

**NZEI TE RIU ROA SUBMISSION
ON THE EDUCATION (UPDATE) AMENDMENT BILL**

11 NOVEMBER 2016

To: The Education and Science Select Committee

NZEI Te Riu Roa Submission

EDUCATION (UPDATE) AMENDMENT BILL

INTRODUCTION

1. NZEI Te Riu Roa (NZEI) is the professional organisation and industrial union that represents the interests and issues of its 47,000 members.
2. Our members are employed as teachers in the early childhood education and primary sectors (including Kura Kaupapa Māori and Wharekura), support staff in the primary, intermediate and secondary sectors, school advisers employed by Universities and Colleges of Education, and Special Education staff employed by the Ministry of Education.
3. The main objective of NZEI is to advance the cause of quality public education generally while upholding and maintaining the just claims of its members individually and collectively.
4. NZEI is one of the largest unions and professional bodies in Aotearoa and has a long history of playing a positive role in the education sector and on wider social issues affecting our members and the tamariki and whānau they serve.

NZEI POSITION ON THE BILL OVERALL

5. The Bill is a comprehensive reform. While NZEI Te Riu Roa welcomes the opportunity this presents, there are a number of radical proposals in the Bill which have been subject to no, or limited consultation, and which are based on very minimal evidence.
6. Parts of the Bill require further research, analysis and policy development together with full, meaningful consultation with the education sector and the public prior to any legislative change. Examples include provisions around cohort entry policy, the establishment of Communities of Online Learning (COOLs) and aspects of the expansion of Communities of Learning (COLs). There is no demand from the public, or clear policy rationale advancing such significant change into legislation.
7. Notably, the Bill sets a direction of travel away from the Tomorrow's Schools' reforms towards a more centralised, and supposedly more collaborative system. Unfortunately, this is being proposed via legislative mechanisms with insufficient review and consultation about where the system should "land". A fundamental shift away from a pure and atomised system of self-

managing schools is desirable, but it is important that there is a sector-wide and public-facing conversation about the future of the schooling system, rather than the imposition of a model based on a standardised structure - Communities of Learning.

8. NZEI's submission focuses on the parts of the Bill that relate to the early childhood education (ECE) and primary schooling sectors. Our submission is divided into three sections:
 - **Section 1:** A summary of our recommendations regarding the six components of the Bill with which we have the most concerns;
 - **Section 2:** A more detailed section outlining the evidence supporting our views on those six major components;
 - **Section 3:** Clause by clause comments on other areas of the Bill.
9. We wish to make an oral submission on the Bill to the Select Committee.



Louise Green
Te Manukura
National President
NZEI Te Riu Roa

SECTION 1: SUMMARY OF RECOMMENDATIONS ON KEY COMPONENTS OF THE BILL

8.1 Articulating the purpose of education (Clause 4, New Part 1AA, section 3):

NZEI broadly supports the direction of the objectives and the essential inclusion of references to current curricula documents.

NZEI recommends the objectives in section 3 include a broader notion of educational success and a visible commitment to equity, inclusion and te reo me ngā tikanga Māori.

8.2 Establishing National Education and Learning Priorities (Clause 35) and national education performance measures (Clause 41-43)

NZEI does not support establishing a mechanism for government to set out its medium term priorities for ECE and schooling as learning priorities are for teaching professionals to establish in line with the national curricula and in relation to local context. National Education and Learning Priorities (NELPs) should not have higher status than the curricula in the Act's hierarchy.

There is little evidence to show that setting targets or "performance measures" improves the performance of the system. There is considerable evidence that setting targets diminishes a focus on authentic learning and creates perverse incentives to "game" the system (Zhao, 2014).

NZEI recommends clauses 35 and 41-43 are removed. Should NELPs remain in the Bill, NZEI recommends that Clause 4, new Part 1AA be amended to require the Minister to consult specifically with education unions, as the largest group representative of key sector stakeholders.

8.3 Permitting cohort entry to schools from ECE (Clause 10, Section 5A)

NZEI does not support allowing schools to adopt or revoke a cohort entry policy. There is no evidence that this would improve the transition experience for children. The policy appears to be driven by a desire for administrative simplicity and/or be based on addressing the "...risk of increased government expenditure under current arrangements."¹

New Zealand children already begin formal schooling early in comparison with most other OECD countries, and this proposal would potentially increase the number of children starting school while still four years old. In the absence of conclusive evidence in support of the policy it should be withdrawn from the Bill.

NZEI recommends removing Clause 10 and new sections 5A-5C on cohort entry policy from the Bill.

¹ Ministry of Education (2016) *Regulatory Impact Statement, Changes to enable schools to implement cohort entry arrangements for children first starting school.*

8.4 Communities of Online Learning (COOLS) Clause 38 – new Part 3A

NZEI opposes the amendments relating to COOLS in their entirety.

There is little evidence to substantiate expanding privatisation of education via COOLs administered by commercially led organisations and with no requirement to have fully qualified and registered teachers delivering any curriculum to children as young as four. What evidence there is suggests online schooling policies do not serve students well, and in particular poorly supports students with the most challenges. Rather than increasing contestability and choice through privatisation, what is required is the development of a robust policy framework and sufficient resourcing of existing online networks. This would enable the innovative virtual learning networks already operating in New Zealand that support blended learning to be strengthened.

