination on INZ Operational Manual updates and clarification of policy on the Immigration procedures have occurred. The Refugee and Migrant Service website provides research papers and links to services such as <http://www.rms.org.nz/news-and-events.html> as does the Office of Ethnic Affairs and the Human Rights Commission ([www.hrc.co.nz/](http://www.hrc.co.nz/) -). Of particular note is the *Refugee and migrant needs: an annotated bibliography of research and consultations* Prepared by Boutros Nam and Rachel Ward, February 2006. which provides a summary of research relating to refugee and migrant needs as identified by service providers, communities and researchers in New Zealand. The findings are classified into two parts, the first part reflecting the needs of refugee communities, and the second part providing an overview of the needs of both refugees and migrants.

*S.K.I.P - Strategies with Kids - Information for Parents* (Feb 2006) by Rachel Ward is a scoping study of some refugee issues faced by parents. Victoria University of Wellington has several Participatory Action Research Projects. [Refugee Health Website](http://www.refugeehealth.govt.nz) - [www.refugeehealth.govt.nz](http://www.refugeehealth.govt.nz) - provides information regarding access to health services and discussion of some issues for refugees and asylum seekers. However the focus has been particularly in the area of resources regarding the refugee resettlement experience and processes with informative material produced from the Ministry of Social Development project *Refugee*

*Voices: a journey towards resettlement* begun in 2001 and produced in 2004. *Refugee Voices* provides an in-depth look at the resettlement experiences of refugees in their first five years in New Zealand. It includes comment and research on housing, family reunification, learning English, finding work, the experiences of children and teenagers, social networks, discrimination, and settling in New Zealand.

*Interventions for Refugee Children in New Zealand Schools: Models, Methods, and Best Practice* published in 2004 promoted by a contract to review the literature on refugee issues for the Ministry of Education taken up by Richard Hamilton and Dennis Moore at University of Auckland Research Centre for Interventions in Teaching and Learning

(<http://www.educationcounts.edcentre.govt.nz/publications/schooling/interventions.html>). International literature on refugee trauma, loss and grief and second language concerns, resilience, issues of migration, school and teacher effects, and conceptual and policy issues is examined. Reviews of different models, methods and best practice for intervening with refugee children in New Zealand schools including a range of best practices for refugee children within schools is presented.

Some advocacy NGO groups such as The Human Rights Foundation and ACYA have been very active in making submissions and taking up rights issues relating to and for refugee and asylum seekers in New Zealand. However the comprehensive assessment of the status of human rights in New Zealand, *The New Zealand Action Plan for Human Rights* (2004) by the Human Rights Commission indicates that issues for refugee and asylum are most severe for women and children. HRC raise concerns too regarding the amendments to the Human Rights Act in 2001 that has meant the HRC has limited oversight of refugee policy and practice (pp. 223-223). Canvassing and responding to the particular needs of refugee and asylum seeking/ers children through dedicated policy development and specialized practices, is too slow.

### **Definitions of “child”**

As a signatory of UNCROC there is a requirement for the NZ Government to align policy and regulation to match with the definition of a child as laid out in the convention. (Article 1: UNCROC ratified in New Zealand 1993). However the NZ Immigration Service refugee and resettlement policy provided for facilitating resettlement refugees includes a range of definitions of the ‘child’ with no reference to UNCROC. In the Operations manual ‘child’ appears as “under 18 years” however policy regarding ‘adult siblings’ are referenced as 17 years and over and ‘adult child’ 17 -24 yrs’. The term ‘minor’ is used in reference to asylum seekers and refugee status “C.8.1 minor under 17 years ...”; the reference to an ‘adult child’ as 17 years and over is used to determine refugee family reunification criteria for the Refugee Family Support Category or Family Quota. (See Immigration New Zealand website – registration advice for Refugee Family Support Category –Sponsor July 2007 See The NZIS Glossary provides the definition of a minor as ‘17 yrs’ (NZIS 28 November 2005)

### **Refugee Family support category difficulties**

Refugee family Support category is challenging for unaccompanied children or ‘minors’ to meet criteria regarding sponsors provision of accommodation (Article 10) Serious concerns regarding the rights of children who are deprived of their right to grow up in a family environment must be raised in relation to unaccompanied

children (Articles 10; 22) Unaccompanied children resident in New Zealand would find it extremely difficult to meet the criteria for eligibility to sponsor a family member. An unaccompanied child 'under 17yrs' may not act as a 'sponsor' of a parent or family member, nor would they meet the criteria for provision of accommodation, and financial support. A two-tier queuing and/or ballot system is now in place, which can be accessed for a designated period once a year. This is an additional and extended challenge for a child or youth wishing to be reunited and to sponsor a parent or relative  
(<http://www.immigration.govt.nz/migrant/general/generalinformation/quanda/refugeefamilysupportcategory.htm>)

### **Children and Youth Seeking Asylum**

The provisions of children's rights extend to all children inclusive of asylum-seekers. New Zealand as a signatory of UNCROC has a history of taking in unaccompanied children 'minors', such as in 2001, a group 37 unaccompanied minors were amongst those asylum seekers rescued by a Norwegian ship, the *Tampa*, when their boat began sinking in the Indian Ocean. Many have been reunited with their families under the quota program. In 2005, 76 of these refugees were granted citizenship, including all 37 of the 'Tampa boys'.

