

12. Right to Education

He Tāpapa Mātauranga



**“Everybody has
the right to free
primary education.”**

Everyone has the right to free primary education.

Universal Declaration of Human Rights, Article 26 (plain text)

Introduction

Tīmatatanga

New Zealand has a proven international reputation as a provider of quality education, particularly with regard to its innovative policies and approaches. In a number of areas, New Zealand students' participation and achievement statistics rate amongst the highest of the OECD countries. Yet New Zealand continues to face the challenge of ensuring all children and young people receive an education appropriate to their needs, interests and aspirations.

In 2004, the Human Rights Commission first considered the extent to which the right to education was realised in New Zealand, as part of a national assessment of human rights. The Commission found that there was a wide range of educational opportunities for children and young people at early childhood, primary and secondary levels, and that a high percentage of New Zealand children were performing well by international standards. The Commission also found there were barriers to successful participation for specific groups of children and young people, that standards in education varied for some, and that some experienced discrimination, bullying and harassment.

The Commission's review of human rights in 2004 formed the basis for the *New Zealand Action Plan for Human Rights 2005–2010 – Mana ki te Tangata*. It prioritised actions to realise the right to education in New Zealand. This chapter is an overview of the past five years. It identifies areas where improvement has been made, where issues are still outstanding and where new issues are apparent.

WHAT IS THE RIGHT TO EDUCATION?

Education is both a human right in itself and an indispensable means of realising other human rights. Education is essential for the development of human potential, enjoyment of the full range of human rights and respect for the rights of others. It is the primary vehicle by which economically and socially marginalised adults and

children can lift themselves out of poverty and obtain the means to participate fully in their communities.

The right to education involves learning about rights and responsibilities. It is also about creating high-quality teaching and learning environments where there is freedom from violence, bullying and harassment; where individuality and diversity are respected; and where all those involved are able to participate fully. The right to education encompasses civil and political rights, and economic, social and cultural rights.

Core elements of the right to education include (as specified in international treaties):

- entitlement to free and compulsory primary education
- availability of different forms of secondary education
- access to higher education on non-discriminatory terms
- education directed to develop individuals to their fullest potential and to prepare them for responsible life in a free society, including development of respect for others and for human rights
- availability of accessible educational and vocational information
- measures developed by the State to ensure full participation in education
- availability of some form of basic education for those who may not have received or completed primary education
- protection and improvement of conditions for teachers
- respect for the right of parents/legal guardians to choose schools other than those established and funded by the State, and to ensure that the religious and moral education of their children conforms to their own convictions
- respect for academic freedom and institutional autonomy, including the freedom to express opinions about a workplace institution or system, fulfil functions without discrimination or fear of sanction, and participate in professional or representative academic bodies.

The late Katarina Tomasevski, UN Special Rapporteur on the right to education from 1998 to 2004, proposed a set of four broad standards (the 4-A standards) as a basis from which the realisation of the right to education could be assessed. These are:

- Availability: ensuring free and compulsory education for all children and respect for parental choice of their child's education
- Accessibility: eliminating discrimination in access to education as mandated by international law
- Acceptability: focussing on the quality of education and its conformity to minimum human rights standards

- Adaptability: ensuring education responds and adapts to the best interests and benefit of the learner in their current and future contexts.

In the 2004 review of human rights in New Zealand the 4-A standards were developed into a framework for use in the New Zealand context (see Figure 1). The framework has been developed to inform the current assessment.

FIGURE 1: THE RIGHT TO EDUCATION FRAMEWORK – HE WHARE TĀPAPA MĀTAURANGA



International context

Kaupapa ā taiao

The right to education is set out in a number of international treaties, the most significant of which are the International Covenant on Economic, Social and Cultural Rights (Articles 13 and 14) and the Convention on the Rights of the Child (Articles 28 and 29).

Other treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (Articles 5(e) and 7), the International Convention on the Elimination of All Forms of Discrimination against Women (Article 10), the UN Convention on the Rights of Persons with Disabilities (Article 24), and the UNESCO Convention against Discrimination in Education. The UN Declaration on the Rights of Indigenous Peoples also refers to the right to education (Article 14).

The UN Convention on the Rights of the Child provides that education should be directed at:

- **the development of the child's personality, talents and mental and physical abilities to their fullest potential**
- **the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations**
- **the development of respect for the child's parents; his or her own cultural identity, language and values; for the national values of the country in which the child is living; the country from which he or she may originate; and civilisations different from his or her own**
- **the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin**
- **the development of respect for the natural environment [Article 29].**

In meeting the right to education of every child and young person, it is not sufficient to provide the same education for all. In order to ensure that all children and young people have the opportunity to fully engage in education, it is necessary to provide different and additional support.

This may mean, for example, providing specialist teachers for children with particular education needs, and ensuring access to good quality Braille, New Zealand Sign Language and other communication assistance. It may also mean indigenous children having access to education in their own culture and language, subsidised transport for rural children to get to school, and additional benefits to attract quality teachers to isolated schools.

The international instruments also provide for special measures to ensure that particular groups are not disadvantaged, such as tertiary institutions offering preferential entry to groups which would otherwise be underrepresented.