NZEI recommends that Clause 38, new Part 3A and new sections 35T-35Z on the establishment of COOLs is removed and that the issue of COOLs is referred back to the Ministry of Education for coherent policy development prior to any further legislative action.

8.5 Powers of the new Competency Authority (Clause 140-143 amending Section 410AA)

Clauses 141-143 amend sections 410-412 of the Act, making provision for a “Competence Authority” to deal with certain mandatory reports and complaints about competency matters. These provisions would largely overlay existing provisions in the *Education Council Rules 2016* establishing and regulating a competence authority. However, the proposed statutory provisions make two key proposals.

- Effectively transferring to the Authority, the Council’s current powers to consider and determine those matters where competency concerns are so grave that cancelling the teacher’s right to teach is proposed; and
- Extending the potential sanctions to include the cancellation of a teacher’s registration.

NZEI opposes this section.

The Education Council should retain authority to determine serious competency cases, and the Competence Authority should be wholly composed of members of the teaching profession.

NZEI recommends that Clause 140, new Section 410AA is amended to ensure that the Education Council continues to have oversight of the most serious competency cases and the new Competence Authority members are all current qualified and certificated teachers.

8.6 Formalising Communities of Learning (CoLs) Part 1, new section 75A-E

NZEI believes the Bill’s focus on formalising CoLs’ administrative structures is premature.

Creating a “Community of learning agreement” with the Secretary of Education, along with the edict to report annually to the Secretary and requiring services and schools to join or leave a CoL by

gazetted notice is both unnecessary and impractical for a community-designed collaboration, based on strong contextual relationships.

NZEI therefore recommends the deletion of Clause 48, new sections 75A-75E and recommends removing Clause 90 enabling the Minister to combine boards as this could also impact on CoLs.

SECTION 2: DETAILED SUBMISSIONS ON SIX MAJOR COMPONENTS OF THE BILL

9.1 The Purpose of Education (New Part 1AA, section 3)

NZEI broadly supports the direction of the objectives and the essential inclusion of references to current curricula documents. We would support acknowledgement of the “whakapapa” of New Zealand’s public education system in the Bill by the inclusion of an updated version of Clarence Beeby’s aspirational and egalitarian vision in the Bill:

"Every person, whatever the level of [their] academic ability, whether [they] be rich or poor, whether [they] live in town or country, has the right, as a citizen, to a free education of a kind for which [they are] best suited and to the fullest extent of [their] powers."

In addition, **NZEI would like to see amendments to this provision** including:

- A broader notion of educational success than ‘attaining educational achievement’ which implies a limited quantitative Western measurement assessment model and risks excluding learners in ECE and Māori and Pasifika settings.
- A visible commitment to education that addresses equity, supporting life-long learning and a stronger focus on building active and ethical participation in a democratic and inclusive society.
- The right of all students to be included and participate in the curriculum made explicit.
- The right and ability to access me te reo Māori me ngā Tikanga Māori made explicit.

9.2 National Education and Learning Priorities and Performance Measures

9.2.1 **NZEI does not support the proposals in Sections 60A and 61**; placing National Education and Learning Priorities (NELPs) higher than the current curricula in the Act’s hierarchy is unacceptable and unwise.

9.2.2 The NELPs would be reflected in national performance measures; targets against which the performance of Boards of Trustees can be measured (Section 60A). The requirement for Boards, principals and staff to “give effect” to policy statement and any national standards is not supported (Section 61).

9.2.3 The teaching profession is best placed to exercise their professional judgement informed by pedagogical knowledge, steeped in developmental knowledge of how and what children learn; the profession will set educational priorities. There is little evidence to show that setting targets improves the performance of the system. There is considerable evidence that setting targets diminishes a focus on authentic learning (Zhao, 2014).

9.2.4 The profession expects to enact high trust, locally contextualised curricula to meet the needs of their particular learners. The profession also expects to see the national curricula statements given primacy in the Act.

9.2.5 **NZEI opposes Clause 35 (new section 35GA)** which refers to NELPs as the basis of all learning programmes in the schools and gives the Board as “manager” of the school responsibility to make the principal and staff adhere to this national directive. This risks further standardisation and narrowing of the curriculum in order to meet a set of targets for reading, writing and maths. Enforcing compliance around arbitrary targets will not result in better learning; it simply reinforces inequity in the system by rewarding high decile schools with students more likely to achieve “above standard”.

9.2.6 **The proposals in Clauses 39-43 of the Bill that conflate measurements that may be required for system and governance accountability with assessment of student progress and success should be deleted.** Making Boards of Trustees responsible for teachers to “give effect” to measures such as National Standards and requiring National Standards to be included in all monitoring, evaluating and reporting on student achievement is not supported by NZEI.

