



ORGANISATION MONDIALE POUR L'ÉDUCATION PRESOLAIRE  
ORGANIZACIÓN MUNDIAL PARA LA EDUCACION PRESCOLAR  
WORLD ORGANIZATION FOR EARLY CHILDHOOD EDUCATION

*OMEP, the World Organisation for Early Childhood Education, is an international, interdisciplinary, non-governmental organisation, founded in 1948 in Prague, to benefit children under the age of 8 years throughout the world. OMEP provides a meeting ground for representatives from a range of professions and nationalities concerned with the care and education of children aged eight years and younger and promotes research and the dissemination of knowledge about quality early childhood education.*

*OMEP Aotearoa New Zealand, operating since 1986, has five Chapters and members seek to act as advocates for children, their rights and their best interests.*

**Submission to the Ministry of Social Development as response to the draft report -United Nations Conventions on the Rights of the Child, Fifth Periodic report by the Government of New Zealand 2015**

OMEP Aotearoa New Zealand is concerned about children who are marginalized in our communities through Government legislation, lack of policy and/or funding that may be discriminatory or where the children's best interests are not a desired outcome. Our submission addresses areas of concern that relate to younger children.

**II General measures of implementation**  
**A Reservations and declarations**

**A.1, 19.**

**Children unlawfully in New Zealand [CRC/C/NZL/CO/3-4, para 9(a)]**

We congratulate NZ government's progress on the general reservation to Article 2. and their response to children unlawfully in New Zealand as criteria introduced in 2013 by the MoE. Access to education for children unlawfully in New Zealand is now provided for children aged five to 19 years, however there remains a barrier for access to Early Childhood Services for children under five. (p.5) This is a contravention of Article 2(status of child's parents).

**A.3, 30, 31 & 32.**

**Tokelau [CRC/C/NZL/CO/3-4, para 9(b)]**

Limited progress on compliance with the Convention for children in Tokelau in relation to access to and the quality of non-discriminatory education remains a contravention of the Convention. Concerns arise regarding the health and well being of children and families who are under resourced and under -informed by the New Zealand Government to respond to climate change.

All children in Tokelau are New Zealand citizens and the rights accorded the children in New Zealand must be available for children in Tokelau.(p.6). The TUPU series of Pacific language readers for beginners in a range of Pacific languages ages 5- 14 yrs and Folunga a reader for age 9 yrs – 16 yrs, materials in Samoan, Tongan; Cook Is Maori, Niuean and Tokelau were halted in 2010. The New Zealand Government,

Ministry of Education has not resumed the publication of instructional readers in the Tokelau language.

#### **D.1.38**

##### **National plan of action [CRC/C/NZL/CO/3-4, para 15] and VIII A & B Articles 8, 29, & 30.**

The NZ Government reports on progress made for Better Public Services. They report against Result 2 noting a strong growth in Maori and Pasifika children's participation in ECE. The MoE sought to improve the responsiveness of ECE services to meet the needs of non-participating children and their families by using different models of provision (such as playgroups, home-based projects and identity, language and culture projects (Ministry of Education 2013a). The reported increase is not matched by a similar increase in culturally or linguistically responsive services or a compulsory requirement for teachers in any sector to be skilled in ways to work with bi/multilingual families (Ministry of Education, 2013). Statistics show that in 2013, Te Kōhanga reo enrolments decreased by 2.0%. The number of Māori language immersion services increased by only three services between 2012 and 2013, and there was one less service available for families, where Māori was used more than 50% of the time. There was an increase of one service for Pasifika families where a Pasifika language was used more than 80% of the time.

ERO 2013 report on priorities for children's learning and document studies that indicate "lack of responsiveness to Maori and Pacific children in many of the services. Only two-fifths of services had thought about how their curriculum might support Maori children to achieve success as Maori, and about one-fifth of services had considered this for Pacific children" (Education Review Office, 2013, p.23).

The last five years educators, researchers and families have already contributed to a wealth of evidence for the Government endorsing an overarching Languages Policy with well informed strategies that can direct the implementation of Articles 8, 29, 30 and 31.

We are concerned that for many of these new participating families, there have been fewer choices available for services that are staffed by qualified teachers able to support home languages and cultures (Articles 29 & 30) at such a vulnerable time for the child's growth of languages, cultures and identities (Child Poverty Action Group, 2014). We note too that enrolment is the outcome rather than attendance for participation.