New Zealand context

Kaupapa o Aotearoa

NEW ZEALAND LAW

New Zealand has ratified all the international treaties listed in the previous section, and is taking progressive steps towards fulfilling them.¹ In addition, the Government has ratified the International Labour Organisation (ILO) Convention 111 on Discrimination in Respect of Employment and Occupation, the ILO Convention 182 on Worst Forms of Child Labour, and the UNESCO Convention against Discrimination in Education.

The right to education is not explicitly provided for in New Zealand law, although elements are reflected in the Education Act 1964 (section 3 sets out the right to free enrolment and free education in state schools for those aged 5–19), the Education Act 1989, the Education Standards Act 2001 (an amendment to the Education Act 1989), and the Private Schools Conditional Integration Act 1975. The Education Standards Act responds directly to the Human Rights Act 1993 by ensuring compliance with human rights standards, particularly in the areas of gender, marital status and disability. Education policy and

¹ New Zealand technically has a reservation to UNCROC with regard to education. However, work is under way to have this removed in 2010.

administrative practice further supplement the realisation of this right. The Human Rights Act 1993 states that it is unlawful to treat people differently on various grounds in specific areas of life, including the provision of education.

New Zealand today **Aotearoa i tēnei rā**

Education in New Zealand includes compulsory and non-compulsory sectors. In both sectors, education can be funded by the State, privately or through a combination of both.

A range of compulsory and non-compulsory education institutions is available. Parents and guardians have a choice of schooling options within and between state-run schools, integrated schools and private schools. Institutions that provide te reo Māori immersion and are founded on Māori principles are available at all levels. Early childhood education and schooling provision in Pacific languages are also available.

Education is compulsory for all children aged from six to 16 years, with entitlement for free schooling to the age of 19. In practice, most children begin school on their fifth birthday. Students assessed as having high special education needs under the Ongoing and Reviewable Resourcing Schemes are entitled to free enrolment up to 21 years.

CHILDREN AND YOUNG PEOPLE

Children and young people make up a decreasing proportion of the population. Currently, New Zealand's 1.05 million children (those aged 0–17 years of age) make up 26 per cent of the population.² There are fewer children and young people in rural areas and more in urban areas. The gender balance is equal. Ten per cent of children have a disability.

The most significant demographic feature is the increasing ethnic diversity of the population, particularly among children and young people. Currently, the population is European 67.6 per cent, Māori 14.6 per cent, New Zealand 11.1 per cent, Asian 9.2 per cent, MELAA (Middle Eastern, Latin American and African) 0.9 per cent. In July 2009, domestic students were 55.8 per cent NZ European/Pākehā, 22 per cent Māori, 9.6 per cent Pacific, 9 per cent Asian and 2.4 per cent other.

The poverty rate in New Zealand continues to be above the average of other developed countries. This affects the right to education for some children and young people. The most recent Ministry of Social Development survey of living standards reported 19 per cent of children experiencing “serious hardship” and “unacceptably severe restrictions on their living standards”.³

ADULTS IN TERTIARY EDUCATION (16 YEARS AND OVER)

Following a three-year decline, the number of students enrolled in formal tertiary study increased from 2008 to 2009 by more than 5 per cent at every qualification level, except lower-level certificates, which fell by 5.5 per cent. Study for graduate and postgraduate certificate and diploma qualifications rose by 15 per cent during this period.⁴

Overall, New Zealand has a high proportion of tertiary qualified adults and, in particular, a very high proportion with vocational qualifications. Despite high levels of tertiary-qualified adults, one in five adults aged 25 to 34 does not have a year 12-equivalent school qualification or higher (a rate which is higher than some countries we might normally compare with).⁵

Asians (4.9 per cent) and Europeans (3.3 per cent) had considerably higher participation rates in bachelor's degree courses than Pacific peoples (2.9 per cent) and Māori (2.8 per cent).

2 Statistics New Zealand (2006), *Census of Population and Dwellings* (Wellington: StatsNZ). Accessible online at <http://www.stats.govt.nz/Census.aspx>

3 Ministry of Social Development (2009), *Non-income measures of material wellbeing and hardship: first results from the 2008 New Zealand Living Standards Survey, with international comparisons*. Accessed 24 March 2010 from <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/monitoring/2008-living-standards-survey-wp-01-09-main-report.doc>

4 Ministry of Education (2009). Accessed 6 October 2010 from <http://www.educationcounts.govt.nz/publications/series/2531/79882/2>

5 Education Counts (2010) Accessed 6 October 2010 from http://www.educationcounts.govt.nz/publications/tertiary_education/81180/5

In 2008 females were more likely than males to participate in tertiary study. Participation by Māori females (3.6 per cent) and Pacific females (3.8 per cent) was more than for European males (2.6 per cent).⁶

Tertiary completion rates vary according to demographic characteristics:

- Qualification completion rates are higher for women than for men, but the gap reduces at higher qualification levels.
- Asian students have the highest rates of completion of any ethnic group, while rates are lower for Pacific and Māori students (particularly at postgraduate level).
- In the 2006 census, among disabled adults, almost twice as many had no formal qualification, compared with non-disabled adults.⁷

The number of industry trainees and those in modern apprenticeships almost doubled from 2001 to 2009.

Gender segregation persists in the Modern Apprenticeships scheme, with the three industries that dominate the scheme (building and construction, motor engineering and engineering) remaining overwhelmingly male.