Therefore **NZEI Te Riu Roa does not support Clause 39, 40, 41 and 43 which amend the Act to replace NEGs with “Curriculum and performance” requirements (NELPs and national performance measures) that effectively require Boards to enforce nationally standardised teaching and learning programmes in order that students meet national performance measures, or risk being disestablished.**

9.2.7 Should NELPs proceed, **Clause 4 should be amended to require the Minister to consult the profession and its representative bodies, including unions. The provision in Clause 4 allowing the Minister to make unspecified “minor changes” unilaterally without consultation should be deleted.** In view of the importance of NELPs, NZEI agrees with the suggestion of the Education Council that the **legislation be amended to require every NELP be submitted to Parliamentary scrutiny.**

9.3 Cohort Entry

9.3.1 **NZEI’s position is that schools should be “child ready”, rather than children “school ready”.** We support the right of every child to enrol at school on their fifth birthday or the date before they are six that best suits their needs. Our education system is based on teaching to the needs of the child. The ability of New Zealand teachers of junior classes to cater for the individual needs of new entrants as they arrive on their birthday is admired by many overseas educators. The current system allows parents to choose whether to enrol their children on their fifth birthday or at any time after that date, with compulsory attendance beginning on the child’s sixth birthday.

9.3.2 **NZEI therefore opposes the proposed change to cohort entry.** It appears to be driven by a desire for administrative simplicity rather than any evidence that cohort entry works better for children. New Zealand children already begin formal schooling early in comparison with most other OECD countries, and this proposal would potentially increase the number of children starting school

while still four years old. While the cohort entry provision is “voluntary”, one cohort of parents opting for cohort entry would ironically reduce the choice of future cohorts of parents.

9.3.3 The aim of this legislation appears to be to financial savings, based on the potential “risk of increased government expenditure under current arrangements” (*Regulatory Impact Statement: Changes to enable schools to implement cohort entry arrangements for children first starting school* p.15).

9.3.4 Allowing students to enrol at school before the age of five is likely to result in further losses in funding to the ECE sector. Currently children transition to school on an individual basis, whereas this proposal would enable groups of students to transition leaving significant gaps in participation.

9.3.5 This change is not about meeting the needs of learners and their families, who would be better served by maintaining the status quo. Learners and their families are more likely to receive appropriate, individualised support around transition to school if the current system is maintained. This approach is supported by the recent Education Review Office publication, *Continuity of learning: Transitions from early childhood services to schools* (2015).

9.3.6 Introducing this change is supposedly about “increasing the flexibility for schools to put in place school entry arrangements that best meet the needs of their communities and students” (*Regulatory Impact Statement: Changes to enable schools to implement cohort entry arrangements for children first starting school* p.15). However, the needs of communities and students are able to be met under current arrangements.

9.3.7 **NZEI therefore supports Part One Section 3 of the current Act.** This gives persons the right to free primary and secondary education beginning on a child’s fifth birthday. **NZEI does not support** the changes which would restrict the rights of section 3. The right of every child to free education from the age of 5 years must not be over ridden by any perceived need for administrative convenience, nor should it be expanded for the same reason to allow children under the age of five years to be enrolled in compulsory education.

9.3.8 **NZEI supports compulsory schooling starting from the age of six and no younger.** Part 3 section 20 (1) would result in schooling being made compulsory for children enrolled as young as four years of age. **NZEI does not support Clause 30 which amends section 25 (Students required to enrol must attend school).**

9.3.9 **NZEI does not support Clause 9** which replaces Section 5 (Restriction on enrolment at primary school) or **Clause 10** which inserts two new sections on cohort entry. NZEI does not support Section **5A (cohort entry policy) or Section 5B and 5C.**

9.4 Community of Online Learning (COOLs)

9.4.1 NZEI recognises both the current and the potential benefits of online learning and supports the expanded use of digital technology and virtual learning in a well-supported teaching and learning context. However, the Education Act already provides for the Government to create new ‘correspondence schools’ to meet demand, and digital learning is becoming integral to teaching and

learning in most schools and ECE services. The COOL provisions in the Act go far beyond enabling digital learning. They provide for any child from as young as 5 years old to enrol fulltime in an online school that can be provided by private corporations that can charge fees and are not required to have qualified teachers. NZEI believes this is effectively opening the education system to another form of privatisation that will risk the quality of children's education, divert essential funding from state schools, and increase competition, rather than collaboration, in the system.

9.4.2 The evidence on the use of digital learning, even in face to face environments, is still very mixed. The OECD's Andreas Schleicher says technology had raised "too many false hopes" and writes that the OECD's most recent PISA data concludes that moderate rather than frequent online computer use is correlated with somewhat better learning outcomes and that the results show, "no appreciable improvements in student achievement in reading, mathematics or science in the countries that had invested heavily in information and communication technology (ICT) for education. Perhaps the most disappointing finding is that technology seems of little help in bridging the skills divide between advantaged and disadvantaged students. Put simply, ensuring that every child attains a baseline level of proficiency in reading and mathematics seems to do more to create equal opportunities in a digital world than expanding or subsidising access to hi-tech devices and services."²

9.4.3 Fully online learning is not an ideal learning environment for more than 54% of learners. Recent research shows significant concerns about learners' attendance, engagement and achievement in online learning settings.³ There are a number of disadvantages for students, particularly younger children, with the proposed COOL model. NZEI Te Riu Roa believes that the relationship between teachers and learners and between learners and other learners is pivotal for educational success. Primarily, this should take place face-to-face. Qualified and certificated teachers are the strongest agents of affecting change in teaching and learning. This is not just in implementing technological innovations but also as active participants in design.