Refugee law reports from RSAA indicate between 2003 and 2006 of the 152 minors deemed eligible to apply for refugee status yet only 26 were granted refugee status. (<http://www.refugee.org.nz>). The special needs and particular difficulties for unaccompanied children or minors to seek refugee status may face severe challenges such as access to translation and interpreting services understanding government procedures and right to 'voice' in these situations. Refugee law reports from RSAA indicate between 2003 and 2006 of the 152 minors deemed eligible to apply for refugee status only 26 were granted refugee status. (<http://www.refugee.org.nz>). An understanding of the systems and procedures involved is particularly intimidating for adults, let alone for children. Concerns about safety for children in this situation have implicated a need for an independent advisor allocated to each child. (HRC 2005 *Plan of Action for Human Rights Mana ki te tangata*)

Consideration of the special needs and particular difficulties for unaccompanied children or minors to seek refugee status is slow to appear in policy. In ACYA 2007, *Working paper No 1 Kids Missing Out* Ludbrook reports that the Department of Labour works with Child Youth and family to provide support for unaccompanied minors and arranges care and education for the child. They will also be present at interviews with immigration officials. The best practice manual being collated is yet to be published. Suggestions that there needs to be an independent advisor allocated to each child have been made.

### **Access to Education Health services and security benefits.**

There is anecdotal evidence to support the claims that unaccompanied or separated asylum seeker children are discriminated against in terms of their status and there are difficulties in accessing their rights to care and education. Although the Ministry of Education state that asylum seeker's children have been entitled to education and ESOL support at Primary Schools since 2003 this is not consistently actioned by schools in their enrolment procedures  
([http://www.minedu.govt.nz/web/downloadable/dl8357\\_v1/refugee-part1-8262.pdf](http://www.minedu.govt.nz/web/downloadable/dl8357_v1/refugee-part1-8262.pdf)).

Often emergency health care can be accessed only (ACYA 2007, *Working paper No 1 Kids Missing Out*)

### **Detention**

From September 2001 families with children who are part of the refugee quota arrivals must now live in the Mangere Refugee Reception Centre still designated as an open detention facility for their first six weeks in New Zealand. The effects of such an environment are not conducive to fostering trust and acceptance of the host society. The New Zealand Immigration Service procedures for refugees was changed by the amendments to the *Immigration Act 1987* such that detention can apply for longer than 28 days and from September 2001 until late 2002, some families with children who arrived as asylum seekers were being detained at the Mangere Refugee Reception Centre.

The New Zealand Refugee Council and the Human Rights Foundation took a legal challenge regarding the practice of detaining refugees at the Remand Prison or the Mangere Detention Centre without right to apply for bail. This practice was ruled unlawful in an interim judgment of the High Court. The Court found that the practice breached both provisions of the *New Zealand Bill of Rights Act 1990* and Article 31.2 of the 1951 *Convention Relating to the Status of Refugees*. This decision was overturned on appeal. The Government has changed operating procedures. Advice in NZIS manual (A 6.2 Effective April 2004) directs immigration officers to ‘exercise discretionary powers’ (Sections 4.1, 4.2,4.3). Children seeking asylum are now generally not kept in detention but stay in a designated hostel or on conditions in the community. (Action for Children and Youth Aotearoa Incorporated (July 2007: Para 68; 69; 70; 71. Report to the United Nations Committee on the Elimination of All Forms of Racial Discrimination: *Some Aspects of New Zealand’s Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*). Concerns regarding detention remain high as the impact of the heightened security measures of Immigration Bill 2007 takes effect.

### **Collection of data**

Some data collected through verification of ESOL funding in schools is collected by the Ministry of Education however New Zealand Work Programme on Implementation of UNCROC 2004-2008 notes that data on refugee children who may have been in armed conflict is not yet collected but the government will “try to obtain the information”. Anecdotal evidence suggest that New Zealand has accepted boy soldiers within the refugee quota. (ACYA 2007 Working paper 1) . The Royal Australasian College of Physicians (2007) refer to Drs McLeod & Reeve and their work in beginning a process of investigating health needs and recommend the routine collection of data on health and well being of refugees to enable best possible practice and support. (*Journal of Pediatrics and Child Health* 43: 522-526)

### **Specialised training.**

Support for the special needs of refugee and asylum seeker’s children is often in the form of voluntary service profession and ‘general practice’ professionals inexperienced with the cultural and linguistic expertise and specialized support required. Resilience and trust are paramount. (See Hamilton & Moore, 2004). Some specialized and refugee dedicated professionals now work in the on arrival and resettlement programmes and associated NGOs. There is an urgent need for their

work to be documented and for systematic training and qualification in this special work of reintegration and restorative support for the children and their families.

