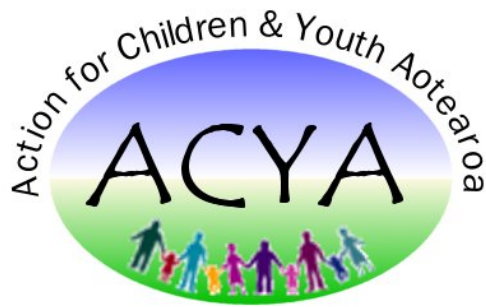


Education, leisure and cultural activities

**Discussion paper for consultation:
Delivering children's and young people's rights
under UNCROC**

September 2015



Action for Children and Youth Aotearoa (ACYA) is a coalition of non-governmental organisations (NGOs), 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 New Zealand's compliance with UNCROC to the UN Committee on the Rights of the Child (UNCROC 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 UNCROC Committee on Aotearoa New Zealand's implementation of the UNCROC. Aotearoa New Zealand ratified UNCROC on 6 April 1993. The alternative reports are submitted as part of the formal periodic reporting process under Article 44 of UNCROC.

The Government submitted its fifth periodic report to the UN Committee in May 2015. In the next 12 – 15 months, we will be consulting our members, individuals and organisations working with children and young people. We want to know: to what extent are the rights of children and young people in Aotearoa New Zealand being delivered?

This position paper forms part of ACYA's consultation process. We look forward to receiving comments, criticisms and amendments from all those with an interest in the issues raised by the paper.

ACYA gratefully acknowledges the financial support of the JR McKenzie Trust, which makes our work possible

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Introduction

The purpose of this discussion paper is to inform the development of the education, leisure and cultural activities section of the UNCROC shadow report. This paper examines, and asks for feedback on, how well Aotearoa New Zealand is using the child rights standards and principles from UNCROC to guide the government's behaviour, actions, policies and programmes in this area of the lives of children and young people.

The first part of this paper considers what general steps Aotearoa New Zealand is taking to implement UNCROC and how these apply to education, leisure and cultural activities. The second part of the paper looks specifically at the realisation of rights children and young people to learn, rest, play and enjoy arts and culture.

The format and content of ACYA's NGO (shadow) report

ACYA's NGO (shadow) report to the UN Committee on the Rights of the Child must be no more than 30 pages long. It should analyse the implementation of legislation and the effects of government policies. It must follow a prescribed format and address eight prescribed themes. One of these themes is education, leisure and cultural activities. The UN Committee welcomes case studies that demonstrate what is actually happening for the tamariki and rangatahi of Aotearoa New Zealand.

ACYA's approach to developing the shadow report

When assessing how well individual articles are being applied ACYA's approach¹ is to recognise the indivisible and interdependent nature of the rights of children and young people and take into account the four general principles of UNCROC:

- i. non-discrimination - are all children able to enjoy the right in question? (Article 2);
- ii. best interests - is the current situation with respect to a particular right in the best interests of the child? (Article 3.1);
- iii. life, survival and development - what is being done to ensure children are able to live and develop to their full potential? (Article 6);
- iv. participation - have children's views been respected? (Article 12).

ACYA also considers two other principles central to an assessment of how well UNCROC is being applied:

- v. guidance by families/communities - are children able to get support from within their whanau and community able to help them exercise their rights? (Article 5)
- vi. implementation – what more could be done to implement the right? (Article 4).

¹ 1 For an explanation of a child rights approach see chapter 2 of UNICEF Child Rights Education Toolkit, 1st edition.
http://www.unicef.org/crc/files/UNICEF_CRE_Toolkit_FINAL_web_version170414.pdf

The UN Committee have described a child rights approach as being "holistic" and placing emphasis on supporting the strengths and resources of the child him/herself and all the social systems of which the child is a part: family, school, community, institutions, religions and cultural systems.

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As part of engaging with the public, ACYA is hosting regional seminars on key issues. Questions are asked at the end of each section of this paper to guide consideration of these principles. All comments on this Working Draft are welcomed.

If you cannot make the Seminar, please send your comments directly to Margery Watson, Secretary ACYA at margery.watson@acya.org.nz

We would like to thank you for taking the time to read this paper.