9.4.4 New Zealand already has some innovative online learning occurring, for example with virtual networks of rural schools. These operate to meet the needs of students generally from year 7 and over, who could otherwise not access languages or other specialist subjects. Learning is planned and delivered by fully qualified teachers working in conjunction (co-teaching) with students' own classroom teachers. The experience of teachers operating in these networks could form the basis of

² <http://www.bbc.com/news/business-34174795>

³ Gill, B., Walsh, L., Smither Wulsin, C., Matulewicz, H., Severn, V., Grau, E., . . . Kerwin, T. (2015). Inside online charter schools. Cambridge, MA: Mathematica Policy Research.

Woodworth, J. L., Raymond, M. E., Chirbas, K., Gonzalez, M., Negassi, Y., Snow, W., & Van Donge, C. (2015). Online charter school study. Stanford, CA: Center for Research on Education Outcomes.

a policy framework that could identify the resourcing, professional development and other support required to build further innovation in this area.

9.4.5 In contrast, the Bill's focus on increasing "contestability" rather than quality risks opening the gates to a flood of private providers with access to capital but with fewer constraints in terms of costs (no requirement to employ qualified teachers or to deliver a broad curriculum; the ability to charge fees). This means they could deliver, through public subsidy, cheap, high volume, low quality online modules that could make our current free and public face to face and virtual learning options unviable. Not only would students potentially have to pay to attend, but also funds desperately needed in the public education system would be diverted to subsidise private businesses.

9.4.6 Adopting such an unregulated approach would be extremely unfortunate, as it wilfully ignores the problems with such a market model. The most significant recent study of online charter schools, by Stanford University's Centre for Research on Education Outcomes (CREDO) says: "Current online charter schools may be a good fit for some students, but the evidence suggests that online charters don't serve very well the relatively atypical set of students that currently attend these schools, much less the general population. Academic benefits from online charter schools are currently the exception rather than the rule."⁴

9.4.7 It cautioned that there was insufficient oversight by regulators of US online schools and that they should not enable expansion of online schools without evidence they were good for children's learning: "It ...[is] critical for authorizers to ensure online charter schools demonstrate positive outcomes for students before being allowed to grow and that online charter schools grow at a pace which continues to lead to improved outcomes for their students."⁵ Current evidence suggests online learning in an unregulated environment without high quality teaching has negative outcomes for students. The Ministry's rationale for COOLs - that they will "extend student choice and improve online learning through competition"⁶ puts an ideological commitment to choice ahead of quality student learning.

9.4.8 COOLs are likely to lead to greater expectations of parents, particularly mothers who are often the primary caregiver to promote their child's learning. This would follow international experiences (Gill et al., 2015). Engagement with parents around this issue has not identified any public demand for the creation of COOLs. In fact, many parents have raised concerns about this monumental change to the education system.

9.4.9 Students who are only able to participate in an online environment potentially miss out on extra-curricular activities, particularly those of a cultural and/or sporting nature. The development of social skills and conflict resolution skills are more likely to develop in face-to-face situations. There is a risk that the COOLs could be used as a mechanism to further exclude learners with additional learning needs and disabilities that could benefit from inclusion in mainstream schooling. This situation impacts on both the learners who are excluded and other learners who miss the opportunity to interact with a more diverse range of people.

⁴ <https://credo.stanford.edu/pdfs/OnlineCharterStudyFinal2015.pdf>

⁵ Ibid.

⁶ <http://www.education.govt.nz/assets/Documents/Ministry/Regulatory-Impact-Statements/Ed-Update-Amendment-Bill/RIS-Establishing-a-regulatory-framework-for-online-learning.pdf>

9.4.10 NZEI therefore opposes Part 3A inserting sections 35T to S35ZO that establish COOLs, along with Clause 70 which would bulk fund full Communities of Online Learning. It recommends that the COOL related provisions be deleted and referred back to the Ministry for sector-wide consultation and policy development.

9.5 Powers of the Competence Authority

9.5.1 Clauses 141-143 amend ss 410 to 412 of the Act, making provision for a “Competence Authority”, to deal with certain mandatory reports and complaints about competency matters. These provisions would largely overlay existing provisions in the *Education Council Rules 2016* establishing and regulating a Competence Authority. However the proposed statutory provisions make two key changes –

- (a) effectively transferring to the Authority, the Council’s current powers to consider and determine those matters where competency concerns are so grave that cancelling the teachers’ right to teach is proposed; and
- (b) extending the potential sanctions to include the cancellation of a teacher’s registration.

NZEI opposes both of these proposals.