### **Impact of *Immigration Bill 2007***

Immigration Act 1987 Review 2005-2007 culminating in the Immigration Bill 2007 indicates that the Refugee Convention, the Convention Against Torture and the International Covenant on Civil and Political Rights will be included however the enhanced border security measures that are now included give the Immigration special officers ability to use classified information in a limited range of decision-making situations without disclosure, and gives rise for grave concern for young unaccompanied children who are asylum seekers. *"It allows Classified Information to be used in immigration, refugee, and protection decisions. Provisions in the Bill will replace Part 4A of the current Immigration Act... and the ability to collect and use biometric information."* Hon. David Cunliffe August 8 2007 (<http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=30271>) Global Peace and Justice and Civil liberties are reported as having concerns regarding the Bill as it *"would allow the collection and use of biometric information gathered at border points, and makes changes to the appeal system. It would also give immigration officials wider powers to use classified information in cases involving refugees, migrants and asylum seekers"*. (Radio New Zealand News 10:34 9 August 2007 [http://www.radionz.co.nz/news/latest/200708091034/new\\_bill\\_ushers\\_in\\_surveillance\\_society\\_civil\\_libertarian](http://www.radionz.co.nz/news/latest/200708091034/new_bill_ushers_in_surveillance_society_civil_libertarian)). Concerns regarding the changes proposed are echoed through the UNHCR submissions to the review of the Immigration Act 1987(see submissions <http://www.dol.govt.nz/actreview/index.asp>)

ACYA 2007, *Working paper No 1 Kids Missing Out (p.31)* reports that there has been nothing in the Review of the Immigration Act 1987 and the within the New Immigration Bill 2007 to suggest that UNCROC or the *UN committee Recommendations 2003* have informed the Bill.

### **Special education**

The reality for children and young people with disabilities reflects concerns raised in the Child and Youth in Aotearoa 2003 report. The "heartache, frustration and isolation experienced by children and young people with disabilities and their families" is especially evident in relation to widespread discrimination in the provision of education services. While organisations, which support people with disabilities, like CCS, focus on "everyday people in everyday places doing everyday things" that is not always the experience of many children and young people. Community attitude, lack of resourcing, inconsistencies in allocation, blocks to access and not fitting government's current focus affects the amount of support received.

While early childhood education is not compulsory, 20 hours "free" care and education is provided for three and four year olds in participating centres. However in the past many early childhood centres would only accept children with disabilities when a support person could be present. In some areas of Aotearoa/New Zealand there are long waiting lists when families apply to be assessed for additional support. With this attitude for all children to access the 20 hours "free" funding it would require additional special education funding for individual children and their support people and for Group Services Education and other providers such as CCS.

In some early childhood centres children are separated off by age, however, children who require extra support are often held back with younger children because of ability. This may be physical (ie mobility) or language rather than cognitive ability and it made no difference when the child had a full time support person (Robertson, 2005). Parents have often had to visit many centres before they have felt welcome to visit, let alone attend.

As children face compulsory education from six years of age discrimination is more obvious. Recent anecdotal evidence implies that there are discrepancies in access depending of school decile ratings with lower decile schools being more inclusive.

“Poor transitions can cause children major stress and may have long-term consequences on development. Those who value quality education practice will endeavour to provide effective transitions between settings (Howie & Timperley, 2001). When children move from early childhood to the compulsory primary school sector a written application for On-going and Reviewable Resourcing Scheme (ORRS) funding is made. This focuses on the most negative aspects of the child and tends towards a medical model as eligibility is contested and severity of the disability usually favourably affects the funding received. Wylie (2000) noted that the success rate for receiving ORRS funding was lower in the lowest decile schools, kura kaupapa Maori and for Maori and Pacific students. Bray and Gates (2000) identify that funding is often inadequate for students in inclusive settings and many schools balk at enrolment without adequate ORRS funding. The Ministry of Education Statement of Intent 2006-2011 states that they “want all children to enjoy a quality education that enables them to achieve and participate in the community and workforce.” In contrast to the ORRS applications within the wider early childhood community the focus for assessment is on children’s strengths and interests.

Several cases quoted anecdotally in August 2007 in the Auckland region identified children not having access to primary schools. Because funding was limited the school would only allow the child to attend when the teacher aid was present and consequently their daily attendance was affected. Another school was unwilling to provide an environment that recognised the different ways adults could respond to the child’s behaviour.

The Ministry of Education Statement of Intent 2006-2011 in their internal action plan called “Better Outcomes for Children” aims:

- To raise achievement
- To improve service provision to improve outcomes
- To collect better data within the Ministry and
- To be a guide for Group Services Education staff over the next five years.

It identifies three priorities:

- effective teaching for all children
- engaged families and communities
- quality providers.

It spotlights three outcomes: presence, participation and learning. Presence relates to attendance, a safe learning environment and being able to access the same range as other children in the same location. Participation relates to being positively engaged

in interpersonal relationships, social activities and shared learning experiences. Learning relates to planned and spontaneous opportunities, effective assessment, implementation and review, taking account of the child's perspective.

(<http://www.minedu.govt.nz/web/downloadable/dl111> 382 v1/11 382  
betteroutcomessummdownload: 21.8.07)

Within special education there are shortages of skilled and qualified staff, shortages of teacher aids, difficulties around consistency and equity, particularly for ethnic, migrant and rural communities and now an emphasis on GSE staff spending time collecting data when they are already pushed to provide adequate services.

Parents of children with disabilities ask that financial and other support be available to those children who have a disability but do not qualify for ORRS funding particularly when they are moving from school into further training or the workplace. Currently transition funding is for those with ORRS funding only. The funding is meant to be available for the child to be supported by a teacher aid during the transitioning but schools say that teacher aids can't be spared. So it raises the dilemma of whether the funding is for the young person or the school.