UNCROC articles relating to education, leisure and cultural activities

The relevant articles are:

- Article 2 – the right to be protected from all forms of discrimination, including any resulting from the child's or guardians' race, colour, ethnic or social origin
- Article 3 – the right to best interests as a primary consideration in all actions of administrative and legislative bodies that affect children
- Article 4 – sets out the obligation to implement all the rights of children and young people (economic, social and cultural rights to the maximum extent of available resources)
- Article 5 – the right to parental guidance and support from within the child's whanau and culture
- Article 6 – the right to life, survival and development to full potential
- Article 12 - the right to express views in all matters affecting the child, including in judicial and administrative proceedings
- Article 13 – the right to freedom of expression and to impart and receive information of all kinds
- Article 14 – the right to freedom of thought, conscience and religion
- Article 18 – the right to appropriate public service support for parents in bringing up their children
- Article 23.3 – the right to effective access to and receipt of education for the child affected by disabilities, to allow the child's fullest possible integration and individual development
- Article 28 – the right to education, delivered progressively and on the basis of equal opportunity
- Article 29 – the right to education that develops the child's personality, talents and mental and physical abilities to the fullest extent and respect for the human rights and fundamental freedoms of others
- Article 30 – the right of a child who is of indigenous descent, or who belongs to an ethnic, religious or linguistic minority, in community with other member of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, and to use his or her own language

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- Article 31 – the right of the child to rest and leisure, to engage in play and to recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts
- Article 37 (a) and (b) – the right to freedom from torture, cruel, inhuman and degrading treatment or punishment; and the right to freedom from arbitrary and unlawful detention
- Article 42 – the government undertakes to make the principles and provisions of the Convention widely known by active means, to children and adults alike

UN Committee's concluding observations in 2011 relating to education, leisure and cultural activities

In 2011, the UN Committee produced its concluding observations and recommendations on the combined 3rd/4th periodic report submitted by the government of Aotearoa New Zealand. When the UN Committee considers our government's 5th periodic report – lodged in Geneva 5 May 2015 – it will first consider to what extent the government has acted upon previous concluding observations.

Concluding observations and recommendations relating to education, leisure and cultural activities are:

- Recommendation 17 – the government should initiate a child budgeting exercise that will allow it to specify strategic allocations to implement the rights of children and young people, track this implementation, monitor results and evaluate impact
- Recommendation 19 – the government should strengthen and expand its dissemination and awareness-raising activities to ensure that UNCROC provisions are widely known by the public, teachers and other professionals working with children, as well as the children themselves
- Recommendation 21(a) – the government should develop and further strengthen systematic training on their UNCROC responsibilities for all professional groups working for and with children, including teachers and personnel of childcare institutions
- Recommendation 21(b) – human rights education should be included in the official curriculum at all levels and in professional training
- Recommendation 27 – since the views of children are not adequately respected in schools, the government should promote, facilitate and implement respect for the views of the child in schools
- Recommendation 46(a) – the government should ensure that all children have access to high quality early childhood education and care which is, as a minimum, free for socially disadvantaged families and children
- Recommendation 46(b) – the government should strengthen its efforts to reduce the negative effects of ethnic, cultural and social background on enrolment and attendance at school

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- Recommendation 46(c) – the government should invest considerable resources to ensure that all children – including marginalized and disadvantaged – receive a truly inclusive education
- Recommendation 46(d) – the government should reduce the number of exclusions from school and provide social workers and educational psychologists to assist children whose schooling is at risk
- Recommendation 46(e) – the government should ensure that parents are not pressurized to make donations to school and that children whose parents cannot or do not donate are not stigmatized
- Recommendation 46(f) – the government should intensify efforts to eliminate bullying and violence in schools
- Recommendation 48 – the government should develop and allocate sufficient funding for services and programmes for school-age children after school and during holiday periods; these programmes should be financially and geographically accessible to all children on an equal basis

Some recommendations are general and relate to training and awareness-raising about UNCROC for all sectors, including education. Some relate specifically to schools and education policies and practices. Many of the recommendations made in 2011, or variations on them, were also made in 1997 and 2003, in response to New Zealand's previous UNCROC reports. This paper considers the implications of all of the recommendations and the extent to which the government may be said to have taken them seriously.

Are these still the main issues?

What new issues have emerged?

How do these issues impact on children and young people?