Council Should Determine Most Serious Cases

9.5.2 NZEI made extensive submissions to the Education Council regarding its draft rules, and made complementary submissions to the Ministry of Education when these legislative provisions were first mooted earlier in 2016. NZEI reluctantly accepted the arguments for the establishment of a Competence Authority. There were valid concerns about the workload previously imposed by the requirement for the Council to consider and dispose of every single competency matter brought to its attention. That acceptance was in part based on the Councils’ retention of responsibility for considering the most serious competency cases. **NZEI therefore does not accept the s410AA proposal to transfer total responsibility to the Authority.**

9.5.3 The Council’s new Rules (including the advent of the new Competence Authority) will have made significant inroads into the previous workload. We understand that the Council dealt with about 25 proposed cancellations on competency grounds in 2015, and we do not consider that level of activity would impose an unmanageable workload burden on the Council in the absence of all the other competency matters now dealt with directly by the Council staff and/or the new Authority. We are confident that the number of proposed cancellations could easily be managed downwards. Our regular involvement in such cases has left us with the firm view that not all proposed cancellations have been well-founded, and that a number of those cases better suited the imposition of rigorous conditions, which is an approach more in keeping with the rehabilitative nature of the competency regime.

9.5.4 We believe it is important that the Council continues to have direct responsibility for managing competency within the profession. Leaving the Council to determine the most serious competency cases ensures that the profession’s peak body can continue to clearly articulate the fundamental standards it expects of the profession, with a gravitas that cannot be matched by a subordinate

body. Furthermore, having a clear “line-of-sight” into its own investigative processes is an important governance tool. Continued involvement in some cases would provide the Council with a window into its own organisational performance, in a way that it could not have if all such matters are dealt with without any direct oversight. It is important that teachers are reassured that the Council members know and understand the realities of the processes that are carried out in the Council’s name, and that it is keeping a direct eye on the fairness of its investigative processes.

Ultimate Sanction Should Be Cancellation of Practicing Certificate Not Of Registration

9.5.5 NZEI further believes that it would be inappropriate to empower the new Competence Authority to cancel a teacher’s registration. **NZEI therefore does not support proposed s 412(b).** Prior to 1 July 2015, the regulatory regime had a confusing and largely meaningless overlap between registration and practicing certificates⁷, with the ultimate sanction for both misconduct and incompetence being the cancellation of registration. Parliament clarified the mess⁸, deciding that teachers should be registered for life, with their right to teach being regulated through the issuing of practicing certificates, and the imposition of conditions on, or the cancellation of, practicing certificates where necessary for disciplinary or competency reasons.

9.5.6 NZEI supports that framework as a sensible and coherent regime. Reverting to the cancellation of registration as a sanction is an unnecessary and retrograde step. If the Competence Authority is to be empowered to deal with those cases where a teacher’s continued right to teach is in question, we believe it should be empowered only to suspend a teacher’s practicing certificate; to cancel a teacher’s practicing certificate; or to impose conditions on a current or future practicing certificate.

By teachers, for teachers

9.5.7 NZEI disagrees that the Competence Authority must include a lay member. It is not appropriate to have people who are not teaching professionals determining whether teachers are professionally competent, because they will not have the knowledge or experience to make a judgement. The competence investigation process and the Competence Authority is rehabilitative rather than disciplinary in nature. Our competence investigation process is generally rehabilitative in nature – not disciplinary. It is there to assess a teacher’s professional competence against the set of specialised standards which all registered and certificated teachers must meet (the Practising Teacher Criteria). As such, it is appropriate that only teachers with practising certificates are on the Competence Authority, as only these people are able to properly assess a teacher’s competence.

NZEI therefore supports an amendment making all Competence Authority members teachers holding current practising certificates.

⁷ See *Education Amendment Bill (no 2) 2014 Regulatory Impact Statement: Options For Creating A New Professional Body For Teaching*,

<http://www.education.govt.nz/assets/Documents/Ministry/RIS/RISNZTC.pdf>

pp 5-6, 14-16

⁸ *Education Amendment Act 2015*

9.6 Communities of Learning

9.6.1 The Bill proposes three significant legislative changes for CoLs. Once the Bill is passed, any of these proposals would be voluntary from 2017.

9.6.2 Clause 81, 90 and 91 Section give the Minister power to establish combined boards and approve alternative constitutions for CoLs wanting to form a combined board of trustees. The Ministry argues that numbers would get unwieldy and ineffective if a combined BOT included, for example, principals and staff reps from all the schools in a CoL. However, **NZEI does not support allowing the Minister to *require* a combined board of four or more schools to have an alternative constitution (Clause 91)**. At the very least, there must be a requirement to have input from the communities of the schools involved and safeguards that to ensure that any combined board genuinely represents the communities it serves.

9.6.3 Currently the Minister can only approve an alternative constitution for a combined BoT if the boards or parents concerned, or ERO, requests this. **NZEI does not support the Minister being able to require boards to combine as a possible solution to governance problems, either within or outside CoLs**. Shifting the governance responsibilities to another board could alienate the school and reduce local school community support. There are other possibilities for improving capability as outlined in clause 56 (amending s78). Boards already have the ability to combine but seldom do so, indicating that this is not an option favoured in ordinary circumstances and should not be made mandatory when a board is in difficulty.

