

## DOCUMENTATION

Please provide the APF Secretariat with the following documentation:

### CONSTITUTIONAL PROVISIONS RELATING TO:

- Right to education;
- Non-discrimination and the access for all; and
- Relevance of international law in the national jurisdiction.

### Right to education

The right to education is not specifically stated in New Zealand law, but is reflected in the Education Act 1964, the Education Act 1989, the Education Standards Act 2001 (an amendment to the Education Act 1989), and the Private Schools Conditional Integration Act 1975 Act.

Section 3 of the Education Act 1989 provides for the right to free primary and secondary education and reads as follows:

Except as provided in this Act or the Private Schools Conditional Integration Act 1975, every person who is not a foreign student is entitled to free enrolment and free education at any state school during the period beginning on the person's 5th birthday and ending on the 1st day of January after the person's 19th birthday.

The meaning of the right to education was examined recently in the context of special education by the High Court and Court of Appeal in *Daniels v Attorney-General* and will be looked at in more depth in relation to justiciability questions.

The legal regulation of NZ's constitutional arrangements is unusual as most modern states operate under an entrenched supreme law constitution which gathers in a single document or a small number of documents, the principal elements which govern how public power is to be exercised within that state.

New Zealand's "constitution" is made up of constitutional convention, statute and common law. Further, New Zealand lacks some of the constitutional features of other western democracies e.g the courts have no power to strike down statutes of Parliament on the ground of unconstitutionality. Also, the New Zealand Parliament consists of a single chamber, the House of Representatives.

The Treaty of Waitangi (1840), signed by the Crown and certain Maori chiefs, is regarded by many as the founding document of the modern New Zealand polity. It is from the Treaty that the Crown has traditionally traced its legitimacy. But in law the Treaty has no formal status – it is an unincorporated treaty, and as such, imposes no legal obligations and creates no legal rights of itself. It is often referred to by legal academics and judges as a significant constitutional document. There is still considerable controversy over the Treaty's legal status, with proposals to delete statutory references to it being advanced regularly, and others seeking to establish it as *the* fundamental constitutional document that should override all other law that is inconsistent with it. What the Treaty means and what its 'principles' are, are still the subjects of contentious debate in the community, in Parliament and in the Courts.

In the context of the Treaty of Waitangi it is important to reflect on how the right to self-determination relates to the right to education. The right to education is

considered a fundamental element of the realisation of the right to self-determination. There are varying views among Māori about how to achieve the right to education for Māori.

### **Non-discrimination and the access for all**

The Human Rights Act 1993 (HRA) and the Bill of Rights Act 1990 (BoRA) both protect the right to freedom from discrimination. The BoRA generally applies to the public sector, the legislature, the executive and the judiciary. The HRA generally applies to the private sector. The two overlap because:

- A publicly funded, free, dispute resolution service is available for complaints of discrimination in the public and private sectors
- Public sector employers are required to meet the same non-discrimination standards as private sector employers.

On the whole, New Zealand's statutory regime for dealing with discrimination complies substantially with international requirements. Before 2001, anyone wanting to make a complaint of discrimination against the government under the BoRA had to file a case in the High Court. As a result of an amendment to the HRA in 2001, it is now possible for such complaints to go to the publicly-funded disputes resolution service at the Human Rights Commission.

Part 1A of the HRA deals with the definition of discrimination by Government and across the public sector, including legislation. Part 2 deals with the definition of discrimination in the private sector and in employment, as well as particular forms of discrimination such as sexual and racial harassment and exciting racial disharmony.

The HRA makes it unlawful to discriminate on 13 different grounds which are: sex (including pregnancy and childbirth), marital status, religious belief, ethical belief, colour, race, ethnic or national origins (including nationality or citizenship) disability, age, employment status, family status, and sexual orientation.

The tests for discrimination are different in the public and private sectors. Under Part 1A the areas to which HRA applies are the actions of legislative, executive or judicial branches of Government and actions by any person or body in the performance of any public function, power or duty conferred or imposed by law. An action will be considered discriminatory if it involves a distinction based on a prohibited ground of discrimination and that distinction cannot reasonably be justified under section 5 of the BoRA. The test under section 5 involves considering the objective of the actions and whether rational and proportional means have been used to achieve the objective.

Under Part 2, the areas the HRA applies to are: employment (including pre-employment and partnerships); discrimination by industrial and professional associations, qualifying bodies, and vocational training bodies; access to places, vehicles, and facilities; provision of goods and services; provision of land, housing and other accommodation; and access to educational establishments.

There are a number of exceptions and justifications under Part 2, which if applied, would legitimise otherwise discriminatory behaviour. Specific exceptions relate to particular areas, such as employment where one of the grounds on which it is unlawful to discriminate is a characteristic necessary to do the job. Accordingly requiring people to be over a certain age to work in a bar is permissible, even though it means discriminating on the grounds of age. All areas include exceptions relating to disability which permit disabled people to be treated differently if the position could only be performed with adjustments to

the workplace, or the work environment is such that there is a risk to the person or others.

General exceptions also exist, such as measures to ensure equality and genuine occupational qualifications or genuine justifications. The HRA includes the concept of reasonable accommodation.

### **Relevance of international law in the national jurisdiction**

In New Zealand, treaty-based international law only becomes part of the domestic law by an Act of Parliament. It is New Zealand's policy that a treaty is only ratified or acceded to once any legislation required to implement it has been passed. However, customary international law is automatically a source of New Zealand law without the need for legislative action and can be applied directly by the courts unless there are contrary statutory provisions. It has been unnecessary for New Zealand to engage in massive legislative change to give effect to newly assumed international human rights obligations. This is because New Zealand has a strong common law tradition, together with the separation of powers and independent judiciary which has provided the necessary safeguards for the protection of most civil and political rights. Similarly, New Zealand's commitment to social welfare rights has ensured that not specific legislative action was required to give effect to the rights protected by the ICESCR.

Amendments to legislation are necessary at times to give effect to certain international human rights obligations.

The BORA long title includes, "Affirming New Zealand's commitment to the International Covenant on Civil and Political Rights".

The HRA long title includes "an Act to consolidate and amend the Race Relations Act 1971 and the Human Rights Commission Act 1977 and to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights."

The rights in the Universal Declaration have been codified in United Nations Covenants and Conventions and have become part of customary international law. New Zealand has ratified, with no reservation relating to the rights of education, all of the following international treaties – the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child (CRC), the Convention on all Forms of Racial Discrimination (CERD), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the UN Declaration on the Rights of Disabled people and the UNESCO Convention Against Discrimination in Education. The Government has also endorsed the Dakar Framework for Action, Education for All.

## **PART 1: ISSUES RAISED IN THE TERMS OF REFERENCE**

### **PRELIMINARY QUESTIONS**

#### **EDUCATION POLICY AND PROGRAMS**

1. *Please provide an overview of the framework of government education policies and programs in your country, including the division of responsibilities and financing between national, state and local governments.*

*[MINISTRY OF EDUCATION COMMENT]*

Education is funded by the national Parliament.

Boards of Trustees (elected by local school communities) govern New Zealand schools. They have the discretion to run schools as they see fit (s75 Education Act 1989). This is subject to any enactment (including the New Zealand Bill of Rights Act 1990) and the general law of New Zealand.

Schools must remain open for a prescribed number of days and hours. They may employ only those teachers who have been registered by the Teachers' Council. The Minister of Education sets national education guidelines made up of national education goals, foundation curriculum policy statements, national curriculum statements and national administration guidelines.

School boards, under the administration guidelines, must prepare charters for their schools. These must be approved by the Minister and can be revoked. A charter constitutes an undertaking by the board to the Minister to take all reasonable steps to ensure that the school is managed and administered for the charter purposes and that the school, its students and community achieve the charter's aims and objectives.

Each board in its annual report is to provide an analysis of any variance between the school's performance and the aims, objectives, directions, priorities and targets set out in the charter.

#### **JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS WITH RESPECT TO THE RIGHT TO EDUCATION**

2. *Please provide details of cases from the national courts of your country with respect to the justiciability of economic, social and cultural rights, with a particular focus on the right to education.*

*[MINISTRY OF EDUCATION COMMENT]*

*Daniels v Attorney-General v Daniels* ([2003] 2 NZLR 742) – the leading case – the Court of Appeal noted that “Parliament has conferred rights to education. It has done that since 1877 [through various Education Acts]. It has continued to recognise the essential role of public education for both private and public good in the money that it votes for education each year” (at p762). This is recognised in the International Covenant on Economic, Social, and Cultural Rights 1966, which New Zealand ratified in 1978.

In essence, the Education Act 1989 establishes a right to education that is not a free-standing one enforceable through the Courts but rather is provided for by

1. the systems to promote education created by the Education Act and
2. external scrutiny by the Ombudsmen, Controller and Auditor-General, parliamentary processes and international review.

Schools have duties correlative to the students' statutory rights. Rights under the 1989 Act enforceable through the Courts were only those specifically provided by the Act which in themselves provided for regularity and system and were designed to ensure appropriate quality.

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[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]

Traditionally, New Zealand judges have been ambivalent about adjudicating in relation to such rights because it can involve allocation of resources, which is considered to be a function more properly belonging to the executive arm of government.

For example, in *Lawson v Housing New Zealand* [1997] 2 NZLR 474 the complainant, in the absence of any right to housing in New Zealand, sought judicial review of a government policy to increase the rent of state housing to market levels. She claimed that she was unable to meet the rent and, as a consequence, would be forced to leave her home. This amounted to her being deprived of affordable shelter and was a breach of the right to an adequate standard of living and, therefore, Article 1 of ICESCR. Williams J in the High Court held that the matter involved, "Strong policy considerations and was [therefore] not amenable to judicial review ... the issue of compliance with international treaties was determined by international forums, not by the Court."

The justiciability of the right to education was discussed in *Daniels v Attorney-General* where the High Court judge accepted this had substantive content. However, the Court of Appeal in the *Attorney-General v Linda Shirleen Daniels & Anor* [2003] NZCA 29 rejected the approach of the High Court Judge, preferring recognition of some procedural rights to education. The Court of Appeal stated:

We do not find helpful the "all or nothing" or "justiciability or not" discussions in the judgment below and submissions. The schools have duties correlative to the students' statutory rights and those general rights are capable of legal enforcement [para 79].

Parliament has conferred some rights in respect of education which can be judicially protected. The real question is of course about the content of those rights [para 81].

As we have already indicated, "justiciability or not" puts the argument in the present case into too absolute a form. The 1989 Act plainly creates some rights, powers and duties which can be enforced and be the subject of review proceedings in the courts [para 89]

3. *Please provide information about remedies available and the enforceability of the decisions of national courts with respect to the right to education.*

[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]

The right to education is not specifically stated in New Zealand law, but it is reflected in the Education Act 1964, 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 HRA 1993 by ensuring compliance with human rights standards particularly in areas of gender, marital status and disability. Education policy and administrative practice further supplement the realisation of this right. The HRA states specifically that it is unlawful to discriminate in the area of education.

In general, the remedy of judicial review is available with respect to provisions in the Education Acts pertaining to the right to education – for example, Section 3 of the Education Act provides for the right to free enrolment and free education at any state school for any person who is not a foreign student, between the ages of 5 and 19; Section 8 provides that people who have special educational needs have the same rights to enrol and receive education as people who do not.