Are current policy and/or practices in the best interests of children and young peoples? Why? Why not?

**Are certain groups of children and young people affected more than others?
How?**

How/where can we find out about the children's and young people's views on these issues?

Part One: Measures to improve implementation of UNCROC

The Committee has identified several areas where Aotearoa New Zealand could improve the processes for ensuring the rights of children and young people are taken into account (general measures of implementation). These relate to:

- Aotearoa New Zealand's reservations to UNCROC
- The harmonisation of Aotearoa New Zealand law with UNCROC
- The definition of a child
- Planning to implement UNCROC
- Co-ordination between government agencies
- The lack of a permanent mechanism to ensure implementation of UNCROC across government
- disaggregated data on children
- budget allocation for children
- awareness and training
- the application of UNCROC in Tokelau.

Several of these recommendations have specific application to children's education, leisure and cultural activities and are covered below.

Access to education for children illegally in Aotearoa New Zealand

The general reservation to article 2 (lodged when Aotearoa New Zealand ratified UNCROC in 1993) that directly impacts on access to education remains in place. That reservation maintained that the government would continue to discriminate against children who were unlawfully in Aotearoa New Zealand, including the right to education.

The 5th periodic report (para.19) states that the Ministry of Education introduced "certain criteria" that allowed for children unlawfully in Aotearoa New Zealand, aged 15 to 19 years, to be enrolled in schools. The 5th periodic report (para 19) states that since 2010 approximately 2000 such children have accessed state-funded education. ACYA would like details of the criteria used and the percentage this represents of all those aged 5 – 19 years who are in Aotearoa New Zealand illegally.

Child budgeting and disaggregated data

The 5th periodic report (para. 44) admits that the government's accounting system "does not isolate the level of total expenditure on children and/or families." There is a broad programme of work currently underway (for example, the Children's Action Plan for vulnerable children, the extension of free doctors visits to children up to the age of 13 the Budget 2015 announcements of increases to benefit payments) with associated budget allocations. However there is no budget specifically for children and young people and

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because there is very little disaggregated data available, it is difficult to determine the level of government commitment to policies and initiatives for children and young people.

UNCROC dissemination and awareness-raising

The Ministry of Education website <http://www.minedu.govt.nz> does not have a single mention of UNCROC or of the rights of children and young people in education. Neither are links provided to the information about UNCROC that is available on the Ministry of Social Development website.

ACYA is not aware of any dissemination of information about UNCROC to Ministry of Education staff or consideration of UNCROC's implications for the provision of education in Aotearoa New Zealand. The reference to \$80m per year by the Ministry of Education for Professional Learning Development (PLD) contains no evidence that any of these resources relate to understanding how to develop a rights-based education system for children and young people.

Neither is ACYA aware of any dissemination of information about UNCROC to government agents such as the Education Review Office (the agency responsible for evaluation and accountability of education services), the New Zealand Qualifications Authority (the agency responsible for oversight of national qualifications) or the Education Council, the body responsible for registration of teachers.

It is not clear what information about UNCROC the new Partnership Kura Hourua (sometimes referred to as charter schools) are provided with, or to what extent they are obliged to meet government responsibilities under the Convention. There are currently 9 of these schools operating in Aotearoa New Zealand.

Are these still the main issues?

What new issues have emerged?

How do these issues impact on children and young people?

Are current policy and/or practices in the best interest of children and young peoples? Why? Why not?

**Are certain groups of children and young people affected more than others?
How?**

How can we find out about views of children and young people on these issues?

Human Rights Education

The national school curriculum includes a number of values that are to be encouraged, modelled and explored (<http://nzcurriculum.tki.org.nz>). Two of the values are diversity and equity. Despite this, the curriculum does not refer to UNCROC or any of its principles, nor does it refer to other international human rights documents. Partnership or "charter" schools do not have to apply the curriculum.

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ACYA notes that while there do not appear to be any teaching resources provided by the government that refer to or include UNCROC, under "vision, values and principles" in the curriculum website, there are results from student focus groups. ACYA would like more information on these focus groups, how many students were involved and what actions were taken, based on the pupils' views. The focus groups appear to be a potential example of good Article 12 practice in curriculum development.