NZEI therefore opposes Clause 81 (amending s98), 90 and 91.

9.6.4 The Bill enables the Minister to approve Boards wanting to do work for other educational services and social services to do so. The Ministry argues that some CoLs might more effectively address their achievement challenges if Boards within the CoL could do work for ECE services or other social service agencies. For example, a board could offer back-office services to an ECE service in its CoL.

9.6.5 There appears to be no additional overarching government support to assist in the operation of expanded COL. There is the potential for boards to find themselves taking up yet more work that should in effect be the responsibility of government. The proposals should not involve additional administrative burdens for schools and their volunteer board members, when they already have a heavy workload. This is particularly the case for small schools and those in lower socio-economic areas.

9.6.6 Any expansion of the roles and responsibilities of boards, including the provision of services to other entities, should not be at the expense of boards' fundamental role of managing the school for the education and wellbeing of their students. Schools are not businesses. Contracting for services, for example, can involve a significant commitment of time and resources if adequate monitoring and compliance are to be carried out. It is unclear if additional and hidden costs related to the proposals have been identified.

9.6.7 The Bill enables the Secretary of Education to enter a formal "Community of Learning Agreement" with a CoL that chooses to do so. Schools joining or leaving these CoLs would be formally identified by the Secretary of Education via gazette notice. Under their agreement, CoLs

would be required to report annually on their progress, achievement and resourcing use to the Secretary of Education.

9.6.8 The Ministry argues that CoLs are potentially unstable and that the legislative changes will provide greater stability and create a more stringent accountability regime. The Ministry is worried that CoL structures are too informal and that members can leave too easily at short notice. The Ministry plans to deliver "bundled support packages" (professional learning and development) from external providers to CoLs. This means a financial risk to be managed by the Ministry. It is argued that CoLs therefore require stronger accountability regimes to support this investment.

9.6.9 Schools and services should decide if it is in the best interests of their students to either join or not join a Community of Learning. The basis of the Investing in Success (IES) policy was that it was to be voluntary. This is because genuine professional collaboration needs to be motivated by shared goals, rather than required by legislation.

9.6.10 To date, few CoLs are functioning in terms of approved achievement challenges, appointments to roles, and any evaluation of the success (or not) of their CoL approach or the IES initiative. The proposed changes to the Act would formalise CoLs as a core unit of schooling and risk moving the focus of CoLs from professional collaboration to administrative concerns.

9.6.11 The Government is already using a large number of system levers to encourage schools and ECE services to set up Communities of Learning. Making CoLs a more formal structure may work for some CoLs but not others. It is too early in the formation of CoLs to pressure schools and services to join formal structures.

9.6.12 Our view is that CoLs must not be penalised in any way if they chose *not* to have a formalised "Community of Learning Agreement" with the Secretary of Education. The primary purpose of CoLs is professional collaboration to support student success, not administrative simplicity for the Ministry of Education. Therefore, the CoL's priority should be the agreement with each other, and the nature of the agreement should reflect the stage in the journey of their community, not a form with liabilities and duties proscribed centrally by the Ministry of Education.

9.6.13 Creating bureaucratic hurdles to joining or leaving CoLs is not consistent with the voluntary design of CoLs. The requirement to report annually on a "Community of Learning Agreement" to the Secretary of Education, is onerous and contrary to the four year timeframes for approving/reporting on strategic plans being proposed for schools individually. Currently, accountability through the Memorandum of Agreement makes CoL members accountable to one another locally, not to the Ministry in Wellington. This is the appropriate way to continue to develop authentic collaboration. NZEI is concerned that the proposed legislation is a premature and unnecessary attempt to exert centralised control over what is essentially an emerging collaborative experiment.

NZEI therefore does not support Clause 48 that inserts new sections 75A-75E.

SECTION 3; CLAUSE BY CLAUSE COMMENTS ON OTHER ASPECTS OF THE BILL

Part 1 Rights to primary and secondary education s2 to s10

General comment

NZEI supports Part One section 3 of the current 1989 Act “**Rights to primary and secondary education**”. This legislates for the right to free primary and secondary education beginning on a child’s fifth birthday. NZEI also supports Part one section 20(1) of the current 1989 Act “**New Zealand citizens and residents between 6 and 16 go to school**”. This restricts compulsory attendance to children from their sixth birthday. These two sections of the current 1989 Act must remain. Any amendment or inserts proposed in the Update must not override these sections. The purpose of education must be for the child and it must be the child that is foremost not administrative convenience.

NZEI does not support any clause in the Education (Update) Amendment Act that

- changes the current entitlement of a child to be enrolled at their fifth birthday; or
- allows a child to be enrolled before their fifth birthday; or
- makes schooling compulsory before the age of six years.

Note: NZEI is surprised that in the Update this section continues to use an outdated description of stages of schooling e.g. ‘form 3’.