Breaches of the Human Rights Act are subject to the following general remedies: declarations, restraining orders, damages, orders for specific performance, orders that the defendant undertakes training, and other relief.

The Human Rights Act provides specifically for the remedy of a “Declaration of inconsistency” for enactments that breach the right to freedom from discrimination. Such a declaration does not have the effect of striking down inconsistent statutes. Such declarations must be tabled in Parliament.

Under the Education Act 1989, the New Zealand Qualifications Authority has powers to issue compliance notices to education providers regarding registrations, course approvals or accreditations. The Authority has powers to direct education providers to do or refrain from doing things in relation to these and other matters. If the education provider does not comply then the Minister of Education must be informed and a report tabled in Parliament.

The Office of the Ombudsmen has powers to review any decision or recommendation made or act done or omitted by a central or local government department or organisation (including School Boards of Trustees and education providers) which affects any person or body of persons in their personal capacity. After review, an Ombudsman may recommend that the department or organisation concerned take action to remedy a complaint. An Ombudsman has no power to force a department or organisation to accept a recommendation.

4. *Please provide information relevant to your government’s position regarding the proposed Optional Protocol for the International Covenant on Economic, Social and Cultural Rights.*

*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

With respect to the Optional Protocol to ICESCR, Phil Goff, then Minister of Foreign Affairs and Trade, on 18th January 2005, stated that New Zealand takes a cautious approach to treaties because even when they are "optional" New Zealand always tries to become a party to all international human rights treaties.

Given the complex nature of the issues concerned, and the clear lack of international consensus on the way forward we consider that further discussion is warranted before any decision is taken to begin negotiations on a new instrument (consequently) New Zealand opposes immediate drafting of an Optional Protocol.

**THE RIGHT TO RECEIVE AN EDUCATION:  
AVAILABLE, ACCESSIBLE, ACCEPTABLE, AND ADAPTABLE**

[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]

The four standards – availability, accessibility, acceptability and adaptability – have formed the basis of the *New Zealand Right to Education Framework Te Whare Tāpapa Mātauranga* (Appendix 1). It was against this framework that the right to education was assessed as part of the New Zealand Human Rights Commission’s scoping of the status of human rights in this country. (The Right to Education chapter in *Human Rights in New Zealand Today Ngā Tika Tangata o Te Motu* can be accessed on <http://www.hrc.co.nz/report/chapters/chapter15/education01.html>)

In summary, the report found that while New Zealand is providing a wide range of education opportunities, education in New Zealand is still not fully accessible, acceptable and adaptable. The table below indicates the key areas for concern.

NOTE: The NZHRC has determined to include early childhood education in its RTE work even though this is outside of the parameter of the international conventions. There is growing evidence in this country and internationally that points to the significance of ECE to the successful participation of children and young people throughout their compulsory years.

**TABLE 1:** Significant RTE issues for New Zealand

<b>4-A FRAMEWORK</b>	<b>The right to education Aspects of significance to New Zealand</b>
<b>Availability</b>	New Zealand is performing well.
<b>Accessibility</b>	Formal and informal costs of education create barriers at all levels.
	Participation rates for males, Māori, Pacific peoples, disabled people, and those from poor communities are disproportionately low.
	Māori and Pacific students have higher stand-down, suspension, exclusion and expulsion rates than those of other ethnicities, and males have higher rates than females.
<b>Acceptability</b>	There are disparate standards of education, particularly for disabled children and those from isolated schools or poor communities.
	There is discrimination, bullying, and harassment, particularly over race, disability, sexual orientation and gender.
<b>Adaptability</b>	The gap in achievement between the lowest achieving students and those who are average achievers is increasing. Compared with other OECD countries, we have one of the widest gaps in educational performance.
	Achievement rates for males, Maori, Pacific peoples, disabled people, and those from poor communities are disproportionately low.

## AVAILABILITY

*Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. (CESCR General Comment No. 13)*

## EXPENDITURE

5. *Please provide an overview of government expenditure on all levels of education in your country. Where there is a divide in education expenditure between national, state and local governments please provide this information. Where possible, figures should be disaggregated (primary, secondary, higher education, formal and non-formal) and expressed in both real terms and as a percentage of gross national product.*

*[MINISTRY OF EDUCATION COMMENT]*

### **Primary, secondary, higher education** (Appendix 2)

The attached figures in the spreadsheet give Vote Education forecasts by appropriation for 2006/07 and outyears and an estimate of spending by sector.

Also included is an analysis of overall government spending on education - a functional classification which includes Vote ERO, little pieces of MoRST, MSD and IRD re loans, National Library and others but excludes capital.

Total appropriations and the functional spend have also been compared against GDP.

Information on regional or local or private spending or formal/informal beyond these appropriations is not available.

### **Adult and Community Education (ACE)**

A total of \$40m (GST excl.) will be made available by government to support the provision of Adult and Community Education in 2007. In 2004, 174,000 people enrolled in ACE activities in schools, and 288,500 people participated in ACE provided by tertiary education institutions. Women represented 63 percent of these enrolments. Participation figures for ACE provided by other community groups are not available.

Adult and Community Education (ACE) is the main programme funded by the New Zealand government to support the provision of non-formal education (defined as organised learning opportunities that do not lead toward a recognised qualification). ACE promotes and facilitates the engagement of adults in lifelong learning, and consists of a wide range of community-based educational activities and programmes that are flexible, can either be formal or non-formal, and are responsive to the learning needs of communities as a whole and of individual learners. The five national priorities for ACE are:

- targeting learners whose initial learning was unsuccessful;
- raising foundation skills;
- encouraging life-long learning;
- strengthening communities by meeting identified community needs;
- strengthening social cohesion.

Adult and Community Education is provided by a range of community organisations, as well as by schools and tertiary education institutions.

Non-formal learning opportunities are also funded by government through the Foundation Learning Pool which supports the delivery of high quality and intensive foundation learning opportunities that build learners' skills in literacy, numeracy and language. The projects funded through this pool engage learners in intensive foundation learning in a variety of social and cultural contexts, including: family literacy projects, workplace literacy programmes and English for Speakers of Other Languages (ESOL). A total of \$10.8m is available on an annual basis for allocation through the Foundation Learning Pool.

There is no specific legal and policy framework for the improvement of literacy for women, but the broad theme of non-formal education policy in New Zealand is providing learning opportunities in a range of contexts that best meet learners' needs. For example, the family literacy projects referred to above to break the cycle of intergenerational low literacy by raising the literacy skills of parents and their children. Projects reach parents whose children are engaged in their own learning and enable them to increase both literacy and parenting skills, at the same time creating positive attitudes toward education.

6. *Please provide information about education funding models used in your country. Issues for consideration could include (but are not restricted to):*
- *Funding for state and non-state (private) education institutions;*
  - *The dependence on school fees in any form, direct or indirect*
  - *Use of education vouchers;*
  - *Privatization of the education system.*

*[MINISTRY OF EDUCATION COMMENT]*

#### **Early childhood education**

Most of government's investment in early childhood education is by way of funding subsidies paid by the Ministry of Education. Almost all early childhood education provision is by community-owned or privately owned early childhood services that are independent of government. No early childhood education is currently fully funded, so all types of services need to seek other income from fees or donations.

The early childhood funding system supports the Early Childhood Education Strategic Plan goals of increased participation and improved quality. Almost all of this funding is paid through the Early Childhood Education Funding Subsidy, which is paid for up to six hours per day, and 30 hours per week, per occupied child place. Changes in the hourly rates of this subsidy are linked to changes in the average costs faced by different types of services. For example:

- services with more registered teachers receive higher funding rates that recognise the higher costs of employing qualified and registered teachers
- all-day services receive higher funding than sessional services, reflecting the requirement for higher adult:child ratios for all-day services

Equity funding is paid to community-owned services that face additional costs associated with teaching children from low socio-economic groups, with special needs or in isolated communities.

In addition to Ministry of Education funding, the Childcare Subsidy administered by the Ministry of Social Development supplements the ECE funding subsidy. It is a fee subsidy primarily targeted at working families with low and modest incomes.

From July 2007, up to 20 hours free early childhood education will be funded for three and four year olds enrolled at teacher-led services. This will provide higher funding rates to early childhood services for these hours, based on the average hourly cost of provision for each type of service. Services will not be able to charge fees, but will be able to request donations.

### **Schools**

Since the Tomorrow's Schools reforms, and following the passing of the Education Act in 1989, all state and state-integrated schools have generally received both in-kind and cash resourcing from the government.

A key feature of the reforms was the introduction of formula-based resourcing to improve the transparency, flexibility and efficiency of resource use and allocation. School boards of trustees are expected to manage their resources to meet the requirements of the National Education Guidelines, including the New Zealand Curriculum.

Most resources are provided to schools from one central source, the Ministry of Education. The three main components of resourcing are teacher staffing, operational funding and property. In addition, schools and students are provided with further resources to meet particular needs.

### **Staffing**

Teacher staffing is provided to schools as an in-kind entitlement which schools can use only to employ a registered (or provisionally registered) teacher. Schools can also use operational funding to hire extra teaching staff. School Boards of Trustees decide on whom they employ as principals, teachers and other staff, and are the employers of those staff. The staff are paid directly by the Ministry of Education in line with the appropriate Collective Agreement.

The formularised staffing entitlements are set each year through Orders in Council (signed by the Governor General). Staffing is largely allocated to schools according to the number of students at each year level. Additional staffing is allocated on a formularised basis to meet the special needs of particular schools or students, including:

- teaching staff for students with very high and high special education needs;
- teaching staff for students learning in Māori language for more than half the time;
- specialist teachers for literacy, learning and behaviour, Māori, and vision impaired who serve a number of schools in an area.

The salaries for support and auxiliary staff are paid out of operational funding, generally according to the appropriate Collective Agreement.

### **Operational funding**

Operational funding is the cash resource provided to schools according to the size, type and student characteristics of the school. All schools are allocated base and per-pupil money according to the school type and number of students at each year-level. There are a number of other components specific to students, schools or programmes. These include:

- a decile component to enable schools to overcome the barriers to learning facing students from lower socio-economic communities;
- various programme- and student-specific components to support, for example, Māori language learning, special education needs, and senior secondary student transition to work;
- a property component for maintenance, heat, light and water, and vandalism;
- an isolation component to recognise the additional costs associated with accessing the range of goods and services needed to operate such a school;

### **Property**

The Crown owns the land and the vast majority of buildings of state schools in New Zealand, (but not state-integrated schools' property). However, schools determine their own priorities for expenditure on their property based on their own assessment of their needs. The Ministry of Education provides advice to schools on maintenance planning, project management, and statutory requirements and represents the Crown as owner of this property.

The proprietors of state-integrated schools own and are responsible for their own new capital development but are funded to maintain their land and buildings.

### **Other resources**

The government provides additional resources in cash or in kind to meet the needs of students, teachers and schools including:

- special education - an integrated resourcing package, Special Education 2000, was introduced in 1996 with the aims of improving educational opportunities and outcomes for children with special education needs (further information is provided elsewhere in this response);
- learning materials - are supplied to schools to ensure all students have access to high quality core materials that reflect the range of New Zealand ethnic, cultural and social perspectives and learning contexts;
- English for speakers of other languages – to support English-language learning;
- professional development - provided to teachers, principals and members of boards of trustees, mainly in-kind
- information and communication technology – a number of tools to help improve teaching and learning and administrative processes within the schools;
- school transport, boarding allowances & bursaries - provide assistance to families and schools to facilitate access to education for students disadvantaged by distance from an educational institution or by special circumstances;
- school improvement and school support – provides resources for a number of community-based schooling improvement projects, or to schools with serious financial, governance or other difficulties.