In Aotearoa New Zealand, there are schools who work with UNICEF NZ and with Save the Children NZ and these schools include human rights education as part of their curriculum. The NGO Human Rights in Education (<http://www.hrie.net.nz>) has excellent resources that may be used in schools to help develop a human rights-based all-school environment.

The early childhood sector curriculum, Te Whāriki, is more explicitly rights-based and the sector itself has cited UNCROC in major policy documents since its inception. The lack of adequate funding for professional development has stalled innovative, rights-based, child-centred assessments in the sector (www.ero.govt.nz/national -Reports/infants-and-toddlers-confident-communicators and explorers June 2015).

Cuts to research funding across the board have impacted significantly on the education sector's ability to assess innovation and quality. The competitive, contestable models for funding research appear to favour short term political priorities and longitudinal research opportunities are significantly lacking, further marginalizing children's experiences.

UNCROC professional training

ACYA is not aware that training or continuing professional development for early childhood education or school teachers includes UNCROC or even general human rights content. NZQA requirements for training do not refer to UNCROC or require its inclusion as a subject. While pockets of professional training offered by some providers do include specific reference to UNCROC, this is positioned as a subject to be examined rather than as a practice to be embedded. A problem with the sector, particularly the early childhood sector is the number of training providers, both state and private sector, and the fact that qualified, registered teachers are no longer a national regulatory requirement.

ACYA is increasingly alarmed at the dramatic reduction of Maori and Pasifika lecturers working in mainstream training providers. Affirmative action to include indigenous and Pacific scholars has not been supported by competing demands for universities to become globally viable financial institutions. The Performance Based Research Funding (PBRF) has impacted negatively on minority populations resulting in staff redundancies. The lack of diversity at a tertiary level has a domino effect on the student population and ultimately on who ends up in early childhood education services and classrooms.

Tokelau

The 5th periodic report (para.29) states that the Education Review Office completed a review on the provision of education in Tokelau in February 2014. That review highlighted that (para.29) "significant and urgent action is necessary to improve the quality of education in Tokelau". A five year work plan is referred to, but no further information is provided on how this work plan will improve or increase access to quality education for children in Tokelau.

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ACYA notes that UNCROC has still not been extended to Tokelau, despite the UN Committee's recommendation that they should do so (recommendation 9(b), 2011). ACYA continues to be concerned by the practical implications this has for children residing in Tokelau. While ACYA is cognisant of the wishes of the Tokelau Government, we expect the New Zealand Government to prioritise it's work to extend UNCROC to include Tokelau to ensure that those children also enjoy the same rights as Tokelau children residing in Aotearoa New Zealand.

The rights of indigenous children to education that respects their culture and language

The protection and promotion of cultural identity is a key aspect in the positive and healthy development of every child. The ability to learn and utilise language and cultural practices in multiple settings strengthens a child's sense of wellbeing and their place in their communities. For Māori children te reo Māori (language) and tikanga (culture) are fundamental to their positive health and development and are likely to lift their engagement and achievement in education.

The government's own figures show the lack of significant investment in either education delivered in te reo or in cultural settings appropriate for Māori children. As at 1 July 2014, only 2.3% of the school population was enrolled in education in te reo (<http://www.educationcounts.govt.nz>). The number of students (17,713) was unchanged from 2013. 19.2% of the school population was involved in Māori language learning in English, the vast majority of whom received less than three hours in total.

The 5th periodic report refers (para.57) to the Māori Education Language Strategy. However, no information is provided regarding the resources invested in the strategy, the numbers of kura kaupapa and immersion schools that exist and are supported by the government and the numbers and levels of pupils (both Māori and non-Māori) in Aotearoa New Zealand who have the opportunity to learn te Reo Māori at primary and secondary school levels.

Are these still the main issues?

What new issues have emerged?

How do these issues impact on children and young people?

Are current policy and/or practices in the best interests of children and young people? Why? Why not?

Are certain groups of children affected more than others? How?

How can we find out about views of children and young people on these issues?