Part 2 Enrolment schemes, and suspension, expulsion, and exclusion of students s11 to s19

NZEI supports

Clause 14

New section 11IA **Development of enrolment scheme by secretary**

1. This amendment provides a more active Ministry role in the management of enrolment schemes and sends a clear message to schools that enrolment schemes will be enforced where necessary to protect the network and to lessen additional costs through duplication of resources.

Clause 18

Section 11P **Secretary may direct board to enrol applicant**

New subsection (2A)

2. The additional clause (2A) ensures this power is used only in exceptional cases.

NZEI has concerns

Clause 25

Replaces section 20 **New Zealand citizens and residents between 6 and 16 must be enrolled at registered school or full community of learning**

3. In the main the intent stays the same. However NZEI has two concerns both related to how this section is affected by other proposals in the update. The first is that the intention of s20(1), restricting the start of compulsory attendance to 6 years of age, would be over-ridden if new sections proposed in Part 9 become law. The second is the inclusion of 20(1)(b) reference to “full community of online learning” a proposed network structure that NZEI adamantly opposes.

Clauses 26, 27, 28 and 29

Amending s21, s22, s23, s24

4. NZEI’s objection relates to the inclusion of “full community of online learning” in all these amendments.

NZEI supports with a caveat

Clause 47

Inserts new section 71A **Off-site locations for schools**.

5. NZEI supports the subsections that give the Minister power to establish and disestablish off-site campuses removing the ability to set up ad hoc off-site locations without the Minister’s approval. The current lack of clear legislative instruction has led to schools using off-site arrangements in order to enrol students outside the year levels allowed by the school’s designation. 71A provides the mechanism for all off-site locations to be regulated and gives clear direction to boards as to what is required for approval by the Minister.
6. However, while NZEI agrees that a more formal process needs to be in place to approve and monitor any off-site campus, NZEI is concerned that in the ministry’s Regulatory Impact Statement it is the special education units that are targeted as an example. NZEI’s support for 71A depends on the special education units currently operating in schools and the special school satellite units that have been in operation for some time, both of which provide a much needed service, receiving formal approval to continue.
7. These ‘off-site’ units are an important part of the schooling network. To single them out in the Regulatory Impact Statement has triggered NZEI’s reluctance to give unconditional support for this clause.

8. NZEI's support for the new section 71A is conditional on formal notice that special education units will have a Memorandum of Agreement to continue rather than just be protected short term by the proposed transitional period of one year for any existing off-site campus to continue to operate without the Minister's approval.

Part 7A Interventions in schools

s78H to sAS 78T

Clause 55 Risk Management Schemes to Clause 64

9. NZEI supports the intent of changes to Section 78 (Risk management schemes) but with several caveats. We believe that this early intervention process would be better covered in guidelines rather than in legislation.
10. We are concerned about the cost of interventions being placed on the boards. Whether or not the new interventions remain in the legislation or are removed to become guidelines, in all cases the costs should be the responsibility of the Minister in the first instance with the Secretary having the ability to charge the cost to the board in exceptional circumstances only. There should be guidelines that state the circumstances that might influence the Minister or the Secretary to shift the cost to the board.
11. NZEI also has concerns that the Secretary can restrict whom the board can employ to provide the mandatory specialist help. The mandatory requirements included in the changes to Section 78 might result in fewer community members putting their name forward for election to a board.
12. NZEI notes that Clauses 60 and 61 provide for the cost of limited statutory managers and commissioners to be paid by the crown if the Secretary so decides. While this is an improvement to the current situation it is NZEI's view that in all but exceptional instances the Crown should bear the cost.

NZEI opposes

Clause 57

Amends section 78J **Requirement to provide information**

13. NZEI does not support arbitrary interventions or unspecified information as further compliance measures for boards. There appears to be no substantiated basis for the suggested amendment.

NZEI opposes

Clause 58

Amends Section 78K **Specialist help**

14. NZEI does not support the new subsection 78K(3)b requiring boards to meet all the costs associated with the enforced employment of a "specialist" on the Secretary's instructions. The

cost of the “specialist” help should be amended to state the cost of help is the regulated responsibility of the Minister.

NZEI opposes

Clause 60

New sections added 78LA to 78LE

Section 78LA **Case conference**

15. The board members elected by the school community volunteered for this important role. As this intervention is at the very beginning of a process to identify and find solutions to actual, or perceived, board problems it is heavy-handed to regulate that the Minister will decide on the date of the conference the board is required to attend. Forcing boards to attend a case conference ‘on a specified date’ ignores the voluntary nature of the role of a trustee. NZEI does not agree that the costs to cover board members’ attendance at case conferences should be the responsibility of the board.

Section 78LB **Specialist audit**

16. NZEI does not agree that the board should be responsible for the fees and expenses of whoever is employed to do the audit unless the Secretary decides otherwise. The audit is directed by the Minister and the specialist engaged by the school has to be from a list that is generated by the Secretary. It is NZEI’s view that the cost should be the responsibility of the Minister unless there are valid reasons why that should not be so.