Hairdressing remains the only industry classification that has more female than male apprentices.⁸ In 2008 NZ European/Pākehā made up 76.2 per cent of modern apprenticeships, Māori made up 15.2 per cent, and Pacific and 'other' each made up 0.3 per cent.

WHAT HAS HAPPENED SINCE 2005?

Ministry of Education statements of intent since 2006 recognise that while education provision in New Zealand is good and the majority of students are doing well by international standards, there are significant groups of students for whom education provision at all levels is not delivering – for example, Māori and Pacific students, those from poorer communities, those with disabilities and specific groups of male students. The Ministry has amended sections of its regulatory framework and developed policy initiatives accordingly.

Arguably, the most significant government initiative in the compulsory sector has been the development and implementation of the National Curriculum (NZC), which is being implemented in English-medium schools in 2010. The NZC:

- focusses on notions of identity and belonging of all New Zealanders
- includes references to the Treaty of Waitangi throughout
- encourages students to "respect themselves, others and human rights" in its values statement
- recognises te reo Māori, New Zealand Sign Language and English as official languages for the delivery of the curriculum and as taught subjects
- acknowledges that a curriculum that reflects and values te ao Māori strengthens the identity and belonging of all New Zealanders
- recognises the special place of Pacific languages
- recognises cultural diversity and inclusion.

Te Marautanga o Aotearoa is New Zealand's first curriculum to be developed and written in te reo Māori and in consultation with the Māori education sector. It will be implemented in Māori-medium schools in 2011.

The Ministry sees the NZC as a guiding framework that goes beyond the learning content to the environment within which the learning occurs. The NZC focusses on fostering positive relationships; creating environments that are caring, inclusive, non-discriminatory, and cohesive; building good relationships with the wider school community; working with parents and caregivers as key partners; and attending to the cultural and linguistic diversity of all students. It gives schools the scope to design their curriculum for their particular communities of students.

During the consultation process, questions were asked about whether school communities have the requisite capability, resources and tools to design curricula that

6 Ministry of Social Development (2010). 2009 The Social Report. Accessed Oct 6 2010 from <http://www.socialreport.msd.govt.nz/knowledge-skills/participation-tertiary-education.html>

7 Statistics New Zealand (2008), Disability and Education in New Zealand in 2006 (Wellington: Statistics New Zealand).

8 National Equal Opportunities Network (2009). Accessed 22 September 2010 from <http://www.neon.org.nz>

realise the intent of the NZC across the system. There is also dispute about whether the inclusion of human rights is explicit enough, or effectively supported by wider policy and regulatory mechanisms, to guide schools and communities toward providing human rights-based education and ensuring that education provision meets human rights standards. According to a number of schools, the ability of the NZC to empower notions of diversity, identity and belonging has been undermined by the introduction of National Standards in 2010. The standards, they claim, focus predominantly on English literacy and numeracy, do not encourage full diverse human potential, and have been developed without the participation or inclusion of those on which they impact.

A priority over the next period for the Government, school communities, academic and research institutions, civil society organisations, human rights organisations, iwi and hapū, and others, could be to co-ordinate efforts to achieve the vision of the NZC and Te Marautanga o Aotearoa.

Further government initiatives have focussed on encouraging student engagement and successful participation;⁹ monitoring and reporting achievement

by ethnicity, gender and school decile rating (though no statistics are available for disabled students);¹⁰ supporting students' successful transition to work or further education;¹¹ and targeting the inequitable achievement rates for Māori and Pacific children and young people.¹²

Positive Behaviour for Learning School-Wide began in 2009, to address the high incidence of bullying and violence in early-childhood education centres and schools. The Government has supported specific 'positive behaviour', bullying, harassment and restorative justice programmes initiated by schools and supported by non-government organisations.¹³ Many schools have included explicit bullying and violence programmes as part of their student management systems.

From July 2007, the Government has provided up to 20 hours' free optional early-childhood education (ECE) to all 3- and 4-year-olds in teacher-led services.

Civil society organisations have contributed to building human rights awareness in education. The Human Rights in Education – Mana Tika Tangata initiative focusses on ensuring that human rights are embedded in the educational environment.¹⁴

9 An electronic student-tracking system aimed at monitoring students moving between schools and those not enrolled; and an early leaving application and approval processes strengthened in order to reduce the number of early-leaving exemptions

10 Ministry of Education (2009), *The State of Education in New Zealand* (Wellington: MoE); (2008), accessible online at <http://www.educationcounts.gov.nz/publications/series/2551/34702/34656>

Ngā Haeata Mātauranga – The Annual Report on Māori Education (2010) (Wellington: MoE), accessible online at <http://www.educationcounts.gov.nz/publications/series/5851/75954>

Ministry of Social Development (2009). *Children and Young People: Indicators of Wellbeing in New Zealand 2008* (Wellington: MSD). Accessible online at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/children-young-indicators-wellbeing>

11 Tertiary Education Commission (2010). Gateway. Accessible online at <http://www.tec.govt.nz/Funding/Fund-finder/Gateway>

Work and Income (2010). *Youth Transition*. Accessible online at <http://www.workandincome.govt.nz/community/yts>

