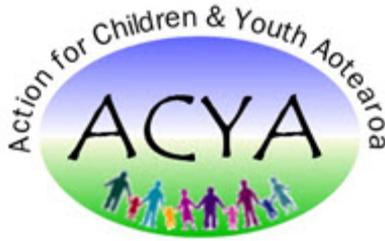


Education Amendment Bill (No 2)

**Submission to Education and Science
Committee**

29 April 2014



Action for Children and Youth Aotearoa (ACYA) is a coalition of non-governmental organisations, families and individuals promoting the rights and wellbeing of our children and youth through education and advocacy based on evidence and New Zealand's human rights commitments.

Underpinned by the values encapsulated in the UN Convention on the Rights of the Child (UNCROC), Te Tiriti O Waitangi and the wider human rights framework, ACYA promotes:

- accountability by providing reports from NGOs in Aotearoa New Zealand on Aotearoa's compliance with UNCROC to the UN Committee on the Rights of the Child (UN Committee)
- understanding and implementation of UNCROC
- action on the recommendations of UNCROC Committee to Aotearoa New Zealand;
- opportunities for the participation of children and youth and for their voices to be heard

ACYA's principal work is the production and publication of Aotearoa New Zealand's Alternative NGO (non-governmental organization) Reports to the UN Committee on Aotearoa's implementation of the UNCROC. Aotearoa ratified UNCROC 6 April 1993. The alternative reports are submitted as part of the formal periodic reporting process under Article 44 of UNCROC.

ACYA most recently produced and published *Children and Youth Aotearoa 2010*, the NGO sector's third and fourth periodic report on Aotearoa New Zealand's implementation of UNCROC. The report and its working papers were presented to the Committee in Geneva, 7 October 2010.

ACYA produced and published *Children and Youth in Aotearoa 2003*, the second periodic NGO report on Aotearoa New Zealand's implementation of UNCROC. ACYA supported children to develop a video called *Whakarongo Mai / Listen Up* which collated and presented the views of children and young people. Both the report and video were presented to the Committee in Geneva in June 2003.

ACYA has made numerous reports on New Zealand's compliance with other human rights treaties and on proposed legislation and policy that impact upon children. Between 2004 and 2009 ACYA was represented on the UNCROC Advisory Group to the Ministry of Social Development and most recently sits on the UNCROC Monitoring Group co-ordinated by the Office of the Children's Commissioner. ACYA receives no government funding.

General Comments on the Bill and its context: the importance of universal principles and services

1. Action for Children and Youth Aotearoa's (ACYA's) submissions on the Bill are restricted to comments that are specifically supported by reference to Aotearoa New Zealand's obligations under the UN Convention on the Rights of the Child (UNCROC). ACYA reminds the government that its ratification of UNCROC on 6 April 1993 brings with it a responsibility under international law to ensure all law, policies and practices relating to children under 18 comply with UNCROC principles.
2. ACYA wishes to exercise its right to an audience with the select committee and to address the committee directly on the issues arising from its submission.
3. ACYA opinions on the merits of the proposed amendments to the establishment of a new professional body The Education Council of Aotearoa New Zealand (EDUCANZ) which replaces the existing Teachers' Council are restricted to ACYA's views on how this may impact children and young people's rights to education.
4. ACYA supports the underlying principles of the Bill to ensure that New Zealand's education sector is equipped to
 - a. meet the challenges and opportunities of the modern learning context; and
 - b. create a regulatory framework that promotes accountability and high standards within the education sector; and
 - c. strengthen processes, as appropriate.
5. ACYA acknowledges the important role EDUCANZ will play in maintaining a high quality teaching workforce but also notes that there are threats to this via the establishment of partnership schools and reduced requirements for early childhood teachers to be qualified and registered.
6. UNCROC Articles 28 and 29 are usually cited in relation to education (early childhood, primary and secondary). Article 28 articulates the child's rights to education and the States Parties responsibility to provide free (at the primary level), accessible and available schooling. Our previous Human Rights Commissioner, Rosslyn Noonan extended that aspiration to early childhood services¹ and using UNCROC's notion of progressive compliance (Article 44.1) in conjunction with the research that emphasizes the importance of the early childhood years, ACYA submit that this is an appropriate interpretation in the Aotearoa New Zealand context².

¹ Noonan, R. (2001, October). *Early childhood education – a child's right?* Paper presented at the Early Education for a Democratic Society, Wellington. Wellington: New Zealand Council for Educational Research; Noonan, R. (2003, October). *Early childhood education from optional extra to essential, from privilege to right.* Paper presented at the AEU National Early Childhood Education Forum, Melbourne.