### **Locally-raised funds**

State schools are fully-funded to meet the requirements of the National Education Guidelines but can also raise their own funds through voluntary school donations, sponsorship, events, etc, and by accepting foreign fee paying students. State-integrated schools are able to charge fees to cover the costs of their school property.

### **Private schools**

The government provides per-student subsidies to private schools. Private schools also receive similar funding to state schools for students with high

and very high special education needs, for Māori language learning, and for the national senior secondary school qualification (NCEA).

7. *Please provide information about your government's laws, policies and programs regarding acceptance of international assistance and cooperation in relation to education.*

*[MOE COMMENT NOT YET RECEIVED]*

8. *Please describe the role and impact of non-state actors such as international financial institutions and trans-national corporations on the realisation of the right to education in your country. For example, if your country has adopted a structural adjustment program, has this impacted upon government expenditure on education policies and programs?*

*[MOE COMMENT NOT YET RECEIVED]*

## **INFRASTRUCTURE**

9. *Please provide information the availability and adequacy of infrastructure, especially for girls, for schools and other educational institutions in your country, including classrooms, library, sanitation facilities, safe drinking water and any other relevant facilities.*

*[MOE COMMENT NOT YET RECEIVED]*

## **TEACHERS AND SUPPORT STAFF**

10. *Please provide information about the availability of qualified teachers and support staff for all levels of education in your country, on teacher training initiatives to meet 'education for all' goals, and any other relevant issues that impact upon this availability.*

*[MINISTRY OF EDUCATION COMMENT]*

All teachers are required to be registered with the NZ Teachers Council. Teachers may be registered only if they are fully qualified and trained. Secondary and primary schools are fully staffed with registered teachers. Exceptions occur only in respect of short-term relieving positions where people may be employed on a "limited authority to teach". At any one time only about 2% of teaching positions are held by persons with "limited authority to teach" status.

There is an oversupply of trained and qualified primary teacher at present. Oversupply in secondary is limited to a few subjects. Some secondary subjects such as mathematics and physical sciences are taught in some schools by qualified teachers teaching 'out of field': that is, they are qualified to teach other subjects. The government has incentive schemes in place to try and attract a full supply of adequately qualified and trained teachers in these shortage subjects.

The head teacher in licensed early childhood education centres must be a trained a qualified teacher. The government has set a target that by 2012 all early childhood education teachers will be trained and qualified. Presently only about half of early childhood education teachers are fully trained. Schools and early childhood centres employ their own support staff. There are no shortages reported at any level

## TEACHING FACILITIES AND MATERIALS

11. *Please provide information about the availability and adequacy of teaching facilities and materials including: classrooms, books and writing materials, information and communications technology equipment, libraries, laboratories, workshops, sporting equipment and facilities and other relevant materials.*

*[MOE COMMENT NOT YET RECEIVED]*

### ACCESSIBILITY

*Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. (CESCR General Comment No. 13)*

## NON-DISCRIMINATION

12. *Please provide details of legislation and government policies and programs relevant to issues of non-discrimination, equal treatment and equality of opportunity in education. Information provided should include (but is not limited to) consideration of issues of access for people living with disabilities, internally displaced persons, non-nationals, prisoners, refugees and other minorities.*

*[MINISTRY OF EDUCATION COMMENT]*

The New Zealand Bill of Rights Act 1990 And the Human Rights Act 1993 prohibit discrimination. All education institutions in New Zealand from early childhood education services to tertiary institutions are required to have policies that encourage and implement equal treatment and equal opportunity. Section 8 of the Education Act 1989 provides that children with special needs have the same rights to enrol and attend state schools as all other children. Extra support is available for children and students with special education needs and those who are English Speaker of Other Languages. Education in the Māori Language is available through total immersion schools and early childhood services and bi-lingual units in schools. There are some early childhood services that specialise in teaching in the Pasifika languages.

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*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

### 12.1 Māori

Educational achievement indicators highlight a disproportionate percentage of Māori failing within current education structures. Successful participation rates in education for Māori, as a group, are disproportionately low. Māori have higher stand-down, suspension, exclusion and expulsion rates than those of other ethnicities. Māori students also have lower achievement rates. It appears that Māori, as a people, do not have access to the kind of education that enables the full development of their personality and sense of dignity, and their participation as adults in meaningful and rewarding employment.

The Ministry of Education recognises and provides specific services to Māori. To this end a number of programmes and some funding have traditionally been available to support the specific needs and rights of Māori. Support has

also been given to the establishment of institutions at all levels of education that provide Māori language immersion and validate Māori knowledge structures, processes, learning styles, and administration practices. Over the past 12 months, however, the government has been committed to systematically removing separate funding that has been tagged for specific racial groups who have not been achieving within education, specifically Māori and Pasifika.

The Treaty of Waitangi gives New Zealand a framework for discussing the right to education for Māori, particularly as it relates to *rangatiratanga* (the right to self-determination). Many Māori perceive *rangatiratanga* as the right to freely determine social, cultural, political and economic development within the State. For some, *rangatiratanga* may be about living outside the authority of the State. Others perceive *rangatiratanga* as the ability to develop mechanisms to deliver *iwi* (tribal)-based education services.

There are varying views among Māori about how to achieve the right to education for Māori. Māori *whānau* (family), *hapu* (wider familial group) and *iwi* (tribe) are calling for greater autonomy in shaping and determining educational success for Māori. Debates are ongoing about whether educational success for Māori can be achieved through partnerships with the State, independence from the State, or both.

## **12.2 Pacific Peoples**

New Zealand has 66,000 Pacific students in the compulsory education sector. For reasons similar to those related to Māori, educational achievement indicators for Pacific students highlight a disproportionate percentage failing within current education structures.

Along with Māori, the Ministry of Education has also prioritised Pacific education as an area of work. Presently one in ten children is a Pasifika child, and by 2051 it is predicted that this will rise to one in five. A *Pasifika Education Plan* (2001) aimed to increase Pacific achievement in all areas of education through increasing participation, improving retention and focusing on effective teaching strategies in early literacy and numeracy. The Plan has reportedly contributed to increased participation in early childhood and tertiary education, a lift in literacy and numeracy achievement and more students leaving school with qualifications.

A further action plan aimed at lifting educational achievement among Pacific students was launched in June 2006. The government is investing \$4.8 million (additional to core education spending) over the next four years, including funding to support literacy teaching, strengthen engagement with Pacific families and communities, develop resources to support teaching of Pacific languages, and to provide professional development for teachers.

## **12.3 Disabled People**

The Ministry of Education, (through Group Special Education), together with schools and early childhood education services, provides services to children and young people in New Zealand with special education needs. Special education in New Zealand is available for children with physical and/or intellectual impairments; hearing or vision difficulties; children who struggle with learning, communicating, or getting along with others; or who have an emotional or behavioural difficulty. For further information: <http://www.minedu.govt.nz>

The New Zealand Government launched a national disability strategy in April 2001. Objective 3 of the *New Zealand Disability Strategy* pays specific attention to education and aims to ensure access to school; effective communication; educators who understand the learning needs of disabled people; equitable access to resources; contact with disabled peers; schools responsiveness and accountability; effective educational settings; and post-compulsory opportunities. For further information: <http://www.odi.govt.nz/nzds>

*Human Rights in New Zealand Today Ngā Tika Tangata o Te Motu* (Chapters 5 & 15) found that in spite of the provisions of the Education Acts 1964 & 1989 that recognise the right of disabled people to the same access to education as others, this is an area of considerable contention. Many of the disability-related complaints to the NZHRC relate to education – particularly refusals to enrol and suspension, exclusion or expulsion. Of the written submissions to the Right to Education Discussion Document (2003) a large proportion related to disability. The complaints and submissions identify problems in the capacity and capability of mainstream schools to meet the needs of disabled students. A related issue is the availability of equitable resourcing across disability type.

In June 2005, the New Zealand Education Review Office released two evaluations of how effectively schools used the Special Education Grant (SEG) and the Ongoing and Reviewable Resourcing Schemes (ORRS) to improve student outcomes. The evaluations found that, although some schools were using the SEG and ORRS to make a positive difference to the achievement of students with moderate needs, across the 180 schools evaluated there was a very wide distribution of performance and effectiveness from highly effective to ineffective.

Currently there is no demographic data relating to disability and the right to education apart from that gathered as part of receiving specific grants. Consequently most information about the successful engagement in education of disabled people is anecdotal. This is an area of concern.

#### **12.4 Migrants and Refugees**

New Zealand is a signatory to the Convention relating to the Status of Refugees and accompanying Protocol. In 2003, the Government created a national Immigration Settlement Strategy for migrants, refugees and their families. Access to appropriate information and responsive services, including education, is part of the Strategy. Once a person has been given refugee status in New Zealand, they have the same rights as a 'Permanent Resident', including the right to education. For further information: <http://www.immigration.govt.nz/community/stream/support/nzimmigrationsettlementstrategy>

#### **12.6 Children deprived of their liberty**

A range of programmes are offered to compulsory-aged students in youth prisons. Rehabilitation and education programmes are also available for older people in prisons. Those consulted as part of the development of the NZ Action Plan for Human Rights had some positive perceptions towards educational courses offered, but found a lack of opportunity for mainstream education. The cost of non-compulsory education for prisoners was also a concern.

### **GENDER PARITY AND GENDER EQUALITY**

13. *Please provide details of legislation and government policies and programs directed to improving gender parity and gender equality in education at all levels.*

*[MINISTRY OF EDUCATION COMMENT]*

In terms of education legislation, there are no provisions directed specifically at gender parity or gender equality. However, one of the Ministry of Education's three Vital Outcomes focuses on effective teaching for diverse students. The Ministry's Vital Outcomes link closely with the wider aims of the Government's Education Goals.

Diversity does include issues for students, or groups of students, specifically related to gender differences. The Ministry of Education employs an evidence-based approach to diversity, to highlight which groups of students require particular assistance, rather than a blanket gender approach, which separates male students from female students.

In the 1970s and 1980s, gendered views of knowledge constrained the achievement of girls in a range of curriculum areas, such as science, which were viewed as male domains. Over the 1990s, achievement of girls has matched or even overtaken boys in subjects where they had been under-represented and/or under-achieving.

As a result, the focus on gender issues has shifted more recently to the long-standing disparity in achievement for boys in literacy based assessments, and particularly in writing. Although the curriculum is designed to be inclusive at all levels, there is an argument that the curriculum, and how it is assessed, has become more literacy-based to the disadvantage for some boys.

The Ministry established a Boys' Educational Achievement Reference group in 2004 to discuss issues related to boys' education and interventions to improve outcomes for some groups of boys. At the highest level, its findings point to two main issues. The first relates to boys' literacy, and particularly writing. Boys are on average significantly behind girls as they leave primary school. A major concern is that this gap in literacy continues to affect some boys, as they move through secondary school, as many of the modes of assessment use writing.

The second finding is the negative social outcomes beyond school for groups of boys, who are failing to establish key relationships with teachers at school. Instead, they are disengaging with academic learning. This leads to a future risk for employment prospects and well-being. This work confirms that the Ministry should continue to focus its efforts with boys on improving literacy and also focus on groups of boys who disengage with school at an early age.