Collection and aggregation of data for participation rates in ECE services is still over-estimated. <http://www.educationcounts.govt.nz/statistics/early-childhood-education/annual-ece-summary-reports>

#### **VII G Child care and Educational services.**

Vulnerable Children's Act, 2014 set to improve safety and competency of the children's workforce, yet the New Zealand Government reduced the number of qualified staff required in teacher led centre-based services, to only 50% of the staff with a teaching qualification that is recognised by the New Zealand Teachers Council and advised that these qualified teachers do not need to be working full time. Counted into the 'qualified staff' can be one student her/his final year of study. A goal of 100% of all staff working in ECE to be qualified teacher has also been reduced to 80% of staff. ECE services can operate with only the 'person responsible' requiring

a current teacher registration and a current practicing certificate. This decrease in oversight by a professional body, such as the New Zealand Teachers Council is a retrograde step for ensuring the implementation of UNCROC for children in early childhood education and appears to contradict the determined intention of the Vulnerable Children's Act, 2014. Quality ECE means 100% of teaching staff are qualified,

<http://www.education.govt.nz/early-childhood/running-an-ece-service/employing-ece-staff/the-number-of-qualified-teachers-your-ece-service-needs/>

A policy focus on increasing participation in ECE before school has endorsed Government funded services such as Homebased care where the carer is not a qualified teacher. Unqualified and unregistered carers are not bound by similar competency expectations and carers are only visited once a month by a qualified and registered co-ordinator. We believe this does not adequately ensure the health and wellbeing of infants and young children. (Regulation 28(2)(c) requires a home-based service coordinator to *take all reasonable steps each month to observe each child participating in the service while that child is receiving education and care*).

A significant concern too in this endorsement of participation in lower quality ECE services is signaled by 2009 amendment to the Education (Early Childhood Services) Regulations 2008; for the purpose of employment in both ECE services and in Home-based services, the age at which a person is counted as an adult was lowered from 20 to 17 years (see Schedule 2 of the ECE Regulations). This contravenes UNCROC, as a person under 18 years of age is defined as a child (MoE,2008)

#### **G.1**

##### **Dissemination and awareness-raising [CRC/C/NZL/CO/3-4, para 19]**

**47.**

Congratulations to the Ministry of Social Development on recently updating its website with information about UNCROC, the report process and optional protocols. We consider that this Government department charged with working in children's best interests will also follow up this public acknowledgement with the professional development on implementing UNCROC for every staff member.

**48.** The Children's Commissioner Act 2003 directs the Commissioner "to raise awareness and understanding of the Convention...raise awareness and understanding of children's interests, rights and welfare", yet the Office for the Commissioner for Children, as of May 2011 operates without a full time Commissioner. The reduction in resourcing has recently included the closure of the Auckland Office and the Commissioner's declaration of inadequate resourcing for work of the Office for the Commissioner for Children(OCC).

The OCC does not appear to be well resourced to be meet statutory requirements as well as to be involved in monitoring the impact of the VCA and CAP to ensure non-partisan concerns and recommendations are made regarding the best interests of children.

#### **H. 1. Training [CRC/C/NZL/CO/3-4, para 21]**

**49.** *Training that reinforces the principles of the Convention is delivered in a range of different settings to professionals who work with children and young people.*

Despite the Vulnerable Children's Act (VCA)and Children's Action Plan(CAP) providing direction for improving safety and competency of the workforce there

appears a contradictory direction from the “Better Public Services” targets set by the Government. The desired outcome of 98% participation in early childhood education for all children is undermined by the reduction in the requirement for qualified teachers in ECE services.

Services endorsed for participation include Home-based services, where one qualified person works in a supervisory capacity with unqualified carers of up to 80 children in diverse home-based environments. The Government in its drive to increase participation appears to neglect its obligations to meet ‘the best interests’ of each child’s right to protection, and to access to high quality, culturally and linguistically responsive education. Social policies of a punitive nature may condemn 3- 5 year old children of beneficiaries to poor quality early childhood care and education. beneficiaries “receive messages that they are second-class citizens, and that as parents they are unqualified to determine the best form of care and support for their young children.” (CPAG, 2014, p.11). The Census indicates, 30% of families with children are ‘sole parent’ families.