Ministry of Education (2010). *Youth Apprenticeship Scheme*. Accessible online at <http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/Initiatives/YouthApprenticeships/YouthApprenticeshipsScheme.aspx>

12 Ministry of Education (2010)

Ka Hikitia - Managing for Success: The Māori Education Strategy 2008. Accessible online at <http://www.minedu.govt.nz/theMinistry/PolicyAndStrategy/KaHikitia>

Te Kotahitanga (2010) Improving the Educational Achievement of Māori Students in Mainstream Education; <http://tekotahitanga.tki.org.nz>

He Kākano (2010–2012). Accessible online at <http://www.educationalleaders.govt.nz/Leadership-development/He-kakano>

13 Peace Foundation, Amnesty International, Aotearoa Global and Development Education Network, Safe Schools 4 Queers, Save the Children Fund, UNICEF

14 Accessible online at www.rightsined.org.nz

ACTIVITIES OF THE COMMISSION

Over the past five years, the Commission has focussed on the right to education as one of the elements of its work programme. The Commission has provided advice to Parliament, the Government and government agencies, and to schools and early-childhood centres on the right to education. A core component of the Commission's right-to-education work has been its collaboration with and support of Human Rights in Education.

Of the education-related complaints and enquiries received by the Commission in 2009, disability accounted for 26 per cent; race-related issues 19 per cent; religious belief 7 per cent; and sex 6 per cent (see Figure 2). Eleven themes were apparent, of which enrolment and bullying were the most prominent.¹⁵

FIGURE 2: NUMBER OF EDUCATION-RELATED APPROACHES TO HRC (2009) BY THEME



¹⁵ Each theme involved 10 or more approaches to the Commission.

The Commission continues to monitor the extent to which disabled children and young people are prevented from accessing quality, appropriate education. The Commission's Transgender Inquiry evidenced the high rates of discrimination and bullying based on sexual orientation and gender identity.

WHAT ARE THE KEY ISSUES NOW?

The Right to Education Framework (Figure 1) is the basis for assessing how well New Zealand is realising the right to education and meeting its international obligations. Since the Human Rights Commission's 2004 review, progress has been made in a number of areas:

- The overall number of children participating in early-childhood education services has increased.
- The NZC includes human rights and diversity in its values statement.
- There has been a focus on Māori and Pacific children and young people as educationally disadvantaged groups.
- There is an improvement in achievement rates for Māori and Pacific students and those from low-decile secondary schools, and the number of those leaving without a qualification registered on the National Qualifications Framework is decreasing.
- Government and non-government organisations have initiated programmes that focus on student engagement and participation; achievement; transition to further education or work; discrimination; bullying and harassment; and decreasing information and technology gaps.
- The annual assessment State of Education in New Zealand uses measures such as 'accessibility', 'achievement of potential' and 'diversity' to highlight education priorities – these measures parallel those of the right to education reflected in international instruments.
- Changes to the Immigration Act 2009 mean that undocumented children can be legally enrolled at school, and the 2010 Budget allocated funds over four years to enable them to access state schools.

However, fundamental human rights issues remain:

RIGHT TO EDUCATION

Early childhood education is still not universally accessible

4-As

Accessibility

Barriers to engagement in education exist for specific groups, including Māori, Pacific, disabled, specific groups of male students and those from refugee families.

Accessibility
Acceptability
Adaptability

Formal and informal costs of education still create barriers to successful participation

Accessibility

Successful participation and achievement rates continue to be disproportionately low for some groups, including Māori, Pacific, disabled children and young people, those from low-decile schools and specific groups of male students.

Accessibility
Adaptability

Discrimination, bullying and harassment persist. Particularly vulnerable groups include disabled; ethnic minorities; and same-sex-attracted, trans and intersex children and young people.

Acceptability

There is currently no nationwide human rights education provision.

Availability

EARLY CHILDHOOD EDUCATION

New Zealand is a world leader in early childhood education, as demonstrated by the Ministry of Education's Pathways to the Future – Ngā Huarahi Arataki. This 10-year strategic plan focusses on quality, participation and collaboration, a commitment to a fully qualified registered teaching workforce, and the groundbreaking curriculum Te Whāriki.

The 20 hours granted to teacher-led services in 2007 aimed to reduce cost barriers and increase participation rates in early childhood education (ECE). Recent impact assessments show, however, that it is middle- and higher-income families who are benefiting most from these hours.

Since 2004, the growth in the participation rate for Māori in ECE has slowed, and there has been little change in the proportion of Pacific new entrants attending ECE services before starting school.¹⁶ In 2008, children in low-decile schools were much less likely to have attended an ECE service (82 per cent at decile 1 schools) than children in high-decile schools (97 per cent at decile 6 schools and 99 per cent at decile 10 schools).

The findings of the Office of the Children's Commissioner inquiry into the education and care of infants and toddlers¹⁷ highlighted concerns about long waiting lists for places, inequitable access and variance in quality.

The 2010 Budget included the retention of 20 ECE hours and additional support for community-led ECE initiatives. It also lowered the additional funding previously tagged to providers with more than 80 per cent fully qualified and registered teachers. This will have an impact on current providers with more than 80 per cent qualified staff, as their government funding will be reduced. Rates to parents are likely to rise and services may lose the incentive to employ 100 per cent qualified teachers.