## **PHYSICAL ACCESSIBILITY**

14. *Please describe the main issues regarding geographical location of and physical access to educational institutions for people from urban, rural and remote communities, as well as for people with physical disabilities.*

## **ECONOMIC ACCESSIBILITY**

In the mid-1990s, the National Government introduced "decile funding", which ranks schools according to the wealth or poverty of their communities, and

provides extra funding for lower decile schools. Decile ratings are used in allocating a variety of funding and support programmes to schools. The measures used include averages of household income, crowding, parents' qualifications, reliance on benefits, parents' skill levels, and the proportion of Maori and Pacific Island students on the school roll. Current efforts to remove 'race-based' funding has meant the abolition of the component based on the percentage of Māori, Pacific, and ESOL-eligible refugee students on each school's roll.

#### *Primary education / Secondary education*

*15. Is primary education compulsory and free for all? Please provide details of relevant legislation and government policies and programs. For example, does your government have a plan of action for making primary education free? (Responses below)*

*16. Please provide information about any school fees, charges and other costs imposed on parents or guardians for primary education. Please describe the extent of financial assistance available for the completion of primary education. (Responses below)*

*17. Is secondary education compulsory and free for all? Please provide details of relevant legislation and government policies and programs. (Responses below)*

#### *[MINISTRY OF EDUCATION COMMENT]*

Section 3 of the Education Act 1989 states that every person who is not a foreign student is entitled to free enrolment and free education at a State school from the person's 5th birthday until 1 January following the person's 19th birthday.

The right to free enrolment and free education means that a board of trustees may not make payment of a fee a prerequisite for enrolment or attendance of a domestic student. The only exception to this rule is the provision for proprietors of integrated schools to charge attendance dues. A board of trustees may not demand a fee to cover the cost of either tuition or materials used in the provision of the curriculum.

In subjects with a practical component such as clothing and workshop technology, a board may charge for materials where the end product belongs to the student and may, if paid for, be taken home.

Completion of primary education is compulsory.

Senior secondary students may be involved in tertiary level courses where the school facilitates enrolment in a tertiary course for a student; meaning that the student is effectively enrolled only part time at the school the student will be subject to whatever fees are associated with the tertiary level provision. Sometimes schools organise activities away from school as part of the curriculum. Examples of these are fieldwork in geography and biology and outdoor education programmes. Parents are expected to pay for any travel costs which are connected with such activities. In cases where parents are unwilling or unable to pay for a trip, teachers try to provide an alternative which would give the student an insight into the curriculum experience covered by the trip.

Government assistance is available to families with students who are still at school as part of the wider support for families. Boarding bursaries are

available for secondary school students who live in rural areas where smaller schools may not be able to offer a full curriculum choice, especially in the senior secondary school. Education through The Correspondence School, a distance learning school, can help rural students or those alienated from regular schools complete their secondary education

There are also a number of initiatives devoted to encouraging students to stay at school beyond the legal leaving age and to leave with higher qualifications. The improved ability of teachers to teach the full range of students with diverse needs is crucial. There are initiatives to reduce suspensions and expulsions and to get truants re-engaged in schooling.

18. *Please provide information about any school fees, charges and other costs imposed on parents or guardians for secondary education. Please describe the extent of financial assistance available for the completion of secondary education.*

*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

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 five to 19. That is, state schools may not charge fees. Payments or school donations requested by state primary, intermediate and high schools are by law a voluntary donation to provide services beyond those paid for by government funding.

In support of the legislation, Ministry of Education Circular 1998, *Payments by Parents of Students in State and State Integrated Schools* aims to assist principals and boards to formulate policy related to requests for financial contributions from parents.

A survey of Auckland schools at the beginning of 2003 showed that the amount suggested to families for an annual donation ranged from \$40 to \$300 per student, with the most common figure being around \$150. (More recent data does not appear available).

In addition to school donations, families are expected to pay for uniforms, stationery, course-related materials, school camps and adequate equipment and clothing to take on camp. Poorer children were identified by those consulted as part of the development of the NZ Action Plan for Human Rights as particularly disadvantaged in that they are deprived of school trips and activities. In an attempt to address this issue, Work and Income provides a Special Needs Grant that offers one-off recoverable financial assistance for school exam fees, school stationery and school uniforms.

A further and increasing cost facing families and schools is related to participation in digital technology, a problem that is exacerbated for low-income households. The Ministry of Education's strategy *Digital Horizons*, introduced in June 2002, aims to fully integrate information and communications technology (ICT) into the curriculum. At the time of the 2001 census, 63 percent of New Zealand households and 50 percent of households with two or more children under 15 did not have access to the Internet. Projects such as *Recycled computers - Learning Power* (CAN Trust) and *Computers in Homes* (2020 Communications Trust) in partnership with the Ministry of Education aim to bridge the access gap for students, families and communities of low-decile schools. It remains to be seen whether projects such as these are sufficient to diminish the 'digital divide'.

NOTE: The NZHRC is currently writing a discussion paper highlighting cost as a barrier to schooling in this country. The general thesis of this discussion document is that although every citizen and permanent resident in NZ is entitled to a free primary and secondary education, there is increasing evidence that parents are being compelled by some schools to contribute to the cost of their children's schooling; and that some students are being excluded from activities, and in other ways penalised, when their parents are either unable or unwilling to meet their schools' expectations. (The discussion paper should be available in July/Aug if useful)

### *Higher education*

*19. Please provide information about fees, charges and other costs for higher education. Please describe the extent of financial assistance (if any) available for the completion of higher education.*

A New Zealand student loan scheme was introduced by the National Government in 1992 as part of a tertiary education reform plan that included the deregulation of tertiary tuition fees, successive reductions in the level of per-student funding going to tertiary institutions, the targeting of student allowances, and measures aimed at promoting the expansion of the private tertiary education sector. Students are able to borrow to pay for tuition fees, living costs, course-related costs and student association fees.

Until April 2006 the student loan repayments were interest-loaded. From this date, student loans are interest free for borrowers living in New Zealand. Interest free student loans apply to existing and new borrowers, whether studying or not. Eligibility for is linked with time living in New Zealand.

NOTE: The New Zealand University Students' Association (NZUSA) lodged a complaint with the Human Rights Commission in 2003 claiming that, because women take nearly twice as long as men on average to repay their loans, earn less than men, and take time out of the workforce to have and care for children, they pay more for qualifications through increased interest payments. Data collected for the *Student Loan Scheme Annual Report* (2003) revealed that male and 'New Zealand European' borrowers indeed had shorter repayment times due to higher income projections.

#### *[MINISTRY OF EDUCATION COMMENT]*

In New Zealand, the costs of tertiary education are shared between the government and families. The government's funding of tertiary education is intended as a subsidy, rather than funding the full cost of the education. Thus, the tertiary education providers are permitted (and expected) to raise part of their revenue by way of tuition fees.

On average, fees currently represent around 26 percent of the full cost of tertiary education.

While providers have the right to set their own fees, the government has imposed rules that regulate fee-setting. These rules – called the fee and course costs maxima (FCCM) policy – provide upper limits on fees in each field of study (with those limits adjusted by the inflation rate from year to year) and prevent sharp fee rises. The policy also covers the recovery from students of the incidental costs of the courses they take – such as the costs of compulsory equipment and the costs of field trips. In this way, the policy

is intended to maintain the affordability of tertiary education for New Zealand students.

Since the FCCM policy was introduced, the ratio of average weekly wages to average fees – the best index of affordability – has hardly moved.

There are two main government means of assisting tertiary students to meet the costs of tertiary study. These are:

- The Student Loan Scheme
- Student allowances

Loans are open to nearly all New Zealand students. (There are some restrictions on access to loans for students undertaking very small quantities of study and for students on courses/qualifications that don't meet threshold conditions for access to loans). Under the loan scheme, students may borrow:

- Their tuition fees
- Part of their course-related costs

while full-time students may also borrow to help them meet their living costs.

Repayment of loans is managed through the tax system and is income contingent – in that borrowers repay nothing until their taxable income reaches a certain threshold, beyond which they repay at the rate of 10 cents in the dollar of income above the repayment threshold.

Under legislation enacted in December 2005, no interest is charged on the loans while the borrower remains in New Zealand following study.

Student allowances are grants made to full-time students who meet certain targeting criteria – related to their age or their parents' incomes – that help meet the costs of living while studying.

Around 150,000 students draw loans from the Student Loan Scheme each year. This represents about 53 percent of all students but about 74 percent of all full-time students borrow. About 72,000 students receive allowances.

In addition to loans and allowances, the government makes available a range of scholarships targeted to particular groups. For instance, there are scholarships directed at those undertaking training for teaching in certain fields, those who are undertaking study in animal or human health and in certain other fields. And there are also government-funded scholarships directed to those with very good study records

### *Non-formal education*

*20. Please provide information about access to non-formal education in your country. Issues for consideration include (but are not restricted to):*

- *The existence of and support for Community Learning Centres*
- *The legal and policy framework for the improvement of literacy for women.*

### [NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]

The Tertiary Education Commission (TEC) funds eligible organisations through Adult and Community Education. Its priorities include enhancing lifelong learning, expanding opportunities for adults to develop their literacy

skills, and promoting both job-specific training and training in general skills so as to support people into employment.

Various non-governmental organisations provide life-long learning and adult and community education, either privately or by a contract with the Government. These include national organisations such as the Workers' Education Association, Literacy Aotearoa and the Rural Activities Education Programme.

Those consulted as part of the development process for the NZ Action Plan for Human Rights commented positively on the range of opportunities in New Zealand for lifelong learning and second-chance education for adults. Specific mention was made of evening classes, on-the-job training and tertiary institutions that provided adults with wider choices. Others noted the lack of opportunities for adults to acquire new skills or improve existing ones, stating that it was difficult for those who had not achieved school qualifications in the past to catch up.

#### **ACCEPTABILITY**

*The form and substance of education, including curricula and teaching methods, have to be acceptable (eg – relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents. (CESCR General Comment No. 13)*

#### **QUALITY EDUCATION AND MINIMUM STANDARDS**

*21. Please identify the relevant national and/or local institutions which are responsible for the implementation of the right to education. In particular, are there any specialised agencies, authorities or officials that have a mandate on the right to education?*

*[MINISTRY OF EDUCATION COMMENT]*

The following accountability measures protect the right to education:

1. Parents must send their children to school, and are prosecuted by the Ministry of Education if they do not.
2. Boards of Trustees must report to the Ministry of Education variance between their school's performance and the aims, objectives, directions, priorities and targets set out in the charter. This is done annually (s87 Education Act 1989)
3. The Education Review Office reviews the performance of state schools and other bodies in the provision of education services. The resulting reports are published and are widely available as well as being provided to the Minister and the institution.
4. The Minister or Ministry of Education have powers to intervene in schools. The range of options extends from requiring information, requiring specialist help, requiring an action plan, appointing a limited statutory manager to dissolution of the board and the appointment of a commissioner (s 78I Education Act 1989).
5. In addition to the system created by and under the Education Acts to promote education, external scrutiny is provided by the Ombudsmen, the Controller and Auditor-General, the responsibility of Ministers to the House, the parliamentary processes of scrutiny including the estimates

and financial and annual reports, professional and public scrutiny and comment, and international review through bodies such as the OECD.