² Gluckman, P. (2011). *Improving the transition. Reducing social and psychological morbidity during adolescence. A report from the Prime Minister's Chief Science Advisor.* Office of the Prime Minister's

7. Article 29 directs States Parties to ensure the development of the child's potential to its fullest extent. The role of education is to "prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her cultural identity, language and values, and for the cultural background and values of other"³
8. ACYA's view is that while the Bill contains some valuable provisions, there are shortcomings in the scope of these provisions in regards to Aotearoa New Zealand's obligations as a signatory to UNCROC. ACYA submits that are broader considerations that must be addressed. ACYA's belief is that these shortcomings arise from a failure of the current Bill to utilise this opportunity to inform, include, and consider the views and opinions of children and young people in the broader education legislative and policy context. These considerations pertain
 - a. Obligations to Te Tiriti o Waitangi and
 - b. Obligations to UNCROC.

Te Tiriti o Waitangi and Tamariki Māori

- 10 It is ACYA's view that any legislation should foreground the principles and objects of Te Tiriti o Waitangi. The proposed amendment reduces membership of EDUCANZ Council from 20 persons, nominated and elected, to 12 maximum, nominated *but appointed*.
- 11 The UN Committee on the Rights of the Child noted *with appreciation* "the numerous efforts of the State party in the sphere of education including the new Education Amendment Act and Māori Education Strategy (2008 – 2012)"⁴. We are concerned that the new appointment process will impact on Māori representation, and reduce EDUCANZ's ability to provide culturally appropriate advice.
- 12 In principle ACYA believes that policies which affect the educational quality of services provided to children and young people should be developed in consultation with whanau, hapu, iwi and community groups. Too often tamariki/rangatahi Māori are marginalised and their views are not included (see sections 16 – 25)
- 13 Recent legislative proposals concerning the children's workforce should require that persons demonstrate an understanding of and ability to meet the obligations of the Treaty of Waitangi.

Science Advisory Committee Retrieved from <http://www.pmcsa.org.nz/wp-content/uploads/Improving-the-Transition-report.pdf>.

³ Child Rights Information Network. (2007). Convention on the Rights of the Child [Electronic Version]. *Children's Rights Information Network*, 1-22. Retrieved June 25, 2007, from <http://www.crin.org/docs/resources/treaties/uncrc.asp>

⁴ Committee on the Rights of the Child, 56th session, 17 January – 4 February 2011, *Consideration of reports submitted by States Parties under article 44 of the Convention – Concluding Observations, New Zealand CRC/NZL/CO/3-4*, available at <http://www2ohchr.org> para 45

Law, policy and practice not yet compliant with Aotearoa New Zealand's obligations under the UN Convention on the Rights of the Child

- 14 Children's legislation should make specific reference to Aotearoa New Zealand's obligation under UNCROC. ACYA recommends that a Clause be inserted into the Bill to include a reference to Aotearoa New Zealand's commitments to the UN Convention on the Rights of the Child as noted below.
- 15 In its concluding observations on Aotearoa New Zealand's 3rd and 4th periodic report in 2011 on its implementation on the UN Convention on the Rights of the Child,⁵ the UN Committee noted in its concluding remarks that "not all domestic laws are harmonised even among themselves."⁶ It recommended that the government of Aotearoa "ensure that all existing domestic legislation relating to children is consistent and brought into compliance with the Convention."⁷
- 16 The primary legislation relating to education is the Education Act 1989, which sets out children and young people's entitlements to enrol and receive education. Evidence is clear that access to high quality early childhood, primary and secondary education develops protective factors and ultimately acts as a sound investment in the future. A qualified, registered teaching force is essential to achieving this and the role of EDUCANZ is therefore critical. This should be an entitlement for all children regardless of the type of school they attend and so ACYA suggests that requirements for registered, qualified teachers be extended to include Charter, or partnership schools.

Consulting with children and young people

- 17 UNCROC obligations apply to all children and young people regardless of where they are educated. Article 12 of UNCROC requires a State Party to both inform and consult children and young people about all matters that concern them. In its response to Aotearoa New Zealand Government's official report, the UN Committee on the Rights of the Child noted with regret:
 - a. that the views of children are not adequately represented within the family, in schools and in the community. The Committee also regrets that there are no means by which children can express their views in the public domain, and that the State Party does not systematically take into consideration children's views when formulating laws and policies that may affect them⁸
- 18 The implementation of Article 12 should be interpreted and applied in line with children's other rights including the right to be supported and guided by adults (Article 5) and the

⁵ For the official text of the concluding observations, see <http://www2.ohchr.org>. A pdf of the observations can also be read at <http://acya.org.nz> under "Children's Rights and Resources".