BARRIERS TO ENGAGEMENT

A Ministry of Education survey released in March 2010 showed that truancy rates remain high, with 30,000 students truanting daily and 2500 not enrolled at school.

The Ministry of Education's 2009 truancy survey showed that truancy rates were 80 per cent higher at decile 1 schools than decile 10 schools, and Māori and Pacific students were twice as likely as other students to skip

16 Ministry of Social Development (2009) *MSD Social Report 2009*. Accessible online at <http://www.socialreport.msd.govt.nz>

17 Carroll-Lind J (2009), *School Safety: An Inquiry into the Safety of students at school* (2009) (Wellington: Office of the Commissioner for Children). Accessible online at http://www.occ.org.nz/_data/assets/pdf_file/0016/6028/OCC_SchoolSafetyReport_160309.pdf

FIGURE 3: PARTICIPATION IN EARLY CHILDHOOD EDUCATION

Most recent level	Trend	Variation within population	International comparison
92.3% of 3-year-olds and 99.7% of 4-year-olds (2009)	Continuous increase since 1988	Lower for Pacific and Māori children and those in low-decile areas; regional differences	Higher than OECD median

Source: Education Counts (2009)

classes. The Young Person's Reference Group (YPRG) of the Office of the Children's Commissioner explained that "students truant because they can and it's better than going to class". It considered that, if teachers were stimulating and the work was at an appropriate level, many more students would choose to attend classes rather than truant.

The Student Engagement Initiative (SEI) has resulted in decreases in the suspension rates of Māori and Pacific students. However, high suspension, exclusion and expulsion rates remain an issue for Māori, males and students from low-decile schools.¹⁸ Likewise, a greater number of early-leaving exemptions are granted to Māori and males.

There is a clear correlation between the socio-economic mix of the school and stand-down, suspension, exclusion and expulsion rates. Students in the lowest deciles (1 and 2) are four times more likely to be excluded from school than students in the highest deciles (9 and 10). Although the statistics vary slightly between categories, evidence shows that a minority of schools stand down, suspend, exclude and expel the majority of students. Continual disobedience, physical assault on other students and issues relating to drugs (including substance abuse) are the key reasons for stand-downs, suspension, exclusion and expulsion.

In 2008, the exclusion rate was 2.6 times higher for males than females, while the expulsion rate was 3.4

FIGURE 4: TRUANCY AND RETENTION AT SCHOOL

School truancy:	Most recent level Absence rate of 2.3% of students (2006)	Trend Increase since 2004	Variation within population Higher for Māori, Pacific and older students and those at low-decile schools; regional differences
Retention of students in secondary schools:	Most recent level 60.8% of all students stayed at school to age 17.5 (2007)	Trend Little change in past four years	Variation within population Lower proportions for Māori, European, males, and those from low-decile schools

Source: Children and Young People: Indicators of Wellbeing in New Zealand (2008)

18 Ministry of Education (2010), Education Counts: Indicators. Accessed 22 September 2010 from http://www.educationcounts.govt.nz/indicators/student_participation.

times higher for males. For Māori and European/Pākehā students in the original cohort of SEI schools, the overall age-standardised suspension and exclusion rates have decreased by 66 per cent and 56 per cent respectively since 2000.

Submissions to the Commission have recommended the establishment of an independent appeal authority, similar to the Employment Relations Authority, which can act quickly to determine whether expulsion is fair procedurally and based on substantive grounds which are lawful.

Research conducted during the development of *Ka Hikitia* (Māori Education Strategy 2008–2010) shows Māori students in Māori immersion and bilingual schools have a lower rate of stand-downs, unjustified absences and truancy than Māori in English-medium schools. The latest achievement data on Māori immersion education also show students achieving NCEA qualifications at rates that surpass those of their English-medium education peers.¹⁹

In 2007, 75 per cent of students stayed at school to the age of 17. Māori students had the lowest retention rates (57.5 per cent), compared with an estimated retention rate of 80.1 per cent for Pacific and 76.6 per cent for European/Pākehā students. Boys in this age bracket were less likely to stay at school (57.9 per cent) than girls (66.9 per cent) in 2008.

New Zealand has 163 alternative education (AE) centres for students aged 13 to 15. They provide an alternative for students for whom the mainstream system has failed, and who have either been excluded from school or have stopped attending. A review of AE (2009) recognised aspects of AE that are not working.²⁰ The review proposed aligning steps to improve AE outcomes, whilst also strengthening schools' capability and resources to meet the needs of 'at-risk' students before they disengage from the mainstream system.

FORMAL AND INFORMAL COSTS OF EDUCATION

The Education Act 1989 stipulates that every person who is not a foreign student or attending a private or

integrated school is entitled to free enrolment and free education at any state school from the ages of 5 to 19.

School donations: Ministry of Education guidelines say that state and state-integrated schools are to make clear that donations are voluntary. No charges are to be made for anything used to deliver the curriculum, such as photocopying, paper or internet access. There is both empirical and anecdotal evidence, however, that parents are increasingly coming under pressure from state-funded schools to contribute to the cost of their child's education. It appears that not all schools are fully aware of the guidelines, some are misinterpreting them, and some are choosing to ignore them.