22. *Please provide information about measures adopted by education authorities to provide quality education and to establish minimum education standards and an effective and transparent system for monitoring standards.*

*[MINISTRY OF EDUCATION COMMENT]*

The provision of quality education is the goal of education at every level of the education system. A key area that everyone in the system is working on is the improvement of the quality of teaching. High quality teaching is the main contributor to improved learning.

Minimum standards in the early childhood sector are set through a licensing system that sets standards around curriculum, teaching, care, administration, health and safety. Compliance against these standards is reviewed on a regular basis by a government department – the Education Review Office. The government regulates for the quality of teachers by setting qualification standards and by requiring teachers to meet the standards for registration set by the Teachers Council.

Minimum standards in the school sector are set through the requirement that schools comply with National Education and Administration Guidelines set by the Secretary for Education. These include a requirement to follow the National Curriculum. Schools are required to submit and report on both annual plans and three-five year strategic plans that set out how they are going to meet the requirements in the Guidelines. The Education Review Office regularly reviews schools for compliance.

The Education Act also has requirements that set minimum standards for education. It has requirements around how long and for how many days in a year a school must stay open. Schools are required to employ registered teachers. They must provide guidance and counselling for their students.

23. *Please describe the indicators (including human-rights-based indicators) used by education authorities to monitor the realisation of the right to education in your country.*

*[MINISTRY OF EDUCATION COMMENT]*

Education Sector Indicators have been developed to help decision-makers monitor the health of the education system and implement resultant strategies. These indicators are published on the internet as they are developed and data becomes available. Published alongside the indicators are definitions and, where available, data presenting the indicator at more detailed levels, for example, broken down by gender, geographic, socio-economic measure, ethnic groups, etc. <http://educationcounts.edcentre.govt.nz/indicators/edachievmnt/index.html>

The main focus of education sector indicators is on educational and learning outcomes. This covers the skills, knowledge, attitudes, and values gained through the education system. The Ministry of Education's goals in education are to raise achievement and reduce education disparity. This domain shows the extent to which the goals are being achieved. It shows if New Zealand is heading in the right direction and how well we compare to other countries in the education of our population.

The education system has to meet the wide variety of educational requirements at all ages and stages of learning. It is therefore important to

consider outcomes throughout an individual's progression through the education system.

An individual's learning and experience in the education system has long term consequences and some outcomes may not be realised until much later in life. Beyond educational qualifications, labour market outcomes of education are also included

A second key focus is participation. Indicators here consider who has access to the opportunity to learn, and who is enabled to take up the opportunity.

In recent years government has increased its efforts to improve accessibility to quality early childhood education services, and additional measures are being used to monitor the new comprehensive policies.

Education in New Zealand is compulsory from 6 to 16 years-old, although most children start school on their 5<sup>th</sup> birthday. Here education sector indicators focus on retention and different methods of student engagement.

24. *Please provide details of legislation and government policies, practices and programs which may impact upon academic freedom and the autonomy of educational institutions.*

*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

The Education Act 1989 provides for:

- as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest, and the demands of accountability (Section 160);
- academic freedom and the autonomy of institutions to be preserved and enhanced (Section 161).

Universities and other tertiary institutions also have powers to develop their own subordinate legislation. Section 194 of the Education Act 1989 gives the Councils of tertiary institutions very broad powers to make statutes (not inconsistent with the Education Act 1989 and the State Sector Act 1988) with respect to good government and discipline of the institution, penalties upon staff or students for contravention of university statutes, enrolment, courses of study and training, and numerous other matters. In addition, Councils are given a general power under section 193 of the Act to provide courses of study or training, admit students, and prescribe fees.

## **DISCIPLINE**

25. *Please provide information about the legal status of corporal punishment and other forms of discipline that operate within the education system in your country.*

*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

Corporal punishment in schools has been banned since 1990 (refer Section 139A of the Education Act 1989). The only situations in which school staff can use physical force against a student are for self-defence, or to stop a pupil assaulting someone else. Other forms of punishment are detentions during lunch times. Detentions after school hours are possible also, preferably with the consent of parents or guardians.

Article 28 of UNCROC requires States to take measures to encourage regular attendance at schools and the reduction of drop-out rates (Article 1(e)). However, removing a student from school by stand-down, suspension, exclusion or expulsion is one way that schools manage student behaviour.

NOTE: Several groups who participated in the public consultation for the NZ Action Plan for Human Rights expressed their concern that through the suspension, exclusion and expulsion process students were losing their access to education. Both the Office of the Children's Commissioner and the NZHRC receive complaints from children or their parents and caregivers relating to the right to education. In both cases, these fall into two main categories - removal of students from schools and problems faced by disabled children.

The Ministry of Education has introduced intervention and monitoring programmes to reduce suspensions and stand-downs in secondary schools, such as the Suspension Reduction Initiative (SRI) in 2001, which was established to address the high proportion of Māori suspensions in secondary schools.

While the most recent reports show that overall percentages of students being stood down and suspended are levelling off, boys and Māori students continue to be over-represented. The predominant group of students being stood down and suspended were 14-year-old Māori males. The schools with the highest stand-down and suspension rates were rated decile 1 to decile 5.

## **CURRICULUM**

26. *Please provide an overview of how education authorities determine curriculum development at all levels of education within your country*

[MINISTRY OF EDUCATION COMMENT]

New Zealand is currently redeveloping its curriculum for the compulsory schooling sector. Evidence on what aspects needed improvement was identified in the curriculum stocktake carried out from 2000 to 2002. Following government's acceptance of the findings the New Zealand Curriculum Project was established in April 2003 to redevelop the national curriculum. In June 2006 the government approved the revised draft New Zealand Curriculum for release for consultation.

The principles of the United Nations Convention on the Rights of the Child (UNCROC) are embodied within national curriculum policy, which places the child/young person at the centre of teaching and learning in New Zealand schools. This recognises that what happens in classrooms is something that students and teachers do together, rather than as something that is done 'to' students.

27. *To what extent is human rights education incorporated into the curriculum of primary, secondary and higher education?*

[MINISTRY OF EDUCATION COMMENT]

The New Zealand Curriculum is organised through seven essential learning areas and eight sets of essential skills. The achievement objectives of each curriculum statement provide a framework for progression through eight levels of learning, which are not locked to age or stage of schooling, but recognise that students of the same age, and in the same classroom, may be at different points in their learning journey.

The outcomes focus of the New Zealand Curriculum empowers schools to select resources and curriculum content to meet the needs of their students.

While human rights education is the responsibility of all schools the learning about it is located in the social sciences and health and physical education curricula for primary and secondary students.

For example, in social studies, students develop understandings of the rights, roles and responsibilities of people as they interact within groups. The Social Studies curriculum also makes specific mention of “the roles and responsibilities that New Zealanders have within such international organisations as the United Nations” and includes study of ‘New Zealand’s participation in significant international events and institutions’. Examples of learning for range of ages that incorporates human rights education are at:

(<http://www.tki.org.nz/r/socialscience/curriculum/SSOL/>). For example, students learn about:

- aid agencies such as World Vision, Red Cross, U.N.I.C.E.F., Salvation Army, and Save the Children Fund, that are working to help people gain both access to resources and basic human rights;
- the responsibilities people have when entering into a contract or agreement;
- how people seek to gain and maintain social justice and human rights;
- how aid agencies seek to gain and maintain social justice for disadvantaged groups;
- the impact of racist hysteria on groups of people. For example, students learn about the goldminers of the 1860s as well as implications of present day racism and xenophobia;
- the history of workers rights in New Zealand and how it is celebrated each Labour Day, and current issues relating to children and work;
- how women gained the vote in New Zealand;
- refugees as they are forced to move from their homes, and begin new lives as refugees in places like New Zealand;
- what types of social action could be taken to improve people's access to essential resources such as water;
- the content in the Universal Declaration of Human Rights and how to analyse such documents;
- planning and justifying some form of responsible action in regard to the human rights abuse they have examined in class; and
- cases of human rights abuse around the globe using Amnesty International and World Vision as points of focus. They then decide on possible social action that people could take to fight for social justice and human rights.

The Healthy Communities and Environments strand of the Health and Physical Education curriculum includes learning opportunities about policies, rules and laws and their contribution to social justice at school and the wider community.

In the redevelopment of the NZ Curriculum, the New Zealand Curriculum Project, the structure outlined above remains, although the essential skills will be called key competencies. Key competencies incorporate knowledge, attitudes and values as well as essential skills and are defined as those competencies needed by everyone across a variety of different life contexts to meet important demands and challenges, such as human rights issues.

## **PARENTS / LEGAL GUARDIANS**

*28. Please describe the extent to which parents and legal guardians are able to exercise freedom of choice with regards to educational institutions and educational programs.*

*[MINISTRY OF EDUCATION COMMENT]*

Parents are free to enrol their child at the state school of their choice unless:

- The school does not provide education at a level that is appropriate for the child;
- The school is a single-sex school and the child is of the opposite sex;
- The school has an enrolment scheme in order to prevent overcrowding and the child does not meet the criteria under the scheme; and
- The school is one with a special character (e.g. religious or philosophical) and the parents do not meet the special character requirements.
- The school is a special school, in which case the child can only be enrolled with the consent of the Secretary for Education

Enrolment in a particular early childhood services is a matter between the parent and the services. The Human Rights Act 1993 prevents services from discriminating against parents in relation to the enrolment of their child.

Parents of students under 16 years of age and the students themselves, if they are over 16, may ask the principal to release them from tuition in a particular class or subject on religious or cultural grounds. Parents may request that their child is excluded from tuition in specified parts of the health curriculum that relate to sexuality education.

**RELIGIOUS AND CULTURAL PRACTICES, LANGUAGES OF MINORITY GROUPS**

*29. Please provide details of relevant legislation and government policies and programs regarding respect for religious and cultural practices and the use of languages of minority groups within schools and other educational institutions.*

*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

Te Reo Māori (Māori language) is not only the indigenous language it is also an official language of NZ (as are English and NZ Sign). As such Te Reo Māori has a special place in New Zealand schools. The Ministry of Education has a Māori Language Strategy (2004 – 2008) for the teaching and learning of Māori in English medium schools focussing on the development of a curriculum and materials and on professional learning for teachers. The government's willingness to promote second language learning is recognised as a fiscal challenge. There are capability and resourcing issues eg insufficient numbers of quality teachers.

A number of languages are taught as separate subjects. Curriculum has been developed for English, Māori, Chinese, French, German, Japanese, Korean, Spanish, Samoan and Cook Islands Māori, Tongan, Tokelau, Niue, Latin and Indonesian and NZ Sign language.

Second language learning is available for students from Years 8 – 13 (aged 11 – 18). From 2008, NZ schools with year 7-10 students (aged 10 – 14) will be required to offer those children the opportunity to learn a second language. It will not be compulsory for those students to take up the option.