The Government is yet to ensure that funded and regulated services are responsive to families’ values and aspirations for their children regardless of the status of the parent.(CPAG, 2014; Dalli et al. 2011).

The Government has not acknowledged the impact of poverty and the lack of high quality, culturally and linguistically appropriate services upon families’ preference for and attendance at ECE services. Evidence from the ERO national report (2013) found that only 14% of ECCE services demonstrated “very responsive practices that focused on achieving success for Maori children”, and the benefits to children and families, of home language retention were documented in the report from the Government’s Select Committee Inquiry into Pacific Languages in Early Childhood Education.

Regulations that stipulate a minimum of one educator to five infants are inadequate to ensure quality education care that is responsive to the languages, cultures and identities of very young children expected to participate in ECE.

The maximum of 150 children enrolled (with a maximum of 75 under-2- year-olds), with no limits set for group size and setting a minimum of 80% registered staff in teacher- led, centre-based services, with poor access to specialised professional knowledge and development for staff can mean that Articles 29 & 30 are not met for children from bi/multilingual households. Of particular concern are those children and families who find access to disability support compromised by lack of qualified interpreters.

## **52, 53, & 56**

### **Children suffering trauma**

What support is there to address issues of trauma both for children and for members of their families around issues such as family violence/crime?

There appears little professional knowledge and often little support for children in families experiencing transitions, for example, from women’s refuges, mental health facilities, drug and alcohol facilities, and prisons. Families must confront discrimination as they reveal their histories. Children are often left to face the barriers of a difficult history/transition by poorly informed teachers or carers. The preparation

and support for children and their families during transitions must be considered a high priority.

We are aware of children who have had to disclose to four different adults that they are experiencing abuse before any action was taken on their behalf. This highlights the need for improved public and professional education around children's needs, to hear what children are saying, to recognise the signs of abuse or neglect, and to be well informed about the actions to take.

We consider that to be compliant with UNCROC any member of a professional workforce working with and for children must have knowledge of the UN Convention on the Rights of the Child and the skills to advocate effectively for the best interests of the child.

In our diverse society, cultural and linguistic competence is increasingly important. The professionals such as teachers and staff working with children require the following competencies:

- Cultural competence including knowledgeable use of qualified interpreters
- Listening to children
- Child-centred decision making
- Familiarity with needs assessment and referral pathways
- Understanding of the social determinants of health and wellbeing
- Able to demonstrate responsive, and critically reflective practice
- Able to identify the signs of child abuse/ neglect and knowing what action to take (Every Child Counts, 2012)

#### **IV General Principles**

##### **A. Non-discrimination (Article 2)**

###### **1. Measures to address disparities in access to services by Māori children and their families [CRC/C/NZL/CO/3-4, para 25(a)]**

#### **60 & 61**

##### **A2. Awareness-raising, preventive activities against discrimination, and affirmative action for the benefit of children in vulnerable situations [CRC/C/NZL/CO/3-4, para 25(b)]**

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Children with a parent in prison are one of the most marginalized groups in Aotearoa New Zealand. Aotearoa New Zealand has a high rate of incarceration and yet these children are overlooked in decisions made about their well being and welfare with minimal apparent communication between the Ministry of Corrections, Ministry of Health and Ministry of Social Welfare to consider the best interests of the children of prisoners. Recent studies show that government agencies need to change their approach in order to reduce the harm caused to the children of prisoners. Currently this cohort of children is invisible in social policy.

There is considerable concern regarding support for a child with a parent in prison. Many prisoners are housed more at a distance from their families and this inhibits regular visiting. While there have been some changes in facilities for children provided in some prisons when children are visiting, this is not universal.

We note that many support services are provided through NGO agencies and these are often contracted services that may only exist for 6 months or one year. Expertise and

knowledge about children in difficult circumstances is often ad hoc due to the short term contracts.