Part Two: Current Issues

ACYA has begun consulting with individuals and organizations in the non-government organization (NGO) sector to identify issues impacting children's education, leisure and culture rights. The issues are as follows:

- Equal access to education
 - Access to high quality early childhood education
 - Reduce negative effects of ethnic, culture and social backgrounds
 - Alternative education programmes
 - Access to quality inclusive education
 - Education for children in care
 - Exclusions from school
 - Parental donations to schools
- Leisure and cultural activities
 - After-school and holiday programmes
 - Provision of play and recreational activities
- Elimination of violence and bullying in schools
- Views of children and young people
 - Children's views on education
 - Children's views on leisure and cultural activities

Equal access to education

The government accepts (para.62) that “disparities in educational outcomes for Māori and Pasifika students remain a challenge.” The significantly lower achievements for indigenous and Pasifika children and young people means that UNCROC Art.2 and Art.28 are being breached. When considering the delivery of UNCROC rights, it is useful to remember that the Māori population is young, in comparison with the rest of the population of Aotearoa New Zealand (Kukutai, 2011). The NEET (Not Engaged in Education or Training) figures indicate the scale of the issue: 17.6% Māori males, 27.5% Māori females, compared with 11.5% and 14.6% for non-Maori young people.

Access to high quality early childhood education

In its 5th periodic report (para.11), the government claims: “targeted early childhood education initiatives are addressing multiple barriers to participation”. The report provides no evidence of the impact of the initiatives, the numbers of children involved, their ethnicity or socio-economic backgrounds. ACYA is not aware of any information to substantiate government's claim.

The focus on initiatives to increase the participation of children in ECE has given rise to concerns about the quality of services and, particularly that as more resources have been put into increasing participation funding of known quality indicators, such as qualified staff

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and training, has reduced. (See Carmen Dalli opinion piece in Herald - m.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11493068)

The report (para.38) states that the rate of involvement of children starting school in early childhood education was 95.9% in 2014. There is reference to – but no figures for – increasing Māori and Pasifika involvement.

Public-private partnerships have increased since the last report with large for-profit corporate ECE service providers buying up small community based services, re-branding them with new equipment and fewer qualified staff, and then, selling them on (see the Kidcorp/Evolve situation). Large corporate centres with licenses for up to 150 children contradict international research measures of quality provision. While the figures for participation may be high, ACYA questions the quality of that participation.

ACYA welcomes measures to address quality for home-based ECE schemes. However, in a peculiar conundrum, the new MOE licensing criteria for home-based ECE educators has had the unintended consequence of excluding over 400 children under 5 in care of the State and enrolled in one home-based care programme due to significant differences between MSD's caregiver criteria and the MOE's home-based educator criteria.

Reduce negative effects of ethnic, culture, social background

Inequality is now considered the most important issue facing education in New Zealand. ACYA's consultation with representatives from the early childhood and compulsory sectors have identified the long-term effects of income and food poverty, poor housing, ongoing health and wellbeing issues on achievement. They agree that children's participation in education is compromised beyond measure by poverty. Schools in low decile areas engage in more pastoral care for children than do schools in high decile areas. (See CPAG policy papers, for example, "Our children: our choice" Nos 2 and 3.)

According to Post Primary Teachers Association (PPTA) data, it is the Decile 3 schools that are impacted most severely when it comes to the adequacy of funding, because they do not qualify for the same level of support as decile 1 and 2 schools yet do not have access to the same level of community resourcing that higher decile schools have. There are anecdotal reports of parents choosing high decile schools for their children suggesting a view that higher decile schools are the better schools.

Recent government policy requires sole parent beneficiaries to enrol their child in an ECE service and to engage in part-time work or risk a reduction to their entitlement for support. This is active discrimination that establishes a double standard for parents in New Zealand. While the research is clear that participation in ECE services of high quality is beneficial in the long term, there is no evidence that the services where these children attend meet established criteria for quality. Poor quality services are harmful. This is a breach of the intention of article 5 which establishes government responsibilities to support parents to raise children; of article 18 which articulates government responsibilities to support families by providing services for children; and article 2 is also breached because the policy actively discriminates against children of beneficiaries.

Alternative education programmes

Several initiatives have been introduced to redress inequalities in educational outcomes. These include Partnership Schools (Charter Schools) and Secondary Tertiary Partnerships (Trade Academies, STPs). A recent ERO review of the STPs was extremely positive particularly as STPs appeared to meet the educational needs of a significant number of young people at risk of disengaging from education and not achieving the Better Public Service Goal of passing NCEA Level 2. While ACYA welcomes these initiatives, we support the ERO call for more collaboration to integrate coherent and meaningful educational experiences to reduce negative impacts and disengagement. Clearer transitional vocational pathways for students are needed between secondary, tertiary and employment.