NZEI suggests a change

Clause 61

Amends section 78M **Limited statutory manager**

by adding “*unless the Minister determines otherwise*”

17. NZEI notes that Clause 61 makes provision for the Crown to pay for a (limited) statutory manager if the Secretary deems it necessary. Whilst this is an improvement on the current legislative settings, NZEI recommends that if the Crown appoints a manager, the Crown should bear any and all associated costs.

NZEI Supports

Clause 14

Inserts new Section 111A **Development of enrolment scheme by Secretary**

18. NZEI supports this amendment that allows the Minister, through the Ministry of Education to develop and put in place an enrolment scheme when it is necessary to protect the network and a school refuses or is slow to do so. The Minister has responsibility for the schooling network and, at times, enrolment schemes are necessary to maintain the viability of essential schools within the limits of Vote: Education. It provides the secretary with a more active role in the management of enrolment schemes and sends a clear message to boards that enrolment schemes will be enforced where necessary to protect the network and to mitigate against unnecessary additional costs through duplication of services.

NZEI has a concern

Clause 98

Inserts new section 145AAA **Purpose of Part**

Section 145AAA

19. This new section has three statements relating to the purpose of Part 12. While NZEI agrees with both 145AAA(a) and 145AAA(b) we have a concern with 145AAA(c) which has “diversity” as a factor to be taken into account. Diversity of provision is not necessarily a desirable factor when considering the schooling network.
20. Maori medium education is not included in the comment above and it is noted sections covering Maori medium education are included in the Update. NZEI supports those sections.
21. New schools in the network should be schools that cater for a wide range of students engaging in education together and that promote developing democratic citizens.
22. NZEI would support 145AAA if it were worded as follows:

145AAA

The purpose of this Part is to –

- (a) *Enable the provision of a schooling network that allows parents to meet their obligations to enrol their children at school; and*
- (b) *Assist the effective and efficient use of the government’s investment in schooling.*

NZEI supports

Clause 113

Amends section 157; new **(3A)**

23. While NZEI supports streamlining the legislation to remove repetition of the consultation process when mergers and closures are the outcome of an area review, this support is subject to the consultation carried out during the review being robust and fair and the proposed outcome is demonstrably better than the status quo in providing the best educational opportunity for the students in the community.

Clause 110 amends section 156A; new **(1A)**

24. This change, giving the Minister absolute discretion to merge schools provided the consultation has been '*adequate*' and the decision is '*appropriate*' removes the possibility of litigation by aggrieved boards and the subsequent costs that reduce the funding available to the new school set up by a merger.

NZEI Opposes

Clause 100

Inserts ((1A) in section 146 **Minister may establish schools**

25. NZEI objects to the Minister having absolute discretion. This wording implies no consultation, no opportunity for discussion with the public and school communities about the need for a new school, its type and operation. While we do agree the Minister has the right to establish schools our objection relates to the inclusion of "absolute" in the wording. The establishment of charter schools and 'COOL schools' are examples of political party policy that is detrimental to the maintenance of the state network for all students. The Minister should not have the ability to set up more 'flavour of the month' schooling provision without proper consultation. This amendment would give her that authority.

NZEI supports

Clause 106

Amended **Minister may change class of school**

Inserts new section **153(1B)**

and

Clause 107 (**Closure of schools**)

Inserts new section **154 (2B)**

26. NZEI agrees with the changes that give the Minister "absolute discretion" in both these sections. The expectation being that it would reduce the number of repeat applications for a change of class or year levels, and lessen the risk of boards and communities getting involved in lengthy and costly litigation that sometimes follows a closure notice, particularly in an area review.

27. If it is the Minister’s responsibility to maintain a network that services the school age population and to effectively and efficiently manage the government’s investment then it is sensible to give the Minister ultimate authority to action a decision. These new sections make this clear.
28. NZEI’s support is dependent on the consultation required under section 157 being carried out in an open and fair manner.

NZEI supports

Clause 108

Replaces section 155, **Kura Kaupapa Māori**

29. Relating to the designation of a State school by the Minister as both a designated character school and a Kura Kaupapa Māori when establishing that State school.

NZEI partially supports

Clause 109

Replaces Section 156 **Designated character schools**

Inserts Section 156AA **Process for establishing designated character schools**

30. The changes place Kura Kaupapa Maori in the section covering designated character schools. NZEI has no problem with this change. However, in the rewriting of section 156, and in the new section 156AA, there are two omissions from the original section that are of concern.
31. The first deletion is the requirement that before a designated character school can be set up the Minister must be satisfied that the parents of at least 21 children would enrol their children in the school. The second is that the Minister must be satisfied “*it is desirable for students whose parents want them to do so to get such an education*”.
32. The intent of both these statements should be reinstated in section 156(3). Demand must be sufficient to ensure the viability of a school of special character before it is established and the special character must be one that will provide a sound education for the children; not just provide parents with a platform for furthering a philosophical or religious belief.

PART 33 State integrated schools

s414 to s475

NZEI supports

Clause 144

Inserts new Part 33 **State integrated schools**

Section 431 **Mergers**

33. Allowing integrated schools to merge is supported.

Schedules 1 to 21

NZEI Comment

NZEI Te Riu Roa supports amendments to the schedules in line with comments already made on related clauses.

References

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