We believe the Government must ensure expertise and evidence from local research on children of prisoners be used to draft policies to ensure that children of prisoners well-being is to the forefront of Department of Corrections and other government department decisions. It is valuable to examine using wrap around services for children of prisoners, to respond to discrimination and to provide services for children who have experienced trauma

### **65 - 68 Maori**

**See General comments**

### **69 Pasifika**

**See general comments**

### **71 & 72 Refugee and Migrant**

**See General comments**

### **73 Disabled services**

Evidence from teachers in ECE services in the Auckland region indicate the waiting lists for referrals for assessment and support often take up to six months or more before child is actually seen. Teachers and families report that hours given for an educational support worker are usually 2 hours per day however the child may be present for much longer. Often educational support is not available for the full 20 hours free promised to parents. Children requiring a constant support person only may receive only 15 hours. There is still considerable difficulty if children require a full time caregiver to be with the child constantly. It appears that there is no funding to support families during the school holiday periods.

### **F. Standard of living (Article 27)**

#### **1. Measures to support disadvantaged families and children to move out of poverty while continuing to provide assistance to those who remain under the poverty line [CRC/C/NZL/3-4, para 44]**

See earlier comments

## **VIII. Education, leisure and cultural activities**

### **A. Provision of education (Article 28)**

The Government appears to have ignored the General Comment provided by the CRC regarding Article 31. The strong recommendations from the General Comment on the child's right to play and recreation does not feature in this report.

#### **1. Ensure all children have access to high quality early childhood education and care that is free for socially disadvantaged families and children**

**[CRC/C/NZLCO/3-4, para 46(a)]**

See comments earlier

#### **3. Invest considerable additional resources to ensure the right of all children to a truly inclusive education [CRC/C/NZL/CO/3-4, para 46(c)]**

### **D. Rest, leisure, recreation and cultural activities (Article 31)**

### **G. Protection of witnesses and victims of crimes (Article 39)**

**1. Ensure that all child victims and/or witnesses of crimes are provided with the protection required by the Convention [CRC/C/NZL/CO/3-4, para 57]**

**H. Children belonging to minority groups (Article 30)**

In 2012 the Government refugee resettlement strategy followed by the new migrant specific cross-government approach introduced in 2014 were set to improve monitoring and outcome reporting for whole-of-government settlement activities and decisions about the best use of resources to support migrants. Significantly the closure in June 2014 of many identifiable and easily accessed local offices as sources of advice and support for refugee families and the consequential demand for reliance on English only web-based access to support and advice has created barriers for families. Currently to be well informed regarding health and educational possibilities for young children, parents with meagre family resources must have access to a fluent English speaker, who is critically literate to enable selection of information from web-based services.

**Take into account the observations and recommendations made by the Special Rapporteur on the rights of indigenous peoples following his visit to New Zealand in July 2010 [CRC/C/NZL/CO/3-4, para 58]**

In 2011, the [UN]Special Rapporteur on the Rights of Indigenous Peoples stated that the principles enshrined in the Treaty of Waitangi and related internationally protected human rights should be safeguarded within the domestic legal system. At a minimum, the development of safeguards similar to those under BORA would be important in the context of the Treaty of Waitangi. In 2013, the Committee on the Elimination of Racial Discrimination (CERD) further recommended that New Zealand consider adopting this recommendation by the Special Rapporteur.<sup>32</sup> CERD recalled its previous recommendation and urged New Zealand to ensure that public discussions and consultations were held on the status of the Treaty of Waitangi within the context of the ongoing constitutional process, and to focus on whether the Treaty should be entrenched as a constitutional norm. The HR Committee noted 'that any decision by the Government to act against the recommendations of the Waitangi Tribunal in a particular case should be accompanied by a written justification and should be in accordance with the principles of the Treaty and international human rights standards' (A-HRC-WG.6-18-NZL-2, par 37.)

1. CRC, while noting the measures taken, was concerned that about 20 per cent of children still lived under the poverty line and recommended that New Zealand take all necessary measures to provide appropriate support to allow disadvantaged families and their children to move out of poverty sustain A/HRC/WG.6/18/NZL/2 para 49

2. CESCR regretted New Zealand's decision to restrict eligibility for social housing to only those "in the greatest need". It called on New Zealand to ensure that its enactments and policies guaranteed the right to adequate housing for everyone and urged the taking of appropriate measures to address the problem of the long waiting list for social housing. A/HRC/WG.6/18/NZL/2 para 53