## **Part 4 Early childhood services**

The UN General Comment 7 (2005) identified several factors that supported children's rights in early childhood services. Embedded in socio-cultural and ecological theories of development, the CGC noted that children's "young children are best understood as social actors whose survival, well being and development is dependent on and built around close relationships"

Article 12 "states that the child has a right to express his or her views freely in all matters affecting the child, and have them taken into account. This right reinforces the status of the young child as an active participant in promotion, protection and monitoring of their rights. According to the UN General Comment, respect for the young child's agency is frequently overlooked or rejected as inappropriate on the grounds of age and immaturity.

### ***Participation initiatives in the current context***

In 2002, the Labour-led coalition government approved a long-term strategic plan for early childhood education. *Pathways to the future: Nga huarahi arataki* (The Strategic Plan, Ministry of Education, 2002) has three goals:

- To improve quality
- To increase participation
- To promote collaboration

The "20 hours free" policy is one of a raft of policy initiatives introduced as part of implementing the Strategic Plan.

### ***20 hours free early education for three and four year olds***

The 2004 Budget announcement was a cause for celebration for the early childhood education and care sector in New Zealand. Significant new funding to support the implementation of the Strategic Plan included 20 hours of free early childhood education for three and four year olds in community based services as well as requirements for qualified teachers (Note 1). As the Minister's Fact Sheet stated:

Quality early childhood education has a dramatic impact on a child. Research shows that intensive and regular participation in quality early childhood education delivers long-term educational benefits for children. In total Budget 2004 will see an additional \$365 million spent on early childhood education over the next four years (Mallard, 2004 p. 1).

The Ministry of Education has required centres to sign up with the scheme and in July 2007, over 70% of centres had joined. In reality, implementation has proved to be somewhat controversial. The Early Childhood Council, who represent many private as well as community based services argue that the funding is not enough to provide 20 hours of free service to three and four year olds enrolled in many of the centres they represent. This will necessitate fee increases across the board. Because of this, parents of younger children will be disadvantaged. The ECC argue that their fees will essentially subsidise the 20 hours free early childhood education for three and four year olds.

There are long-standing tensions between community based, not-for-profit services and privately owned for-profit services. According to NZEI/Te Riu Roa, The union representing teachers in early childhood centres and in primary schools, resistance to the policy from private owners is driven by profit, and could potentially undermine the quality of services provided to children.

Owners of these private businesses – such as the publicly listed Kidicorp – gain up to 60 per cent of their income already from state subsidies. Naturally, they are keen to get more but this would benefit their shareholders rather than children. (retrieved from [http://www.nzei.org.nz/ece\\_kindergarten/20hoursFree.htm](http://www.nzei.org.nz/ece_kindergarten/20hoursFree.htm) 6 July 2007)

Linda Mitchell, Senior researcher for the New Zealand Council for Educational Research commented that the 20 hours free policy is part of a jigsaw of policy initiatives that places New Zealand early childhood services first in the world. Along with a national curriculum framework, policy requirements for early childhood teachers to be trained and registered are well documented and researched as contributing positively to quality outcomes for children. This is particularly significant for children who are disadvantaged.

The policy has highlighted a long-standing argument regarding the funding regime for early childhood. While a selective approach to full funding for the sector is understandable, it may potentially affect the participation rights of children who do not have access to a centre or early childhood service.

The move to fully fund early childhood education should be considered. The argument against this is that aligning early education with the compulsory sector would institutionalise childhood and have a negative effect on the role of the family in a child's life (see Farquhar, 2007 and Reid, 2006). The debate is yet to occur, but children's rights to education should be equal and not necessarily determined by age. General Comment 7 issued by the UN Committee supports the family as central to a child's well being with a crucial role in providing educational opportunities. But it also advocates in favour of good quality early education as part of the wider social and cultural opportunities young children can participate in (UNCRC/GC7).

### ***Breastfeeding in early childhood centres***

Article 24 of the Convention requires New Zealand to provide information, education and support in the advantages of breast feeding. This issue is particularly significant as a protection right is potentially breached because there is no national breastfeeding policy in Aotearoa/New Zealand. Recent research demonstrates the unequivocal benefits of breast milk for under-one year olds. Given that there has been a significant increase in the number of babies under one enrolled in full time child care, the lack of visible policy to support breast feeding in centres is concerning. While most centres with babies enrolled would have a policy to support breastfeeding, it is

not always easy to support. Many early childhood centres are re-converted houses without designated space to offer specifically for breastfeeding mothers. While there are many work-based early childhood centres, access to these is limited. Mothers are not easily able to visit their babies to feed them which further disadvantages the babies.

Policies to support working mothers to both breastfeed and work need further development. This sits within the early childhood Strategic Plans goals to increase participation, to improve quality and to promote collaboration. As Judith Galtry and Sarah Farquhar wrote:

The development of breastfeeding-friendly childcare would further each of these objectives. With regard to increased participation in quality early childhood services, the lack of a consistent set of regulations/policies for breastfeeding support within childcare may discourage some parents from enrolling an infant or child that is currently being breastfed. They may be uncertain, in the absence of formal regulations and guidelines, about the level of support for breastfeeding within individual centres and, associated with this, staff awareness and knowledge of breastfeeding. This includes procedures for preparing and feeding expressed breast milk. With regard to the second objective, there is little doubt that the quality of early childhood services would be improved if centres were to become breastfeeding-friendly, given the importance of breastfeeding for healthy infant development (Retrieved from <http://www.womens-health.org.nz/breastfeed/workplace.htm#childcare> on 7 July 2007).