Pressure on families to pay school donations has included:

- students being unfairly or unlawfully excluded from subjects or activities, or in other ways penalised, when their parents are unwilling or unable to make certain payments
- the names of parents/guardians who have not paid the donation being published
- schools reporting unpaid donations to collection agencies or hiring agencies to phone parents to remind them to pay
- students being prevented from accessing school activities, such as school balls, graduation and receiving the school magazine.

The situation is complex. Some schools report difficulty operating within the government funding they receive. Fundraising is resource-intensive and difficult, particularly in poorer communities and during the increased economic pressures of the past two years. Some boards of trustees claim that, in the interest of fairness for parents whose donation does help support resourcing, the pressure is warranted. In some cases, private-sector groups are subsidising and sponsoring state schools.

General costs: In addition to school donations, families are expected to pay for uniforms, stationery, course-related materials, school trips and associated adequate equipment and clothing. A 2010 Office of the Children's

19 Ministry of Education (2008), *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: MoE). Accessible online at <http://www.minedu.govt.nz/theMinistry/PolicyAndStrategy/KaHikitia.aspx>

20 Ministry of Education (2009), *Findings of Review of Alternative Education and Future Directions* (Wellington: MoE). Accessible online at <http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/PolicyAndStrategy/SchoolingInNewZealand/AlternativeEducation.aspx>

Commissioner report²¹ describes young people's shame and alienation from peers because they were unable to participate in activities or pay for basic school items.

Ministry of Education Circular 1998/25 offers guidance about payments by parents in state and state-integrated schools. It notes that it is reasonable to expect parents to pay travel costs for school-organised activities away from school as part of the curriculum. It also notes that students should not be excluded from such trips because of their parents' or guardians' inability or unwillingness to pay. In reality, some students are excluded from school trips because they are unable to pay.

Students have also reported that the cost of some subjects has determined which subjects they choose to study, and that some could not afford to pay for such items as NZQA resubmits or recounts in examination papers, school stationery, student IDs and school locker rentals. Obligations blurred around school fees and donations, with some students denied access to other school activities if the school donation was not paid.²²

A 2009 OECD Report²³ concluded that New Zealand should spend considerably more on younger, disadvantaged children and should ensure that current high rates of spending on older children are much more effective in meeting the needs of the disadvantaged among them.

The issue of differential state financial support to state, integrated and independent schools was raised during consultation.

DISABLED CHILDREN AND YOUNG PEOPLE

Article 24 of the Convention on the Rights of People with Disabilities (CRPD) recognises the right of persons with

disabilities to education, without discrimination, on the basis of equal opportunity, with the purpose of achieving "the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity". The United Nations Special Rapporteur on the Right to Education has provided advice on how countries that have ratified the CRPD can provide an inclusive education system.²⁴

Section 8(1) of the Education Act 1989 recognises the right of disabled people to the same access to compulsory education as others. Despite this, many disabled students and their families have difficulty accessing inclusive education aimed at fulfilling the promises of the CRPD. Official reports on special education highlight specific concerns such as inadequate support for students and teachers, the high number of suspensions and expulsions, and complaints of student discipline and bullying.²⁵

ADULT EDUCATION SPENDING

From 2010, the adult and community education sector has faced significant funding cuts, reducing the number of community-based programmes provided by schools, community groups and national organisations. The impact of these cuts is yet to be fully established, although it is clear that they will have a greater negative effect on those for whom adult education offers a second chance – women, disabled, Māori and Pacific adults. It is also likely that the reduced availability of community education opportunities, where people gain the skills and confidence to enter the workforce, could impact on the longer-term economic environment.

21 Office of the Children's Commissioner (August 2010), *This Is How I See It: Children, Young People and Young Adults' Views and Experiences of Poverty* (Wellington: OCC). Accessible online at http://www.occ.org.nz/home/childpoverty/the_report

22 Office of the Children's Commissioner (August 2010). Young Person's Reference Group. Consultation outcomes received by email 3 August 2010

23 OECD (2009), *Doing Better for Children*. Accessible online at http://www.oecd.org/document/12/0,3343,en_2649_34819_43545036_1_1_1_37419,00.html

24 Muñoz V (2007), Report of the Special Rapporteur on the Right to Education. The right to education of persons with disabilities. Human Rights Council. Accessible online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/108/92/PDF/G0710892.pdf?OpenElement>

25 Controller and Auditor-General (2009), Ministry of Education: Managing support for students with special educational needs (Wellington: Office of the Auditor-General); Education Review Office (2009), *Resource Teachers: Learning and Behaviour, An Evaluation of Cluster Management* (Wellington: ERO). Accessed online 24 March 2010 from www.ero.govt.nz/ero/publishing.nsf/Content/rtlb-cluster-sep09; Office of the Ombudsmen (2009), Report of the Ombudsmen: Nga Kaitiaki Mana Tangata (Wellington: Office of the Ombudsmen) Accessed online 24 March 2010

PARTICIPATION AND ACHIEVEMENT RATES

Overall, the proportion of students leaving school with at least NCEA Level 2 is increasing, and the numbers of Māori and Pacific students leaving without a qualification registered on the National Qualifications Framework are decreasing. Recent improvements in rates of academic achievement by students from low-decile secondary schools were sustained during 2008.