3. '... New Zealand's expression of support for the United Nations Declaration on the Rights of Indigenous Peoples, its steps to repeal and reform the Foreshore and Seabed Act of 2004 and its efforts to carry out a constitutional review process with respect to constitutional issues, including Maori representation and the role of the Treaty of Waitangi ... While welcoming those efforts, the HR Committee recommended that New Zealand ensure that the views expressed by different Maori groups during consultations in the context of the historical Treaty claims settlement process were duly taken into account.' A-HRC-WG.6-18-NZL-2, par 63

‘The Special Rapporteur recommended that, in order to address any conflicts regarding participation or representation in settlement negotiations, the Government, in consultation with Maori, should strengthen available mediation or other alternative dispute resolution mechanisms ... for creative solutions that provided adequate redress for Maori claims, in accordance with the Treaty of Waitangi and international standards.<sup>137</sup> In consultation with the Maori, the Government should explore and develop means of addressing Maori concerns regarding the Treaty settlement negotiation process, especially the perceived imbalance of power between Maori and government negotiators’ A/HRC/WG.6/18/NZL/2 par 64

New Zealand has, largely by its association with the Westminster system, an enviable record of human rights. Not all is to be found praiseworthy, however, as recent critics have found. The UN Special Rapporteur (2011) noted ‘the Treaty settlement process, despite its shortcomings, is one of the most important examples in the world of addressing historical and ongoing grievances. However, he also observed the extreme disadvantage in the social and economic conditions of Māori compared to other New Zealanders... (par 19). He continued ‘consultation procedures appear to be applied inconsistently, and are not always in accordance with traditional Maori decision-making procedures, which tend to involve extensive discussion focussed on consensus-building(par 21)’.

The Treaty of Waitangi /Te Tiriti o Waitangi has long been recognised in Aotearoa NZ as one of the founding document. However, as with a number of rights-based discourse, terms within this are often contested. A recent example of one such contested arena can be found in reports of the Waitangi Tribunal. Wai 1040 has grappled with, for example, if the English word 'sovereignty' meant in 1840 what it means in the twenty-first century; and how it related to Maori terms te tino rangatiratanga. The ruling by the Tribunal, which is not binding on the NZ Crown, suggests that such understandings are a vital part of the history of our present. It found that ‘[p]rincipal among these was ... that Maori did not cede their sovereignty or their mana through te Tiriti in February 1840’ (Wai 1040:9.5).

Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840; that is, they did not cede their authority to make and enforce law over their people and within their territories. Rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Maori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the rangatira did not surrender to the British the sole right to make and enforce law over Maori. (Wai 1040 10.4.4)

We refer you to an unpublished PhD Thesis ( Fletcher, N., 2014, University of Auckland) .A praiseworthy device for amusing and pacifying savages? What the framers meant by the English text of the Treaty of Waitangi, which, we argue, has relevance for education in New Zealand. The abstract notes

*The principal conclusions of the thesis are that British intervention in New Zealand in 1840 was to establish government over British settlers, for the protection of Maori. British settlement was to be promoted only to the extent that Maori protection was not compromised. Maori tribal government and custom were to be maintained. British sovereignty was not seen as inconsistent with plurality in government...* (Fletcher, 2014, abstract)

## **X. Disability (Article 23)**

### **See comments above**

Government is yet to ensure policies and practices enable all children to access and attend early childhood services regardless of their abilities. Problems within the current ECE and early intervention funding systems need to be addressed by the Ministry of Education and those working in the sector, in consultation with families.

1. OMEP believes all children have an equal right to access education. The Government policy of all three and four years old being able to attend an early childhood service appears to be limited by discriminatory attitudes in early childhood settings and a lack of funding for Special Education support. Deficit responses and over use of deficit labeling for children with a disability and difference underpin many barriers to the equal participation of disabled children and their families in ECE.

Issues in ECE include:

- Access conditional on available funding and/or whether teachers view the child as centres restricting the number of hours a child can attend to those offered by an Early Intervention Service (EIS) to fund an Education Support Worker (ESW) or dissuading families from enrolling;
- ESW funding for the 12 weeks of school holidays per year is not available when many centres remain open 48 weeks of the year;
- Centres refusing a child's attendance when their ESW is away on sick leave;
- Centres requiring parents to pay for or top up ESW hours;
- Centres requiring a parent or whanau member attend alongside their child at the centre.
- Education Support Workers are usually untrained in ECE and receive low wages for their work (See Macartney, 2012)<sup>1</sup>.
- Limited access to qualified interpreters

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