Their research led to the development of draft guidelines to support breastfeeding but it also highlighted a need for education in the early childhood sector about the health promotion benefits of breast milk as well as the conditions needed to support and sustain breastfeeding routines for working mothers whose babies attend early childhood centres. These included comfortable spaces; time; privacy; a place to store breast milk; and a supportive early childhood staff who understood the benefits of breastfeeding. This must be translated into feasible policy, supported and funded by centre managers/owners and further supported by national guidelines, educationally and financially. As Farquhar and Galtry comment “support for breastfeeding-friendly childcare is an important intersectoral concern. It necessitates support and collaboration from both the early childhood sector and the health services (Retrieved from <http://www.womens-health.org.nz/breastfeed/workplace.htm#childcare> on 7 July 2007). It is also a child’s rights issue because providing support for breastfeeding in centres is health promoting.

### ***Quality and participation in kindergartens***

In a small focus group discussion with Wellington Region Kindergarten Association Senior Teachers revealed several concerns. One issue raised by the kindergarten emphasized children's rights to a quality early childhood education. Currently group sizes are still too large (40+ per session). There is a shortage of teachers fluent in Te Reo Maori and in all Pacific Island languages, as well as other minority group languages. There is also a shortage of teachers who are Maori, Pacific Island (and other minority cultures), employed in the kindergarten service. This was concerning because the majority of Maori and Pacific Island children are enrolled in mainstream services.

Senior teachers noted the positive influence of a new assessment resource which focused on children's strengths and interests. The cycle of notice, recognize and respond had, in their view, shifted teachers' thinking away from structured approaches to learning and supported a community of planners to which all participants contributed. One commented:

You now see everyone contributing, the children, the teachers and the families.

The senior teachers believed that this supported the 'health' of the kindergarten community. On the other hand, the high rate of child abuse in New Zealand was noted with alarm. How early childhood services might respond is currently being explored and the concept of a one stop shop is underway with approximately 18 kindergartens throughout Aotearoa/New Zealand trialling this approach. However, the fragmented nature of support services is concerning. Perceptions of these services are negative. The Senior Teachers spoken to commented on the need for professional development on how to redress the impact of violence and poverty. Recommending that at risk children's families to seek support was potentially jeopardizing a trusting relationship with children and their families. Teachers were said to be reluctant to assume the role of reporter to social services.

Participating regularly in kindergarten is an issue in some lower socio-economic areas where public transport is minimal and private transport is restricted. Winter weather prevented many children in these areas from participating on a regular basis. In one school, rain coats were given to children, and there had been a dramatic increase in attendance. This scheme does not extend into the early childhood sector. The senior teacher team commented:

A van would be great – you could just drive around and pick up all the kids in the area, drop them off and then take them home again.

### ***Holistic approaches***

During the first years of a child's life, he or she is dependent on family (in the broadest and most inclusive sense). The rights of the child depend largely on the resources and assistance available to support families, therefore assistance to parents. The 2005 GC 7 is clear that an integrated approach to support children's rights must recognize interdependencies between a range of services which include taxation and benefits, adequate housing and, reasonable working hours. Other services include health and parent education programmes.

The current child abuse crisis in Aotearoa/New Zealand suggests that very young children remain the most vulnerable to abuse. While there are services available to support parents, they are not accessed. In order to act in the child's best interests, the child needs to be at the forefront of any decisions made about their well being. In the early childhood sector, more could be done to support teachers to develop partnerships with parents in communities.

### ***Access, availability and participation issues of early childhood education services for children in care***

Linmark Educational Services is currently working with caregivers to provide a home-based early childhood education service throughout New Zealand. This service is funded through the Ministry of Education (under The Education (Home-Based Care) Order 1992) allowing Linmark to provide a free educational service for children who are being cared for by a caregiver in a home environment. Currently our service supports children taken into care by Child, Youth and Family (CYF), grandparents, family, traditional home-based caregivers and nannies.

The legislation allows us to support caregivers, but not biological parents. This impacts on the child's right to participate and to have continuity within our early education service as once the child is returned to the parent, our service can no longer support them and the child often gets lost in the system and misses the vital link of early childhood education.

Our separate parent support programmes are available on request, but do not have funding and are one off situations funded by each individual CYF office, budget allowing. Our current funded services have already established a working relationship with key stakeholders, and put in place a structure and processes that would complement our parent programmes.

The legislation is also restrictive in not taking into account individual and cultural situations. There is a strict health and safety component to the legislation, which is valuable to the safety and well-being of most children, but in situations where the children live in rural areas, apartments or within some isolated Maori communities. These families do not fit the legal criteria and our service is not able to support the children placed in their care by CYF. Even though these children are in a care situation, they do not have access to the early childhood education support that would benefit their future outcomes, socially, emotionally and educationally.