Useful reports include

- The Human Rights Commission *Race Relations Report 2005*  
<http://www.hrc.co.nz/home/hrc/newsandissues/racerelationsreporturgesaction.php>

- *"Managing Cultural Diversity in New Zealand secondary Schools (2005)*  
<http://www.educationnz.org.nz/eedf/ManagingCulturalDiversityfinal.pdf>

### **ADAPTABILITY**

*Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. (CESCR General Comment No. 13)*

### **EDUCATION AND WORK**

30. *Please provide details of legislation which prescribes the age for the completion of compulsory education and the minimum age of employment in your country.*

*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

Section 3 of the Education Act 1989 provides for the right to compulsory and free primary education on a non-discriminatory basis. This includes

- Except as provided in this Act, every person who is not a foreign student is *required* to be enrolled at a registered school at all times during the period beginning on the person's 6th birthday and ending on the person's [16th] birthday.
- Except as provided in this Act or the Private Schools Conditional Integration Act 1975, every person who is not a foreign student is *entitled to free enrolment and free education* at any state school during the period beginning on the person's 5th birthday and ending on the 1st day of January after the person's 19th birthday

The Education Act 1989, Parts 13-18, deal with tertiary education. Higher education is not compulsory, nor free in New Zealand. However, there are student allowances and loans available to encourage people to attend tertiary institutions.

There is no minimum age of employment in New Zealand. New Zealand has not ratified ILO Convention 138, which provides for a minimum working age of 15. The Department of Labour is currently undertaking a work programme assessing New Zealand's compatibility with ILO Convention 138. The New Zealand Government considers the rights of the child provided for in Article 32 (1) UNCROC are adequately protected by its existing law. It has reserved its right not to legislate further or take additional measures on UNCROC Article 32 (2).

New Zealand sets its minimum age of criminal responsibility at ten years of age. However, the Children, Young Persons, and their Families Act 1989 established graduated minimum ages for criminal *prosecution* limiting the number of children, as defined by UNCROC, who are called to account in an adult setting for any offending.

31. *Please provide an overview of the strategies, policies and programs of governments and education institutions which enable the education system in your country to adapt to the education needs of those people who would otherwise not be able to undertake education. For example: working children and young people; children and young people in juvenile detention; working women; prisoners and other people in detention.*

*[MOE COMMENT NOT YET RECEIVED]*

## **EDUCATION FOR WOMEN**

32. *Please provide details of legislation which impacts upon the right to education of women. Issues for consideration could include (but are not restricted to):*

- *The minimum age of marriage*
- *Pregnancy*

*[NEW ZEALAND HUMAN RIGHTS COMMISSION COMMENT]*

Under the Marriage Act 1955, the minimum age for marriage is 16 years, although no marriage is deemed to be invalid if the reason is infringement of the minimum age only. People under 20 years of age, who are not widowed, require the consent of parents or guardian. In case of refusal, the consent of a District Court judge may be sought. Under the Civil Union Act, a person who has not reached 16 years of age is prohibited from entering a civil union.

33. *Please provide an overview of the strategies, policies and programs of governments and education institutions which enable the education system in your country to adapt to the education needs of women.*

*[MINISTRY OF EDUCATION COMMENT]*

New Zealand's education system has for some years been consciously working to meet the education needs of women. In some larger urban areas, parents have a choice of single-sex education for their daughters. In the senior secondary school in many subject areas, girls now out-perform boys. In 2004, 58.3% of enrolments in tertiary education were female.

## **SPECIAL NEEDS EDUCATION**

34. *Please provide information about any special needs education policies and programs that have been developed and implemented by government and non-governmental organisations in your country.*

*[MINISTRY OF EDUCATION COMMENT]*

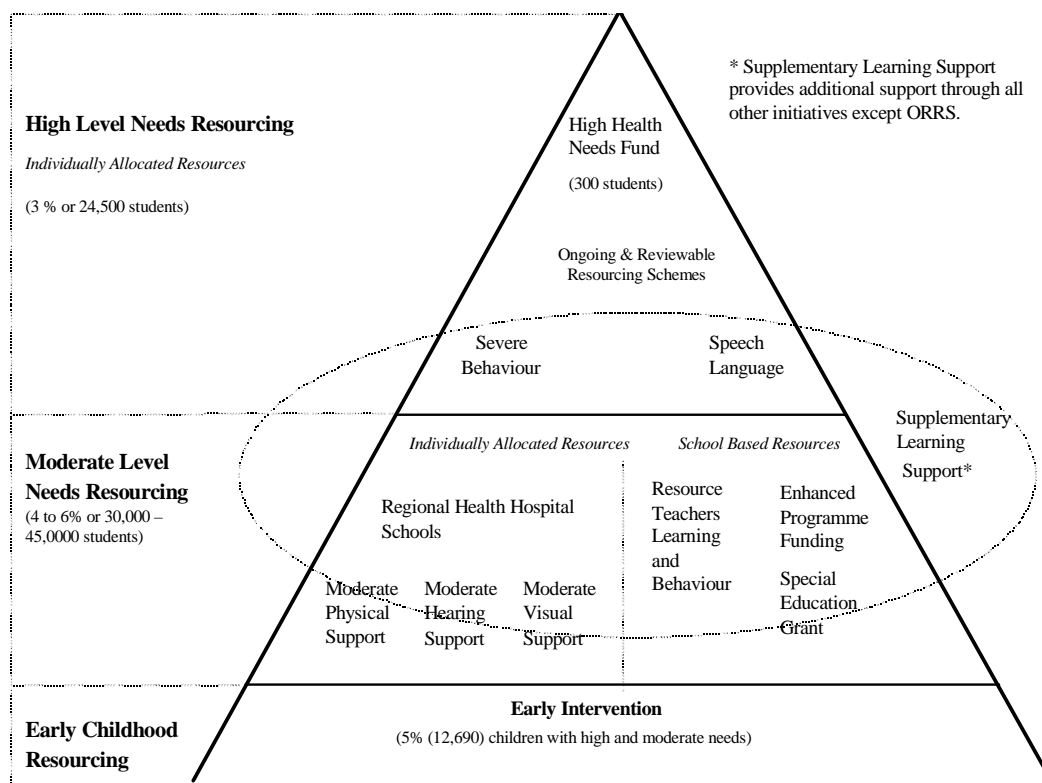
Section 8(1) of the Education Act 1989 states:

Except as provided in this Part of this Act, people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not.

New Zealand schools are independent statutory entities and are obliged to accept their local students with special needs and support them appropriately. This means individualising teaching practice to ensure that all learners can access the national curriculum and experience meaningful learning.

The Ministry of Education provides a range of support targeted to individuals, schools and clusters of schools. In the 2006/2007 budget period approximately \$430 million will be spent on special education support. Every school receives a Special Education Grant as part of its operational funding. At the other end of the spectrum children with high needs receive ongoing individually targeted support through the Ongoing and Reviewable Resourcing Scheme (ORRS). There are some services such as Resource Teachers: Learning and Behaviour that are

administered by clusters of schools. These specialist teachers provide advice and support to the classroom teachers with moderate learning and behaviour needs. The Ministry of Education also provides direct support specialist services through Group Special Education.



As of July 2004 New Zealand had 46 special schools for children with total enrolments of 2,646 students. As noted above, in New Zealand all students with special educational needs have the same right to enrol in their local school as people who do not. However, some parents can choose to send their child to a special school that is specifically equipped to support children with special educational needs. This choice is governed by the process set out in Section 9 of the Education Act 1989 and to a degree by geographic accessibility. Section 9 establishes that a child's parents may, with the agreement of the Secretary of Education, enrol their child in a special school.

The Ministry of Education has been conducting a review of these 'Section 9' agreements to ensure that where possible children are supported in their local school. The Section 9 process seeks to balance parental choice (where available) with the obligation of publicly funded schools to ensure that they support the needs of all local students.

Government is currently conducting a Review of Long-Term Disability Supports. This review encompasses the provision of special education support. It is envisaged that the review will make recommendations about steps to ensure overall coherency in Government provided disability supports. These recommendations will inform future special education policy work and ensure that special education support structures form a coherent part of an overall support structure that meets the needs of people with disabilities at all stages of their life.

There are a small number of non-governmental organisations providing direct special education support. However, the majority of non-governmental organisations focus their attention on providing whole of life support for children and their families.

35. *To what extent are schools able to adapt to the special education needs of individual students?*

*[MINISTRY OF EDUCATION COMMENT]*

New Zealand schools are expected to adapt to the special education needs of individual students. The special education resourcing framework provides support to teachers to adapt their practice to meet the special education needs of individual students.

A broad range of learners require more consideration of their needs, curriculum and lesson adaptation and individualised support which can not always be provided by one teacher acting alone. Supporting effective teaching is therefore about providing special support for teaching and learning that may take more time and effort. Additional resourcing in the form of cash grants and specialist and resource teachers are intended to provide teachers with this special support.

The Ministry's work plan on effective teaching has set out a clear aim to develop a quality system that succeeds well with diverse students rather than with a narrower range of learners. This work has been informed by research that argues that there is little evidence for requiring any different teaching and learning strategies for students with special educational needs.

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*[NEW ZEALAND HUMAN RIGHTS COMMISSION]*

In spite of the provisions of the Education Act, that recognise the right of disabled people to participate in education, the experience of the NZHRC, the Office of the Children's Commission and a number of disability-focused non-government agencies is that this is not a reality.

Many of the disability-related complaints to the Human Rights Commission are about education (refer Part 2, section 2).

Participants in the development of the NZ Action Plan for Human Rights reported often having difficulties with the attitudes and behaviour of staff and students who lacked understanding of their needs, and were patronising or openly discriminatory. They also reported insufficient specialist services and equipment (and lack of funding for them). They wanted more teachers to be trained to work with people with a range of disabilities and more funding provided for training, equipment and staff.

Good progress has been made in tertiary institutions, increasing the participation rates of disabled people, with government funding supporting disabled students. The development of best practice guidelines should result in further progress, although participants suggested that student loans, until recent changes that have removed interest from most student loans, discriminated against disabled people since their ability to repay was limited by their pay rates often lower than those of non-disabled people.

## **PART 2: ACTIVITIES OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

1. *Please describe the mandate of your Commission for the protection and promotion of economic, social and cultural rights. What methods and approaches does your Commission use for the protection and promotion of human rights?*

The NZHRC was established by the Human Rights Commission Act 1977. It is empowered under the HRA to protect human rights in general accordance with United Nations Covenants and Conventions.

The Human Rights Amendment Act 2001 made several significant changes to the functions and powers of the NZHRC. As part of these changes the Office of the Race Relations Conciliator was merged with the NZHRC and the role of Race Relations Commissioner was established. The changes also established the role of Equal Employment Opportunities (EEO) Commissioner.

The NZHRC has a range of functions and powers in order to do this, including,

- advocating and promoting respect for, and an understanding and appreciation of, human rights in New Zealand society;
- encouraging the maintenance and development of harmonious relationships between individuals and among the diverse groups in New Zealand society.

The Commission achieves its functions and powers through,

- education about human rights,
- the production and distribution of human rights information and resources,
- inquiring into, and reporting on, human rights matters,
- resolving disputes relating to discrimination.