A contentious education policy introducing Partnership Schools has been implemented since the last report. ACYA has been concerned that Partnership Schools report directly to the Minister of Education and are not subject to the usual transparent checks and balances of state, integrated and private schools yet they still receive public funding. Of particular concern is the fact that these schools can set their own curriculum, employ untrained, unregistered teachers and can determine their own rules for including and excluding students. International evidence is mixed on outcomes and already at least one Partnership School has failed to meet its financial obligations resulting in students' education being disrupted. More importantly, there is no public accountability for the rights of children and young people in education. From a child rights' perspective, using a curriculum based on broad principles common to a society has a unifying effect that establishes a sense of social cohesion².

Access to quality inclusive education

The 5th periodic report refers to three policies that it is claimed promote inclusiveness in education in Aotearoa New Zealand. Success for all – Every School, Every Child aims to ensure that all schools use inclusive practices. There is no evidence of the impact of the policy, how it is monitored and the number of schools that can demonstrate inclusive practices. The Māori Education Strategy and the Pasifika Education Plan are referred to, with no information about the resources put into the implementation of the plans or their monitoring.

Added to this is the emphasis in legislation and policy on parents' rights to choose the education settings for their child. This approach compromises and overrides the child's right to a quality inclusive education.

Special Education services remain extremely difficult to access and are grossly inadequate. Transitioning between ECE and school and then onto intermediate and college is fraught with bureaucratic difficulties with applicants (teachers, psychologists and parents) aware that one successful application means some other child with special needs will miss out. Competitive, contestable policy disguises funding shortfalls.

² Taylor, N. J. and A. B. Smith, Eds. (2009). [Children as citizens? : international voices / Childwatch International. Citizenship Study Group Dunedin, N.Z, Otago University Press.](#)

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Since the last report, the three out of four of the Special Residential Schools have been closed as a direct result of the Group Special Education policy. Although the closures look to demonstrate a greater commitment to inclusive education at the grass roots the persistent problems with accessing the specialist and wrap around supports and services remain. Availability and access to support services remain issues for children with special education services, and for service distant children, there are equity issues associated with travel and accommodation costs incurred by parents.

ACYA is aware that funding to support students with special needs to sit NCEA exams is disproportionately accessed by high-decile schools (Why do inequities persist in accessing exam help? Nine To Noon, 14 May 2015). Time, access to specialist reports (both medical and psychological), and the costs of submitting an application are barriers to reifying this fund equitably.

Education for children in care

Currently a high ratio of children in care and protection will enter the prison system when they are adults. They go on to repeat the pattern of dysfunction that has been modelled to them from a young age.

Current government policy targets this group of often hard-to-reach children as part of its increasing participation in early childhood education initiatives. Recent research supports the combination of quality early childhood education and parent support initiatives as effective measures to ensure positive outcomes for children. Too many children in care, especially infants and young children miss out on clinical, social and educational services. Despite recent policy intentions, support for caregivers caring for children with disabilities and challenging behaviours continues to be poorly coordinated.

ACYA is concerned that services for the most vulnerable children in society have experienced funding cuts that will compromise quality service delivery. An emphasis on the early years is commendable but the disruption that being taken into care causes to children's education during the primary and secondary school years is effectively a breach of their rights to education.

We are looking for information on this. We will include information about education for children in care and protection and youth justice facilities. We also to cover education provision for 17 year olds in adult justice system.

Exclusions from school

The current disciplinary regime under Section 14 of the Education Act affords students and parents very few opportunities for recourse. There is a high incidence of informal removal from school otherwise known as a "kiwi suspension" where schools advise parents to informally remove a student from school. There is no ability to challenge this once a student has been removed from the school. Where schools make formal disciplinary decisions, they must adhere to the requirements set out in Section 14 of the Education Act.