Some children in care experience numerous placements and require extra support. There are often attachment issues, stress related to the effects of trauma, and in most cases with CYF children, abuse or neglect which has impacted on their early learning and development. The importance of following these children through their numerous placements is imperative, but again the current legislation restricts this if they are either, returned to parents, or caregivers obtain permanency. Some children are lost in the system. This impacts on these children's rights to participate in early education, and jeopardizes the quality of the experience because continuity of education and care is disrupted.

***Support teachers to support children***

While all early childhood services must comply with policy requirements that compel them to report suspected abuse, anecdotal evidence suggests that this is difficult to do, and the fear of falsely accusing parents of abuse tends to override concerns about the child. According to the Convention, “c) State parties should take all appropriate measures to promote the active involvement of parents, professionals and responsible authorities in the creation of opportunities for young children to progressively exercise their rights within their everyday activities in all relevant settings, including providing training in the necessary skills” (General comment 7). There are currently no professional development programmes to support teachers to deal with either violence or poverty and its impacts on childhood.

## Part 5 Primary and secondary school education

### *Issues in primary education*

Clyde Quay School (CQS) is a state school which is a full primary Y1-8 (5-12 year olds). It is situated in the heart of Wellington city and is multicultural with 21 ethnic groups represented at the school. The school operates an enrolment scheme (only children within zone have automatic right to enrol). The maximum number of students the school can accommodate is 240 students. The decile<sup>1</sup> rating is seven which means the parent community is moderately affluent.

There are 234 students at present and nine full-time teachers; three part time teachers, seven teacher aides, one caretaker and an office manager.

### **Focus Group Discussion**

The information provided in this paper was a result of discussion with five senior students, Y8. The question posed was “*What would make a positive difference for you at school?*”

Unless otherwise stated, all quotes are directly from students.

#### 1. *Learning and Teaching*

1.1 Students considered it important to have learning directly related to what students wanted to do in the future so learning is relevant. One student felt there should be more options about what students want in the future, especially Y8 students. Students also realised that for younger students, the curriculum would have to be broad and everyone would have to have lessons in the core subjects- reading, writing and mathematics.

1.2 There should be extension work in every Y8 class such as French, art products, drama and music which currently operate once a week.

1.3 Cross-grouping also facilitates learning because children study at their level. Currently, this works well in mathematics however in previous years the Y5-8 students were cross-grouped for reading and written language as well mathematics; this should be re-established.

1.3.1 Additional benefits to cross-grouping include engaging with different students and teachers. Teachers also have an opportunity to conduct more indepth work for a specific group of students rather than having to worry about breadth and shallow coverage because there are too many curriculum areas and the wide spread of ability groups.

1.3.2 Students were of the opinion that cross-grouping progressed convention 29 (UNCROC) particularly the first sentence which states “*Education should aim to*

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<sup>1</sup> The Ministry of Education assigns a socio-economic rating 1-10 to all state and integrated schools; decile 1 is least affluent and decile 10 the most affluent- poor vs. wealthy.

*develop children's personality, talents and mental and physical abilities as much as possible."*

1.4 Setting learning goals have been successful but this could be improved. It would be worthwhile reviewing these goals every four weeks rather than once a term. A system could be put in place whereby students rotate around subject areas and revisit goals pertinent to that particular area. The duration of each session may only be five to ten minutes. Since students are more likely to remember the specific goal over a four week period as opposed to 10 weeks (one term); they would be in a better position to evaluate the extent to which they achieved the goal.

1.4.1 Some members of the group were of the opinion that setting more specific learning goals were better e.g. *"Taking care in writing to make it clearer* [coherent thought] *or checking back in mathematics* [problem-solving skills]. *This works for all learning* [in reference to specificity of goals]. In addition, learning goals should cover a number of categories- social, academic, out of school goals and the like.

1.5 Students saw term 3 reporting to parents as invaluable. Unlike other reporting systems, term 3 reporting put students at the forefront of interviews. All students had to attend interviews and they prepared the schedule and took a lead role in discussing their work.

1.5.1 Students were concerned that the usual parent teacher interview left students relying on second hand information. Students wanted to be part of the whole process- to hear and contribute to the conversation first hand. They also saw it as making links between the *"conversations they had at home and school* [relating to learning]."

1.5.2 Another advantage of this reporting system was the opportunity it provided to children who don't usually talk about their learning.

## 2. Children's Rights

2.1 All students agreed that knowing the United Nations Convention on the Rights of the Child was of utmost importance. *"Having the right to your opinion, [to] express yourself and having the right to speak up on the decisions made on your behalf* [are essential]"

2.2 The more difficult step was making sure children knew how to act on any breach of their rights. As one student put it *"Even if you know your rights and they're being abused* [what do you do about it]? *The biggest problem is action."*

2.3 Students recognised that there needed to be a multifaceted approach to addressing any infringement of their rights since there are a number of tensions for children; this is particularly so in child abuse issues where children may not want to disclose their situation to a counsellor, mentor, teacher, or another student.

The group suggested small group sessions where students would brainstorm ideas and discuss different scenarios with possible solutions. The advantage of this approach was that the focus was on a scenario not an individual's particular circumstance. The solution would include *"avenues for help"* which individual students could choose to

access. Another advantage of small groups, with or without a facilitator, is the probability that a more confident student may highlight an issue that others are not willing/ or have the courage to broach. Once the issue is on the table this could provide encouragement for other affected students to enter the discussion without disclosing the specifics of their particular circumstance.