2. *Has your Commission received complaints from individuals or groups relating to the right to education? If so, please provide a breakdown of the different type of complaints and, where possible, describe some of the most important cases and the role of your Commission in resolving these complaints.*

35 complaints (not enquiries) have been received since 1 January 2002 of incidents where students have been denied access or full participation in education due to one of the 13 prohibited grounds of discrimination. (Appendix 3)

Of these

- Disability – 23
- Race – 8 (one was both race and family status)
- Family Status – 3 (one was both race and family status)
- Religious Belief - 2

Main issues for disabled

- Stand-down, suspension, exclusion, expulsion
- Lack of physical access
- Lack of access to targeted funding
- Bullying and school not supportive

Main race issues

- Stand-down, suspension, exclusion, expulsion
- Bullying & discrimination and school not supportive

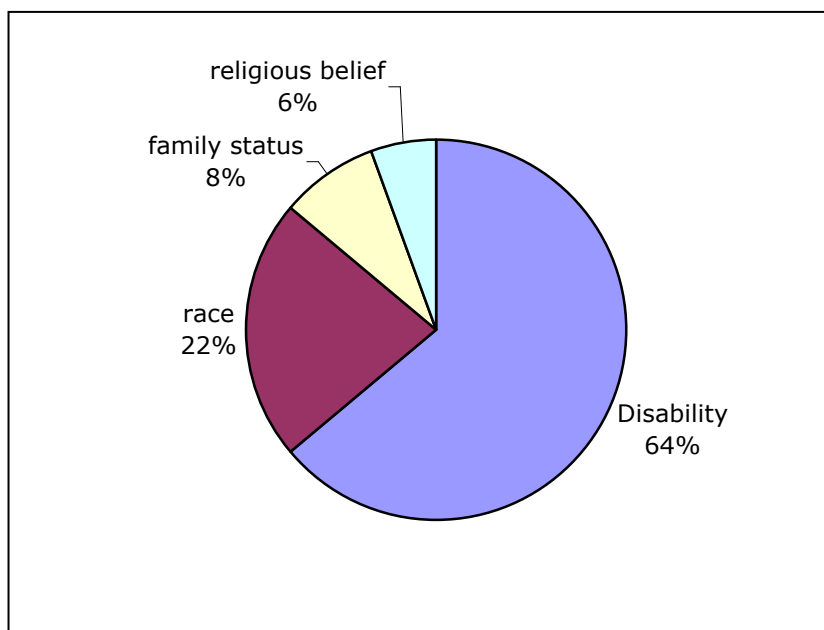
Family status issues

- Refusal to enrol because of an incident involving a father
- Number of suspensions in one family group

Religious Belief issues

- Wearing (or not) of specific items of clothing

**TABLE 2:** Education complaints to the NZHRC on prohibited grounds of discrimination



3. *Has your Commission conducted research and/or public inquiries on the issue of the right to education? If so, please provide the results of this research and the outcomes and recommendations of any public inquiries.*

The NZHRC has identified the realisation of the right to education as one of its priority programmes of work.

Chronology

2003: The Right to Education project was begun. The first stage of the project was the development of a *Right to Education Discussion Document* and its dissemination for public discussion and submission. (A copy can be forwarded on request)

August 2004: New Zealand's status report, *Human Rights in New Zealand Today* was published. Chapter 15, the Right to Education (Appendix 7) was written from the results of the submissions to the RTE discussion document and consultation through the NZAPHR process. Outcomes are identified in Table 1 above. (The full status report can be sourced from <http://www.hrc.co.nz/report>)

February 2005: *The NZ Action Plan for Human Rights* (including priority actions for New Zealand for 2005 – 2010) was published. The actions relating to the right to education were informed by the status report

and involved education for all children and young people, the rights of indigenous people, and recognition of the specific issues for disabled people, migrants, asylum seekers and refugees.

(The full report can be sourced from <http://www.hrc.co.nz/report/actionplan>)

2005 onwards: Although the NZAPHR is the responsibility of all of New Zealand society, the NZHRC has identified two specific projects for its own work programme.

1. Investigating the specific issue of cost as a barrier to the free and compulsory schooling sector (2005/2006)
2. Encouraging Early Childhood Centres and Schools as Human Rights Communities (2005 – 2010). This project involves a partnership with four other national organisations (the Office of the Children’s Commissioner, Amnesty International (NZ), the New Zealand Peace Foundation and the Development Resource Centre), and has two main objectives; to
  - work with experienced educators, children and young people, representatives of teachers, schools and early childhood centres, and with government agencies to develop guidelines and activities that will assist participating schools and early childhood centres to become human rights communities;
  - contribute to the government’s implementation of the United Nations Plan of Action for the World Programme for Human Rights.

4. *To what extent has your Commission identified laws / policies / practices in your country that impact on the realisation of the right to education?*

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 (ICESR, Articles 13 & 14) and the Convention on the Rights of the Child (UNCROC). Other, more specific, treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, Articles 5(e) & 7), the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Article 10), the UN Declaration on the Rights of Disabled Persons (Article 6), and the UNESCO Convention against Discrimination in Education.

The New Zealand Government has ratified, with no reservation relating to the right to education, all the above international treaties, and is taking progressive steps towards achieving them. In addition, the Government has also ratified ILO Convention 111 on Discrimination in Respect of Employment and Occupation, ILO Convention 182 on Worst Forms of Child Labour, and the UNESCO Convention against Discrimination in Education. It has also endorsed the Dakar Framework for Action, *Education for All*.

The right to education is not specifically stated in New Zealand law, but it is reflected in the Education Act 1964, 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 areas of gender, marital status and disability. Education policy and administrative practice further supplement the realisation of this right. The Human Rights Act

1993 states specifically that it is unlawful to discriminate in the area of access to educational institutions.

5. *Has your Commission conducted awareness and education campaigns relating to the right to education? If so, please provide information about these campaigns, identify the individuals or groups who have been trained and estimate how many people have been trained.*

Please note #3 above. The NZHRC's RTE programme of work has involved extensive consultation, discussion, education, and advocacy amongst government and civil society individuals and organisations.

6. *Please provide information about your Commission's general human rights education activities, including: materials used, information produced and how these activities have been made accessible to the community.*

The NZHRC is currently finalising its two-year review of its human rights education provision. HRE programmes, projects and activities during this time have included,

- **Campaigns, promotions and media work**
- **Informal HRE** through Commissioners, mediators, kaiwhakarite, the communications team, library and policy analysts.
- **Korowai Whaimana**, a 'train-the-trainer' programme aimed at education for those with experience of mental illness
- **Making Human Rights Work.** HRE specifically aimed at the public sector (with a recent emphasis on police and prisons)
- **New Zealand Action Plan for Human Rights.** Although not an education-focused project, the development of the action plan has had a profound awareness raising outcome.
- **NZ Diversity Action Programme.** Creating meaningful and intentional networks of those organisations and projects aimed at enhancing (ethnic) cultural diversity
- **Speakers Forums.** Public opportunities to inform, raise awareness and encourage ongoing discussion on current and ongoing human rights issues.
- **Regional and Sectoral development and Outreach.** Various levels of engagement with prioritised regions and sectors. Development of specific partnerships is one feature of this work.
- **Resource development and Information provision**
- **Responsive education** to internal and external requests
- **Taku Manawa.** A comprehensive HRE programme aimed at those groups most at risk of unlawful discrimination, piloted in a remote and impoverished area on the East Coast of NZ, and used as a basis for intense regional development
- **Te Mana I Waitangi.** A programme with a series of projects aimed at promoting a better understanding of the human rights dimensions of the Treaty of Waitangi through information-giving and facilitating of public dialogue
- **Tu Tikanga.** A 'train-the-trainer' programme aimed at education for those with an intellectual disability

The NZHRC is also undertaking an organisational review. As part of reviews, the parameters of human rights education and the role/function of human rights educators has been discussed.

A model of 'education' (as defined in its broadest sense) has been developed (Appendix 4). The model highlights key approaches such as; information dissemination, content-focused education and training, education for change, advocacy and relationship building

7. *Has your Commission addressed the issue of the right to education in its annual reports? If so, please provide a copy of the relevant sections.*

Education is one of the areas of discrimination (HRA 1993). Each annual report includes statistical data related to the total number of complaints by area. Since the HRA amendment in 2001 annual reporting of education complaints has been as follows,

- 1 July 2002 – 30 June 2003: 9 percent of total
- 1 July 2003 – 30 June 2004: 8 percent of total
- 1 July 2004 – 30 June 2005: 10.3 percent of total

The RTE project, Early Childhood Centres and Schools as Human Rights Communities, has built in measures using the NZ RTE Framework (Appendix 1). Reporting against the RTE Framework will begin from the 2007 Annual Report.

8. *Has your Commission intervened in court proceedings on an issue related to the realisation of the right to education? If so, please provide details of the cases, the role of the Commission and the outcomes of the cases. Please provide copies of any submissions and court decisions.*

The Commission intervened in the *Daniels* case at the Court of Appeal, seeking to argue that the High Court's approach to the concept of discrimination was unduly restrictive and wrong in law. The High Court had stated that "discrimination" in the New Zealand Bill of Rights Act (NZBORA) and the Human Rights Act (HRA) cannot sometimes mean 'failure to treat the same' and other times mean 'failure to treat differently'; [in these statutes] it means the former, not the latter".

The Court of Appeal, however, did not consider the judge's ruling on discrimination. The Court of Appeal decision in *Daniels* is at <http://www.nzlii.org/nz/cases/NZCA/2003/29.htm>. Submissions by the Commission in *Daniels* is included in Appendix 5.

9. *If your government has ratified any of the international human rights conventions listed below, has your Commission been approached by the government to contribute to the periodic reports to the relevant Committees, or alternatively, has your Commission provided a shadow report to the relevant Committees? If so, please provide copies of the sections relevant to the issue of the right to education.*

- *Universal Declaration of Human Rights;*
- *International Covenant on Economic, Social and Cultural Rights;*
- *International Convention on the Elimination of All Forms of Racial Discrimination;*
- *Convention on the Elimination of All Forms of Discrimination Against Women;*
- *Convention on the Rights of the Child*
- *Convention Against Discrimination in Education;*

- *Minimum Age Convention 1973*
- *Worst Forms of Child Labour Convention 1999*

The New Zealand Government invites the NZHRC to review and comment on all of the periodic reports. The Commission is also invited by NGO to comment on their shadow reports.

10. *Does your Commission work in collaboration with civil society including the private sector, government or United Nations agencies or multilateral donors such as the World Bank, the International Monetary Fund and the Asian Development Bank on the issue of the right to education? If so, in what way?*