⁶ Committee on the Rights of the Child, 56th session, 17 January – 4 February 2011, *Consideration of reports submitted by States Parties under article 44 of the Convention – Concluding Observations, New Zealand CRC/NZL/CO/3-4*, available at <http://www2ohchr.org> para 10.

⁷ Ibid, para 11(a).

⁸ Ibid para 26 *

right to seek, receive and impart information under Articles 13 and 17 of UNCROC, both of which are 'crucial pre-requisites for the effective exercise of the right to be heard'.⁹

- 19** It is essential that education policies are informed by the views of children and young people. UNCROC obligations apply to all children and young people regardless of where they are educated. ACYA recommends that Clause 386 be amended, to establish a children's and young person's Advisory Board. This Board could both inform the EDUCANZ and provide a forum that would give an opportunity for EDUCANZ to consult with a significant partner in education – students. ACYA recommends the following amendment be included: "that EDUCANZ policy be drawn up in consultation with children and young people, who must have been given opportunities, either individually, in groups or through representatives, to indicate whether they wish to express views. Any views expressed by children and young people or their representatives shall be incorporated into the policy."
- 20** Sections 399 – 402 deal with complaints processes and procedures pertaining to teacher competence and eligibility for practicing certificates and registration. We appreciate this can be a fraught process particularly in the context of self-managing schools¹⁰. Under the proposed legislation, persons are able to submit complaints beyond the school but we feel that children's and young people's views require a proactive stance. A complaints process specifically designed for children and young people should be incorporated into this amendment. This could be based on work done by the Office of the Children's Commissioner for children in care¹¹.

International Students

- 21** AYCA welcomes legislation to protect the well-being of international students studying in Aotearoa New Zealand schools. It is our view that the proposed Disputes Resolution Scheme (DRS) suffers from the same limitations as EDUCANZ because there appears to be limited facility to adequately consult with children and young people. The onus is on one government appointed person to administer the Scheme. We suggest that an Advisory Group of young people representing the interests of international students be established. This does not necessarily have to advise the DRS exclusively but could already be in existence. In principle, however, ACYA supports consultation in appropriate ways with children and young people particularly in matters that directly concern them.

⁹ Lundy, L., & McEvoy, L. (2011). Children's rights and research processes: Assisting children to (in)formed views. *Childhood*, 19(1), 129-144. doi: 10.1177/0907568211409078

¹⁰ Youthlaw, Out of school, Out of mind: the need for an independent review tribunal, 1 August, 2012

¹¹ Egan Bitran, M. (2013). A review of the Child, Youth and Family complaints resolution policy and procedure: Recommendations on how Child, Youth and Family can take a child-centred approach to complaints resolution. Wellington: Office of the Children's Commissioner.

Support for Youthlaw Amendment

- 22** The current exclusion rules generate statistics that contain disproportionate numbers of children from at risk populations: low income, Maori, Pasifika and disabled children¹². In 2010, ACYA recommended the Government takes action to reduce the disproportionate numbers of Maori and Pacific Island students and students with special educational needs who are subject to suspension, exclusion and expulsion from school:
- (c) Introduce restorative justice conferencing as a compulsory process for resolving serious disciplinary matters in state or state integrated schools; and
 - (d) Introduce an accessible and independent appeal process for determining disputed disciplinary outcomes.
- 23** ACYA supports Youthlaw's proposed clause for the Education Amendment Bill (No 2) which effectively establishes an independent education tribunal under the auspices of the Youth Court. While there may be perceptions that the Youth Court deals with criminality, according to Youthlaw, there is facility to conduct hearings relating to stand-downs, suspensions, exclusions and expulsions in child-appropriate ways.
- 24** Although the Education Act 1989 provides that appointments to secondary school Boards of Trustees must include a student representative, there is little external support available for student representatives to assist them with the difficult task of representing a range of student interests and views. At the Board level, they are heavily outnumbered by school staff and parents, and risk alienating the adult members if they are robust in their advocacy for student interests¹³.
- 25** A corollary expectation of ACYA's is that the School Trustees Association, the teacher unions and other education groups be supported to increase training for incoming and existing school boards of trustees, teachers, parents and children and young people. Similarly, other independent advocacy agencies, including the Office of the Children's Commissioner, should be funded to provide training and resources.

Sarah Te One, Education Spokesperson
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¹² Concluding Recommendations, paras 45 (d) and 46 (a, b & d)

¹³ Action for Children and Youth in Aotearoa 2010

http://www.acya.org.nz/uploads/1/7/4/9/17491909/children_and_youth_aotearoa_2010.pdf