Before making a decision to stand down or suspend, a principal need only be satisfied on "reasonable grounds" that the student's gross misconduct, or continual disobedience is a harmful or dangerous example to other students or that other students will be seriously

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harmful in the absence of an order being issued. This can be a very subjective assessment of factual circumstances. If a student is suspended the Board of Trustees acts as a layer of accountability on a principal's decision but may be highly guided by the facts as the principal presents them. A decision by a Board of Trustees to exclude or expel is effectively final with no direct right of appeal or challenge. Students themselves are not empowered to challenge the decisions and rely on parents or other adults in their lives to support them once removed from the school environment.

There is no doubt removal from school can cause significant disruption to academic progress and social development and can lead to criminal or other anti-social behavior with increased cost to the public in health, education and welfare.

Parents and students must rely upon a patchwork of legal and quasi-legal mechanisms which provide little real remedy. Judicial review through the High Court is expensive and only provides a limited power to quash a decision where process has not been adhered to. Complaints to the Ombudsman and Education Review Office although not costly are extremely time consuming and only allow issuing of recommendations which can be ignored by a school.

Rates of exclusions and expulsions for Maori and Pasifika students are between two and three times the national average. Males are 2.7 times more likely to be excluded from school than females and 4.3 times more likely to be expelled. Students from lower quintile (decile one and two schools) are nearly five times more likely to be excluded and over twice as likely to be expelled (Out of school, out of mind, Youthlaw, 2012).

Youthlaw Aotearoa, a community law centre for children and young people, has consistently advocated for the establishment of an independent tribunal to appeal adverse decisions given the current lack of effective remedies. England has a system that would provide an excellent model for reform, where following an adverse determination, a student can take the matter to an impartial forum where both the substance and procedure of a decision can be challenged. The tribunal can also be empowered to reinstate a student to school if deemed appropriate in the circumstances (Out of school, out of mind, Youthlaw 2012).

It is suggested that the disciplinary regime under Section 14 of the Education Act ought to be amended to include the establishment of an independent appeal tribunal. This would ensure that the right to education would be accessible and enforceable. The United Nations Special rapporteur on the right to education has stated that in order for the right to education to be justiciable, there must be a cost effective accessible forum to enforce that right and seek recourse against adverse decisions. As no such forum is currently available in Aotearoa New Zealand. The ability of children and young people to access and enforce their education rights is compromised.

Parental donations to schools

Youthlaw routinely receives complaints where students have been treated in a discriminatory manner when parents have not paid a school donation that has been conveyed to be a compulsory requirement to receive education at a local public school for which the student is in zone.

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Discrimination can include exclusion from activities or experiences that are important aspects in enhancing overall educational experience such as purchasing a yearbook or school magazine, attending a school ball, or playing in a team sport. There are examples of schools which have bag-tagged students whose families have paid the voluntary donation.

Given Section 3 of the Education Act protects the right to a free state sponsored education, it could be argued that such exclusion constitutes discrimination on the basis of family status under the Human Rights Act. Anecdotal information that Youthlaw Aotearoa receives through its advice query line indicates that medium decile ranked schools often do resort to the imposition of compulsory donations to supplement funds. There has been a vast amount of media coverage of a number of cases of exclusion of students from key socialization activities such as school balls where parents have not paid a school donation. Many students are excluded from attending extra-curricular events such as Education outside the Classroom (EOTC) days, school camps and shows. While some schools have an equity fund', others openly exclude children. On days where there are paid for events, it is not unusual for children to stay at home.

Issuing of clear Ministry of Education guidelines would assist in clarifying for schools the limits of their ability to insist on donations and power to exclude students from some activities.

Are these still the main issues?

What new issues have emerged?

How do these issues impact on children and young people?

Are current policy and/or practices in the best interests of children and young people? Why? Why not?

Are certain groups of children affected more than others? How?

How can we find out about the views of children and young people on these issues?

Leisure and cultural activities

After-school and holiday programmes

There is a 'disconnect' between employer demands and parental responsibilities, which compromises children's enjoyment of article 5 and article 18 rights. Parents are not supported adequately to fulfil their role.

Children between 4 and 14 in the compulsory school sector are most affected by poor, unstable provision of after-school and holiday programmes. ACYA is concerned that there is no data on the number of 'latch-key' children in New Zealand. Equally concerning is the effect of long working hours and shift work on family life and children's access to parents after school and during holiday periods. Evidence from the Children's Commissioner's Office (2011) revealed children were kept home during the holidays due to a lack of affordable options for recreation and leisure. A lack of funding remains an issue.