While students from poorer schools (deciles 1, 2 and 3) have pass rates that are much lower than those of students from wealthier schools (deciles 8, 9 and 10), this gap appears to have narrowed since 2004. NCEA results for the 2008 academic year have consolidated these gains. A similar improvement is also apparent in NCEA level 3 pass rates by year 13 students.

The gap between those achieving at an average rate and those not achieving has narrowed, but is still large compared with other OECD countries. Only two OECD

countries had significantly lower proportions of students achieving no higher than level 1.²⁶

BOYS' ACHIEVEMENT

While data on boys' achievement²⁷ shows many are doing well at school, it has highlighted some issues in the area of male educational engagement and achievement:

- Girls perform better than boys in all literacy measures across all years of schooling.
- Literacy differences are observed in qualification attainment, where girls are more likely than boys to gain the literacy requirements for NCEA level 1 and gain English as a subject at all NCEA levels and Scholarship.
- Boys tend to have a wider spread of scores than girls and tend to be overrepresented in the lowest achieving group – this is especially true for Māori and Pacific boys.
- Higher proportions of boys, across all ethnic groupings,

FIGURE 5: ACHIEVEMENT LEVELS

	Most recent level	Trend	Variation within population	International comparison
Reading literacy at age 15	Combined mean reading literacy score of 521 (2006)	No change between 2000 and 2006	Lower mean scores for Māori, Pacific and male students	Higher than OECD average
Mathematical literacy at age 15	Mean score in mathematics literacy of 522 (2006)	No change between 2003 and 2006	Lower mean scores for Māori and Pacific students	Higher than OECD average
Scientific literacy at age 15	Mean score in science literacy of 530 (2006)	Different method of measuring scientific literacy	Lower mean scores for Māori and Pacific students	Higher than OECD average
Higher qualifications	66% of school leavers gained NCEA level 2+ (2007)	Improvement since 2003	Lower proportions for Māori, Pacific and male students, and those from low-decile schools	No comparison available

26 OECD (2009), 'Doing Better for Children'. Accessed 24 March 2010 from <http://www.oecd.org/dataoecd/20/42/43589854.pdf>

27 Ministry of Education (2007), *Boys' Achievement: A Synthesis of the Data* (Wellington: MoE) draws on a wide range of evidence from research, such as the longitudinal Competent Learners Study, national assessment initiatives (for example, asTTle, NEMP) and international assessment studies (for example, PIRLS, PISA, TIMSS), the NCEA and tertiary qualifications.

receive 'not achieved' grades in English, mathematics and science NCEA achievement standards.

- Boys account for over 70 per cent of stand-downs and suspensions and their overrepresentation increases in the formal removal of students from school (exclusions and expulsions). Early leaving exemptions are also more frequently granted for boys, particularly for Māori.
- Girls tend to stay at school longer and attain higher formal qualifications than males – 79 per cent in 2007, compared with 73 per cent for boys.
- In 2007, 5.2 per cent of boys and 4.7 per cent of girls left school with few or no formal qualifications. Girls (45 per cent) were more likely than boys (33 per cent) to achieve a university entrance standard.

IMPACT OF POVERTY ON EDUCATIONAL ACHIEVEMENT

The impact of poverty on the ability of children to successfully engage in education is unequivocal. The State of Education in New Zealand (2006) report²⁸ makes explicit the connection between economic and social factors and a child's or young person's ability to engage in and benefit from education.

The Household Economic Survey of 2008 showed that 20 per cent of New Zealand children lived in relative poverty. Average family incomes are low by OECD standards, and child poverty rates are high. The proportion of New Zealand children who lack a key set of educational possessions, such as those required to successfully participate in school, is above the OECD median.²⁹

Students from low socio-economic communities are less likely than others to attain higher school qualifications. The NCEA level 1 pass rate at the poorest 30 per cent of secondary schools is only two-thirds that of the wealthiest 30 per cent of schools. The NCEA level 3 pass rate at decile 1 to 3 high schools is still only half that of decile 8 to 10 schools.

28 Key indicators used in the State of Education report include participation, accessibility, teaching practice, teacher qualification, foundation knowledge, student engagement, school-leaving qualifications, and transition to tertiary education.

29 OECD (2009), 'Doing Better for Children'. Accessed 24 March 2010 from <http://www.oecd.org/dataoecd/20/42/43589854.pdf>

30 Baragwanath S (Feb 2009), 'Boys In Prison: What about their education?' (IPS Criminal Justice Forum). Accessed 6 October, 2010 from <http://ips.ac.nz/events/downloads/2009/Susan%20Baragwanath.doc>

31 Carroll-Lind J (2009), *School Safety: An Inquiry into the Safety of Students at School*. (Wellington: OCC). Accessible online at http://www.occ.org.nz/_data/assets/pdf_file/0016/6028/OCC_SchoolSafetyReport_160309.pdf; Carroll-Lind J (2010), *Responsive Schools* (Wellington: Office of the Children's Commissioner) Accessible online at http://www.occ.org.nz/_data/assets/pdf_file/0006/7269/OCC_Responsive_01.04.10.pdf

YOUNG PEOPLE WHO OFFEND

A lack of educational provision puts young people who offend at risk of non-participation and failure. Not only does this breach their legal right to education, but it is also a lost opportunity for reducing recidivism.