### 3. *Children's Commissioner and Members of Parliamentn (See Appendix A).*

Year 5-8 students met with Dr. Cindy Kiro, officials in various ministries and cross-party members of parliament. The aim of the meeting was to ascertain how children's views were considered or not at a national level and students took the opportunity to pose a number of questions on issues of concern to them (refer annex A).

3.1 Students considered there was a lot of merit in holding such discussions as did the commissioner (Dr. Cindy Kiro) and the members of parliament.

3.2 Convention 4 (UNCROC) states "*The Government must do all it can to implement the rights in this convention.*" Students were very much aware they had better access to such people because parliament was located in Wellington. They agreed that this meant they have a responsibility to make sure parliamentarians acted on "*students' views.*" As a consequence, students felt an obligation to follow-up and send emails to make sure members of parliament were attending to their issues.

3.3 One student thought members of parliament and the commissioner could set up blogs and a website so students could register concerns on a number of issues not just breaches of UNCROC. One such matter was the media. Students were particularly concerned about the media's portrayal of youth, "*The media portrayed students badly; they recognised the bad things. They weren't fair but what about children doing good things?*"

### 4. *Home School Links*

4.1 "*There needs to be something that helps people relate to home and school, start with the young people [meaning junior school students].*" Students felt that it was important their parents were well informed about their learning and all it entailed. Parents didn't always ask them the right questions about what students were learning and how they were learning; a typical question was "*How was your day?*"

Students noted a number of ways to ensure better home school links enabling teachers, parents and students to be more informed about "*how they [students] learn*" such as retaining parent curriculum evenings but opening it up to students as well. Parents could have a separate meeting where they brainstorm ideas then regroup as a whole to listen to teachers talking about class programmes; likewise teachers listening to the matters parents want to discuss. In terms of the students, they would prepare issues for discussion prior to the meeting and present these to parents and teachers.

The students believed this would promote convention 29 (UNCROC) particularly sentence 2 which states:

*“It should prepare children [education] for an active adult life in a free society and encourage respect for human rights, their parents, their own cultural identity, language and values, and for others’ cultural backgrounds and values.”*

### **Concluding Remarks**

This is a snapshot of student thought about “*What would make a positive difference for you [students] at school.*”

## **Correspondence School roll**

Awaiting information.

## **Out of school hours care and recreation (OSCAR)/Out of school services (OSS)**

Submitted by Murray Upton, Chief Executive of OSCAR.

There are currently 1100 OSCAR programmes delivered by 600 organisations, funded by the Ministry of Social Development (MSD), and approved by Child Youth and Family (CYF). The OSCAR Foundation provides advice and support, and funding administration to these programmes under contract to the MSD. The Foundation estimates there are another 300-400 unfunded and unapproved programmes out there which we believe should be “encouraged” to come into the fold, including the need to be appropriately assessed and approved. We believe the Government has similar aspirations. Our concerns are with the quality of the programmes, as well as with their availability, accessibility, and affordability. The sector is under funded, and consequently, cannot respond to demands for OSS.

It is estimated that there are 650,000 children in the 5-14 (OSCAR) age group in NZ, and 80,000 per annum participate in an OSCAR programme of some sort. That equates to a 12% participation rate. (Compared to a 77% participation rate in the ECE sector of some 240,000 children) It is common knowledge (even within government circles) that funding for, and attention to, the OSS sector has been ad hoc in the past and is not sufficient. For example, following the last budget, the early childhood sector received \$700m from VOTE: Education. The OSCAR sector received \$23m. That equated to \$2917 per child in the early childhood sector, compared to \$35 per child in the OSS sector.

The “Choices for Living, Caring and Working Plan” (New Zealand Government, 2006) called for **improved quality** and an **improved participation** rate in the sector. Similarly, a report released by the Families Commission, “When School’s Out” (2007), called for a significant increase in state funding for the sector. It concluded that 73% of respondents to their survey would use OSS services if suitable **quality, affordability and accessibility** were assured. This finding was supported by a review of the literature which indicated that “regular, sustained participation in OSS of sufficient **quality** is likely to generate positive benefits for children. These include educational, developmental, preventive and cultural benefits”. (Ministry of Women’s Affairs, 2007).

The MSD 5-Year Action Plan Consultative Document (June, 2007) focuses on the areas of **quality, affordability, accessibility and availability** (with the assistance of an Expert Advisory Group). The plan is completely consistent with the wish list OSCAR submitted to the MSD in late 2006. The vision statement of the MSD 5-Year Action Plan is to: “enable parents of school-age children access age-appropriate services which are **available, affordable, accessible and of good quality**”. Again, this is entirely consistent with the OSCAR Foundation’s vision of “**Enriching Childhood**”.

Despite recent research and several reports, children’s participation in OSS is limited. The sector is currently grossly under funded and this impacts on the quality of services. There is no coherent provision and this needs to be addressed in order to secure children’s participation rights in OSS.

### **Secondary Education issues**

Material yet to be supplied

### **Gender imbalance in educational achievement**

#### **Educational failure of boys**

Recent research and Ministry of Education statistics provides evidence that boys are both underachieving at school and leaving school without base line qualifications.