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OSCAR (Out of school hours care and recreation) is a recognized body working in this area. ACYA is concerned that reduced funding announced in the last budget has resulted in OSCAR services being cut. This has particularly affected rural and small town services.

Provision of play and recreational activities

The Children's Commissioner was asked by the Auckland Transition Agency to make recommendations on a model of youth participation. As a result the Commission in partnership with YouthLaw supported the seven territorial youth councils to come together and draft their own proposal. This was adopted initially, with the new youth council then working to create the current model, which resulted in co-development, co-ownership and co-governance of the Children and Young People's Strategic Action Plan, which was launched in July 2014. This plan includes the goal of Auckland being a playground for children and young people.

However ACYA is concerned that there is a lack of coordination in driving the Putting Children First priority across Council. Although there is some Boards that are demonstrating commitment to this priority, (for example one Local Board is looking at Child Impact Assessments) it is not being implemented across Council and there no mechanism to ensure this happens. For example there is no policy linking the priority with operations, community teams, local boards, urban design and so on. ACYA believes there needs to be a coordinating mechanism with a mandate from the Mayor and senior managers to drive this work.

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Elimination of violence and bullying in schools

Youth law operates an advice query line and routinely receives a number of queries each week about bullying in schools. Increasingly the impact of technology and social media has expanded the reach of school jurisdiction over student activities beyond the school gates and has imposed significant obligations to provide a safe learning environment. Teens using Barnardos' 0800 What's Up line consistently rate bullying as their top issue.

It is anticipated that the introduction of new cyber bullying legislation will assist in ameliorating what appears to be an extremely common and regular occurrence in schools nationwide. The Ministry of Education and Netsafe have also released detailed guidelines

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around best practice to maintain safe school environments. Some schools in particular are investing in restorative justice processes to address bullying and provide education of students in this area. School policies need to be comprehensive and clear detail of processes and disciplinary procedures that may result.

The Youth '12 Survey has indicated that 9% of students had been afraid of someone at school who would hurt or bother them in the past year and 6% reported being bullied at school weekly or more often. These figures were higher amongst younger students.

The Census at School confirmed that the scale and prevalence of bullying was widespread and included verbal, online social and physical abuse.

The data revealed that 36% of students thought that verbal abuse was a problem at school. In addition to this, reflective of the impact of technology and social media, 31% considered cyber bullying to be an issue at school. 25% felt that social bullying was an issue and 1 in 5 considered that psychological bullying was an issue.

This anonymous data has enabled identification of trends in bullying. Given the scale of the problem, widespread implementation of guidelines by the Ministry of Education similar to search and seizure guidelines would be useful directives for schools in implementing systems and strategies to address such issues.

<http://www.wellbeingatschool.org.nz/sites/default/files/Bullying-prevention-and-response-A-guide-for-schools.pdf>

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Views of children and young people

In 2012, as part of a submission process, the Office of the Children's Commissioner undertook to consult with children about being a child and childhood; the role of parents and families; schools; communities; the workforce for children; and, the role of government. The children's and young people's responses are summarized below:

- Parents and families should listen to children and young people
- Schools are important places for children and adults to be together
- Communities should acknowledge children's emerging capacities and competencies

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- Adults working with children should develop respectful relationships based on respect for the rights of children and young people to be informed, consulted and heard.
- Children can contribute to political decisions and are in a good position to inform governments if they are informed, consulted and heard.

Children's views on education

To express views, children and young people need information. The national curriculum includes statements about human rights and social justice but more needs to be done to embed human rights within education, including article 12 rights. Since rights-based approaches to education are not embedded in structural or process measures of quality there are no measures of effectiveness so it is difficult to ascertain how well the views of children and young people are taken into account in the education sector.

The Ministry of Education has advised ACYA that it “makes an effort to get feedback from children and young people and it uses this information to guide our work around policies, initiatives and programmes” (correspondence with Andrea Jamison as part of Article 12 project).

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Children's views on leisure and cultural activities

The OCC research (2012) asked children what should be available in communities. Replies to open ended questions confirmed the findings of the UN Committee on the Rights of the Child: there were not enough extra curricula, publically available, free activities for children and young people, particularly after school and during the holidays.

ACYA would like to thank you for reading this paper.

Please send your comments to

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