A 2009 report found that at that time there were around 560 prisoners in the 15–19 year age group.³⁰ Although these were of school age, few of them were receiving their educational entitlement.

DISCRIMINATION, BULLYING AND HARASSMENT

Bullying and violence continues to be a major concern in New Zealand early-childhood centres and schools.³¹ New Zealand has high levels of student-to-student and student-to-teacher physical and emotional bullying in schools compared with other countries. In 2008, New Zealand was ranked second worst among 37 countries for bullying in primary schools.

The cross-sectoral Behaviour Summit (March 2009) identified a number of areas for action which have been worked into the Ministry of Education's Behaviour and Learning Action Plan. The Human Rights Commission recommended to the Ministry in its development of the plan that:

1. the Ministry consider whether the Education Review Office has sufficient powers to enable it to effectively assess schools' management and reporting of peer-to-peer bullying, violence and abuse
2. human rights responsibilities be explicitly included in the National Education Guidelines.

Emerging international evidence demonstrates that a human rights-focussed school contributes to the development of a stronger culture of respecting rights, with a decrease in incidents of violence, bullying and abuse.

HUMAN RIGHTS EDUCATION

Building human rights education communities requires making explicit in legislation, policies and practice the human rights values, principles and statements set out in the Universal Declaration of Human Rights. While human rights is an obligatory part of the National Curriculum, there is no nationwide systematic human right education strategy.

In the absence of clear legislation, some ECE centres and schools are successfully using human rights approaches to tackle barriers that deny children and young people their right to education. A Commission-contracted study³² found that while ECE services and schools had a general understanding of human rights-based education, this was not articulated as such. International evidence shows that in a human rights-based school, children and young people have more self-esteem, understand their responsibilities and the rights of others, are more accepting of diversity and have higher achievement rates. Teachers use more democratic styles of teaching, report better classroom behaviour and are able to spend more time on teaching.³³ The study also found that specific human rights resources were limited, as was the capacity of the sector to embed human rights into early childhood services and schools.

Conclusion Whakamutunga

Children and young people in New Zealand have access to a rich array of educational services. Parents and guardians have a choice of schooling options within and between state-run schools, integrated schools and private schools. Institutions that provide Māori language immersion and validate Māori knowledge, structures, processes, learning styles and administration practices are available at all levels of education.

Three complementary curricula are provided: Te Whāriki for early childhood education, and the New Zealand Curriculum and Te Marautanga o Aotearoa for the school sector. These curricula have an important role

in educating young people with a well-founded understanding of human rights. They also support schools to give effect to the Treaty of Waitangi and New Zealand's international human rights obligations.

The New Zealand Curriculum recognises New Zealand's official languages: te reo Māori, New Zealand Sign Language and English. It envisages that all three may be studied as first or additional languages and used as mediums of instruction across all learning areas. Current resource allocations limit this.

By international standards a large percentage of New Zealand students are performing well in reading, mathematics and science literacy. A review of the right to education in New Zealand shows that since 2005, progress has been made. The 20 Hours ECE policy has increased the number of children participating in early-childhood education services. The focus on Māori and Pacific children and young people as educationally disadvantaged groups has seen an improvement in achievement rates. Likewise there has been an improvement in achievement of those from low-decile secondary schools. Fewer are leaving school without a qualification. Changes to the Immigration Act 2009 mean undocumented children can be legally enrolled at school and Vote Education 2010 has allocated funds to facilitate enrolments.

The assessment of the right to education has also shown that there are fundamental issues to be addressed. Some of these are ongoing issues which were present at the 2004 review. Some are new challenges presented by the changing demographics and situations of children and young people. Most significant are the increasing ethnic diversity of children and young people, and the proportion who live in poverty.

The right to education is not explicit in law. Early childhood education is still not universally accessible. Barriers to access and successful engagement in education still exist for specific groups of children and young people. Some groups are disproportionately underachieving. There is no nationwide human rights education provision.

32 Human Rights Commission (2006). *Baseline Study: Human Rights education in early childhood centres and schools* (Auckland: HRC)

33 'LIFT OFF! Ireland'. Accessible online at <http://www.liftoffschools.com>
RRR Initiative: UK. Accessible online at <http://hants.gov.uk/education/hias/childrensrights>
Children's Rights Centre: Canada. Accessible online at <http://discovery.uccb.ns.ca/children>

Children and young people still experience bullying and discrimination at early childhood services and schools. Funding cuts to the adult and community education sector will have negative effects, particularly on those for whom adult education offers a second-chance education.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to advance the right to education:

Legal recognition of the right to education

The right to education stated explicitly in law, thus acknowledging the inalienable right of children and young people to a quality education.

Human rights values

Establish mentoring and monitoring processes to ensure that the human rights values explicit in the New Zealand Curriculum and Te Marautanga o Aotearoa are evident in schools' philosophies, structures, curriculum, classrooms and relationships.

Underachievement

Address underachievement by:

- ensuring universal provision of quality early-childhood education
- ensuring equitable access to quality education for all, focussing particularly on Māori, Pacific and disabled children and young people
- removing any financial and other barriers to full participation in education.

ECE and school environment

Support early-childhood services and schools to build environments:

- that are free from violence
- where diversity is respected
- where all children and young people are able to participate fully.