In January, the *Listener*, in an article titled "Girls on Top", pointed to research done by Roy Nash at Massey University that shows girls are now beating boys on almost every level, and that the gap in reading abilities is one of the highest in the world. He suggests that part of the explanation is the move away from competitive examinations towards continuous assessment.

This view is contradicted by researcher Marilyn Smith who claims that a small group of dominant boys control the classrooms to such an extent that they limit the knowledge available to the other boys. Nash explains that this theory leads to the situation where "in many schools it is the understood job of the fourth form dean to get rid of the kids they would rather not have". (retrieved from [http://menz.org.nz/menz-issues/february-march-1998/#Education\\_System\\_Fails](http://menz.org.nz/menz-issues/february-march-1998/#Education_System_Fails) on 7 July 2007)

A longitudinal study by Professor David Fergusson found that in all comparisons (performance in reading, written expression, maths, teachers’ rating of children and outcome measures such as achieving school leaving certificates etc) boys aged 8 to 18 years did worse than girls. While the 1988 Royal Commission Report on Social Policy called for specific actions to advantage girls over boys because the girls "did not get a fair chance to develop their abilities", this current data indicates that it is the

boys rather than the girls who are disadvantaged. (retrieved from <http://menz.org.nz/menz-issues/february-march-1998/#Shaping> on 7 July 2007)

The long term implications of this educational deficit have been noted by Paul Callister & Newall (2006) and others (Callister, Newell, Perry, & Scott, 2006). Their research has highlighted a concern for social equity outcomes in the future. An analysis of census data gathered on highest level of educational qualification indicates that more females than males attain a first degree. While this is to be applauded for females, the drop in the number of male enrolments and therefore graduates is concerning. It is even more pronounced for Maori and Pacific male students. With significantly fewer boys achieving at the expected, let alone the minimum educational level, their economic contributions in the future may be curtailed. The education system needs to address the plight of male students both failing and leaving school before graduation in Y13. This is an issue that concerns stereotyped images of boys as socially disruptive as well as a need to introduce strategies that value boys educational achievements.

#### **Few male role models in education**

Since the 1990s when there were two particularly high profile sexual abuse cases taken against male early childhood teachers, there has been a rapid decline of male teacher numbers (see Farquhar, 1998, 2007). This is also true of the primary sector which “ leads many boys to decide that education is a female realm, and that to succeed is to be disloyal to their gender. As employment is increasingly knowledge-based, this attitude is likely to lead to higher levels of male unemployment in the future” (retrieved from [http://menz.org.nz/menz-issues/february-march-1998/#Education\\_System\\_Fails](http://menz.org.nz/menz-issues/february-march-1998/#Education_System_Fails) on 7 July 2007)

The educational achievement of boys is now a rights- issue in need of attention because it potentially disadvantages male participation in the workforce. Recent trends have favoured professional education over vocational (technical and trade) qualifications to the detriment of many boys, and in fact the labour market in Aotearoa/New Zealand is currently experiencing a huge shortage of skilled labour. So while the policy of “girls can do anything” has proved successful, girls’ career choices remain predominantly confined to traditional gendered occupations (Callister et al, 2006), there is a corresponding skills gap in traditionally male occupations.

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## Appendix A

### Meeting July 23 2007 Clyde Quay School, Wellington Children's Commissioner, officials and cross-party members of parliament

#### Agenda

1. Whakatau - Liz Patara (principal)
2. Dr Kiro's introduction
3. Children welcome visitors
4. Two year 5-6 reps outline briefly how this visit was initiated last year.
5. Rotation of adults around groups of 6-7 students.  
NB: There will be time for two rotations - MP's will get to talk with one group of Year 7-8 students and 1 group of year 5-6 students.
6. Questions time
7. Thanks by the students

Issues - these will be what the groups of students talk about in the rotation. Each group has a different focus. Visitors will get to talk to two groups.

#### Year 7-8 Topics

1. Young people are not always the same as what the media portrays
2. We care and that we are concerned citizens
3. Our future concerns and in particular issues of employment and opportunities for further education.
4. We would like to be respected, taken more seriously and involved in decision that are made about us.

#### Year 5-6 Topics

1. We feel there should be stronger laws against smoking, drinking and drugs to protect people our age.
2. Role models- we want people to look up to. Celebrities are not always doing a good job of being good role models.
3. Children need help to talk to their parents. Sometimes when kids raise issues or talk about adult behaviour they get growled at.
4. Chn care about issues like pollution, conservation, global warming.  
Adults need to listen to children's voices as they have creative constructive ideas.

#### Questions which will be raised in question time

1. How do you know that you are listening to kids views?
2. Do you and your party join ideas together with other parties?
3. Do you like reading?
4. Do you often visit schools?
5. Have you read an article recently about how great children can be?

6. Why at 12 are we sometimes an adult and sometimes a child? when we go on planes and buses we are considered adults but the rest of the time we are considered children.
7. Have you considered running a kids parliament for kids under 14?
8. What do you think we should know about your job?

Sue Clement (DP)

Rebecca Sinclair (teacher)

The following students participated in the discussions and contributed to this report:  
Students recommend staff considers and progress the issues raised in this paper.

Jessica Hassard, Matisse Rendell-Mitchell, Oska Rego, Geraldine Wilkins, and Grace Boston.