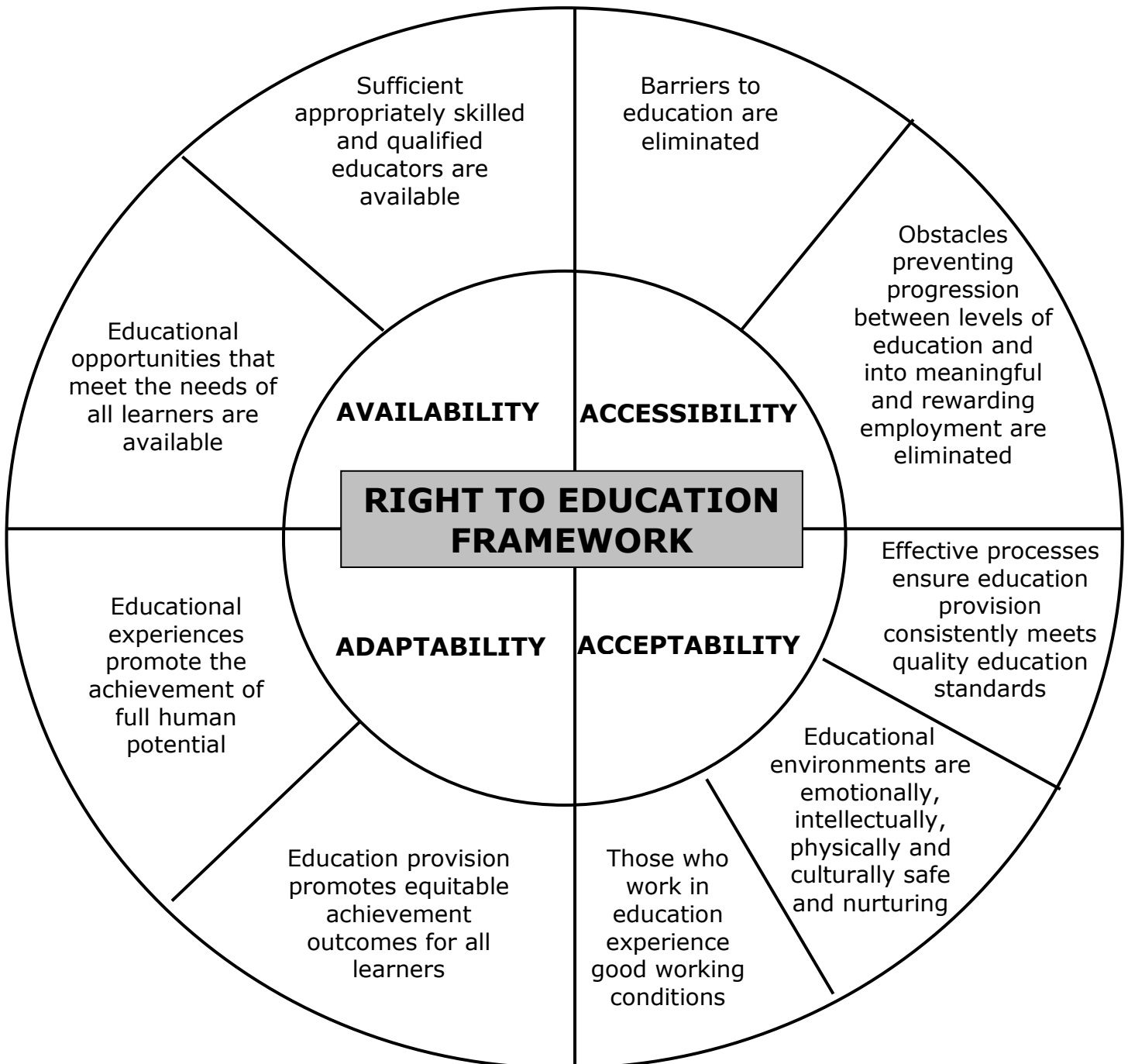
Refer # 3 above.

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ENDS

## APPENDIX ONE

### The New Zealand Right to Education Framework Te Whare Tāpapa Mātauranga (2003)



## **APPENDIX FIVE: Daniels Case: Summary and outcome**

The plaintiffs in Daniels were a group of parents who felt their children's education had suffered as a result of the implementation of SE2000. Of particular concern was the Minister of Education's 1998 decision to disestablish special facilities and instead aim to meet the requirements of special needs students within a conventional school setting. Special units had been integral to the provision of special education under the arrangements prior to SE2000. The plaintiffs claimed their children's needs were not catered for adequately under the new policy. They contended that the policy was inconsistent with the Education Act 1989, and that the Crown had infringed section 98 of the Education Act 1964 through the closure of special units. Their rights under sections 3 and 8 of the Education Act 1989 had therefore also been infringed. Additionally, they argued that the Crown action was discriminatory and thus breached section 19 of the New Zealand Bill of Rights Act 1990 and section 21(h) of the Human Rights Act 1993.

Both the High Court and the Court of Appeal noted that education in New Zealand was provided based on section 3 of the Education Act 1989. Section 3 states:

[E]very person who is not a foreign student is entitled to free enrolment and free education at any state school during the period beginning on the person's 5th birthday and ending on the 1st day of January after the person's 19th birthday.

This provision relates to all school students. Parliament had, however, turned its mind directly to those with special educational needs in section 8, which states:

Except as provided in this Part of this Act, people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not.

This was qualified by Section 9:

- (1) If satisfied that a person under 21 should have special education the Secretary shall
  - (a) Agree with the person's parents that the person should be enrolled, or direct them to enrol the person, at a particular state school, special class or special clinic; or
  - (b) Agree with the person's parents that the person should have, or direct them to ensure that the person has education or help from a special service...
- (4) No person shall be or continue to be enrolled at a special school, special class, or special clinic, or continue to have education or help from a special service, except pursuant to an agreement or direction under subsection(1) of this section.

Thus children with special needs have the same right to education as other children. However, in enacting section 9 Parliament had realised that those rights might be hollow if such students were simply treated the same as others. Section 9 thus provided a meaningful mechanism for ensuring that the sections 3 and 8 rights could be fulfilled. Given that the Education Act 1989 explicitly guaranteed special needs students the right to education, discussion in both courts focussed on the content and enforceability of the right.

The plaintiffs in Daniels were particularly concerned at the decision by the Minister to disestablish special facilities. The power to do so is located in section 98(2) of the Education Act 1964, which states:

The Minister may disestablish any special school, class, clinic, or service established under subsection (1) of this section, if he is dissatisfied with the manner in which the school, class, clinic or service is being conducted, or if he considers that sufficient provision is made by another similarly established special school, class, clinic, or service, or by any other school or class in or reasonably near to the same locality:

Provided that in the last-mentioned case he shall, if the controlling authority of the school, class, clinic, or service so requires, give 3 months notice of his intention to disestablish the same.

Judicial review was granted to the plaintiffs in both courts on the grounds that this provision had been breached. The decision to disestablish all special units was therefore ultra vires.

The Courts took different approaches to the content of the right to education, however; substantive recognition of the right by the High Court was rejected by the Court of Appeal who recognised some procedural rights only.

## **APPENDIX SIX: Relevant Sections of the Education Act 1989**

Primary education is free and compulsory. Section 3 of the Education Act 1989 provides:

### **3 Right to free primary and secondary education**

Except as provided in this Act or the Private Schools Conditional Integration Act 1975, every person who is not a foreign student is entitled to free enrolment and free education at any state school during the period beginning on the person's 5th birthday and ending on the 1st day of January after the person's 19th birthday.

People with special educational needs have the same rights to enrol and receive education at state schools as people who do not. Section 8 of the Education Act 1989 provides:

### **8 Equal rights to primary and secondary education**

- (1) Except as provided in this Part of this Act, people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not.
- (2) Nothing in subsection (1) of this section affects or limits the effect of Part 2 of this Act (which relates to enrolment schemes and the suspension, expulsion, and exclusion of students).
- (3) Subsections (1) and (2) of this section come into force on the 1st day of January 1990

### **13 Purpose**

The purpose of the provisions of this Act concerning the standing-down, suspension, exclusion, or expulsion of a student from a state school is to—

- (a) Provide a range of responses for cases of varying degrees of seriousness; and
- (b) Minimise the disruption to a student's attendance at school and facilitate the return of the student to school when that is appropriate; and
- (c) Ensure that individual cases are dealt with in accordance with the principles of natural justice.

### **20 New Zealand citizens and residents between 6 and 16 to go to school**

- (1) Except as provided in this Act, every person who is not a foreign student is required to be enrolled at a registered school at all times during the period beginning on the person's 6th birthday and ending on the person's 16th birthday.
- (2) Before a child's 7th birthday, the child is not required to be enrolled at any school more than 3 kilometres walking distance from the child's residence.

### **25 Students required to enrol must attend school**

- (1) Except as provided in this Act, every student of a registered school (other than a correspondence school) who is required by section 20 of this Act to be enrolled at a registered school shall attend the school whenever it is open.
- (2) Every Board shall take all reasonable steps to ensure that students who are required by subsection (1) of this section to attend the school whenever it is open do so.

- (3) For the purposes of this section, a student attends a school on any day if, on the day,—
  - (a) It has been open for instruction for 4 hours or more; and
  - (b) The student has been present for 4 hours or more when it was open for instruction.

#### **24 Penalty for failure to enrol**

- (1) Where the parent of a person required by this Act to be enrolled at a registered school fails or refuses to ensure that the person is enrolled at a registered school, the parent commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000.
- (2) The payment of a fine in respect of a conviction for an offence against subsection (1) of this section is not a bar to proceedings for a further such offence.

#### **29 Penalty for irregular attendance**

- (1) Every parent of a person who—
  - (a) While enrolled at a registered school, does not attend as provided in section 25 of this Act; or
  - (b) While enrolled at a correspondence school, does not do the work of the course in which the student is enrolled,— commits an offence, and is liable on summary conviction to a fine not exceeding an amount calculated at the rate of \$15 for every school day for which the offence has occurred.
- (2) Notwithstanding subsection (1) of this section, a fine imposed for an offence against that subsection shall not exceed \$150 for a first offence against the subsection (or section 120(1) of the Education Act 1964), or \$400 for a second or subsequent offence.
- (3) The imposition of a penalty under this section does not affect or restrict the operation of any provision of the Children, Young Persons, and Their Families Act 1989.

#### **30 Employment of school-age children**

- (1) No person shall employ any person who has not turned 16 at any time—
  - (a) Within school hours; or
  - (b) In the case of a person enrolled at a correspondence school, when the employment interferes with the person's ability to do the work of the course in which the student is enrolled; or
  - (c) In the case of a person who has been granted a certificate of exemption under section 21 of this Act, when the employment interferes with the person's ability to be taught as well and regularly as in a registered school; or
  - (d) If the employment then—
    - (i) Prevents or interferes with the person's attendance at school; or
    - (ii) In the case of a person enrolled at a correspondence school, interferes with the person's ability to do the work of the course in which the person is enrolled,—  
unless there has been produced to the employer a certificate of exemption, or other satisfactory evidence that the person is exempted (otherwise than under section 21(1) of this Act) from enrolment at any school.
- (2) Every person who—
  - (a) Being a parent of any other person, permits the other person to be employed contrary to subsection (1) of this section; or
  - (b) Employs any other person in contravention of the subsection,— commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000.

### **31 Ensuring attendance of students**

- (1) Any Board may appoint any person to be an attendance officer for the schools or institutions it administers.
- (2) A person may be appointed an attendance officer by 2 or more Boards.
- (3) Every Board shall, by any means it thinks appropriate, take all reasonable steps to ensure the attendance of students enrolled at its school or schools (or institution or institutions).
- (4) An attendance officer, on producing a distinctive badge or other evidence of appointment, or a member of the Police may at any time detain any person who appears to have turned 5 and not to have turned [16], and who is not then at school, and question the person as to the person's name and address, the school (if any) at which the person is enrolled and its address, and the reason for the person's absence from school.
- (5) If not satisfied by the person's answers that the person has a good reason for not being at school, the attendance officer or member of the Police—
  - (a) May take the person to the person's home, or to the school at which the officer thinks the person is enrolled:
  - (b) Repealed
- (6) A person who, after an attendance officer has produced evidence of appointment, obstructs or interferes with the officer in the exercise of powers under this section, commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000.
- (7) Any attendance officer, a principal, or any person appointed by a Board for the purpose may lay informations, conduct prosecutions, and take any other proceedings, under this Part of this Act.
- (8) A certificate sealed by a Board showing that a person named in it is appointed for any purpose under this section is sufficient evidence of the matters specified in the certificate; and the authenticity of, and validity of the affixing of, a Board's seal shall not in any proceedings under this Part of this Act be inquired into or disputed.

Procedures for suspending, expelling and excluding students from schools are controlled by statute (sections 13-18 Education Act 1989) and are consistent across the country.