

**NZEI SUBMISSION
ON THE
EDUCATION AMENDMENT
BILL**

March 2005

SUBMISSION TO THE EDUCATION AND SCIENCE SELECT COMMITTEE ON THE EDUCATION AMENDMENT BILL

Introduction

- 1 NZEI Te Riu Roa ("NZEI") is the professional organisation and industrial union that represents the interests and issues of its 42,500 members. Our members include teachers in the early childhood and primary sectors, support staff in the primary, intermediate, and secondary sectors, advisers employed by the Colleges of Education, and Special Education staff employed by the Ministry of Education.
- 2 The main objective of NZEI is to advance the cause of education generally while upholding and maintaining the just claims of its members individually and collectively.
- 3 NZEI is one of the largest unions and professional bodies in the country and has a long history of playing a positive role in the education sector in particular, and on wider social issues that might affect our members.

Summary of NZEI's Responses To The Bill

- 4 In the time available, (see paragraph 26 below) NZEI's immediate responses to this Bill can be summarised as follows.
 - (a) Changes in respect of the provision of kindergarten education must not involve any diminution of current requirements for the employment of qualified and trained teachers (see paragraphs 6 and 11 below).
 - (b) Extension of the National Student Number system must be phased in with adequate provision of school support staff (see paragraph 10 below).
 - (c) There are problems with proposed changes to section 129 of the principal Act as they govern activities of the Teachers Council (see paragraphs 13 through 15 below).
 - (d) Changes to the Teachers Council's Complaints Assessment Committee are supported, but similar proposals in relation to the Teachers Council's Disciplinary Tribunal are opposed at this time. Furthermore, any changes, to either body, should be consonant with the principle that teachers should be judged by their peers (see paragraph 16 below).
 - (e) The imposition of a Ministerial appointee to the Teachers Council Disciplinary Tribunal is a derogation from the fundamental premise that the Council is the means by which the profession governs itself (see paragraph 17 below).
 - (f) The proposed method of making a school's annual report available to the public is an improvement on the current requirement that the annual report is merely tabled at the annual meeting (see paragraph 18 below).
 - (g) Reimbursement of some of the foreign student levy back to integrated schools should only proceed subject to carefully drawn regulations and after wide consultation (see paragraphs 22 and 23 below).

- (h) Consolidation of Education legislation is a sound notion but the principal Act has not been reprinted for a decade (see paragraphs 23 and 24 below).

New Early Childhood Regulatory Regime

- 5 NZEI is generally supportive of the proposals contained in the Bill.
- 6 With respect to the proposal to allow for all-day kindergartens, NZEI does not support any change which may impact on adequate staffing of kindergartens. “Adequate” for the purposes of this submission, means fully staffed by qualified and registered teachers. To this end, the Government must continue to support kindergarten employers to employ qualified teachers, even when hours of operation are being extended from sessional to all-day. As stated later in this submission (see paragraph 11 below), this Bill as drafted, proposes that there will be no registration requirements in all-day kindergartens.
- 7 NZEI is supportive of the proposal to amend the *State Sector Act 1988* to allow the Secretary for Education to prescribe processes that the performance management systems of Kindergarten employers must follow, provided that the implementation of such prescription(s) are the subject of meaningful consultation with the key stakeholders.

Extension Of The Use Of National Student Numbers

- 8 NZEI is generally supportive of the National Student Number (NSN) proposals contained in the Bill.
- 9 NZEI is puzzled by the fact that a justification for the proposals is -

“...an unacceptably high rate of non-enrolment referrals, and an unacceptable length of time required to identify and rectify non-enrolments.”¹

when the extension of NSN coverage might add to (rather than solve) the problems quoted above. NZEI assumes that higher amounts of inter-connectivity and the eradication of “multiple stand-alone systems based on a range of data standards”² will solve current difficulties.

- 10 NZEI contends that irrespective of medium and long-term improvements, alterations in the way the NSN system operates is likely, at least in the transitional short-term, to impose further pressure on the workloads of school support staff: a category of education sector employee that is already under funded. Changes must also be accompanied by clear statements to the sector regarding the relative roles of teaching institutions and the Ministry of Education in the matter of tracking students. NZEI therefore submits that changes to the NSN system must be accompanied by concomitant government commitment to improving the funding of school support staff. The government is aware of research-based proposals from NZEI in relation to this matter.

Teacher Registration and New Zealand Teachers Council

- 11 NZEI has concerns in relation to clause 15 of the Bill. The Bill amends the definition of “early childhood education and care service” as it appears in section 120 of the principal Act by substituting a definition of free kindergarten that only applies to entities “whose licence permits no child to attend for a period of more than 4 hours”. The overall effect of substituting a narrower definition of free kindergarten seems to mean

¹ Explanatory note, page 2.

² Explanatory note, pages 2 & 3.

that other categories of kindergarten (i.e. the proposed all-day kindergartens) will have no requirements with respect to the employment of registered teachers. From discussions with Ministry of Education officials, NZEI understands that this lacuna will be addressed by changes to the *Education (Registration of Early Childhood Services Teachers) Regulations 2004*. NZEI wishes to be closely consulted during the drafting of these regulatory adjustments.

- 12 NZEI welcomes most of the amendments proposed in clauses 15 - 28 of the Bill, which can be seen as either addressing lacunae (clauses 16, 17 and 18), or providing clarification of overlapping provisions (clauses 19, 21, 25 and 28).
- 13 With respect to clause 21, NZEI notes that proposed section 129(1)(a) borrows extensively from the present section 129. NZEI understands that it is intended to refer to situations where an applicant for the renewal of a practicing certificate (or, as the case may be, a limited authority to teach), has failed to satisfy the Council as to eligibility. However, as currently drafted, it appears to provide an alternative avenue by which a teacher's conduct or competence can be judged directly by the Council itself - superimposed over the new disciplinary and competency assessment processes now included in the Act. Proposed section 129(1)(a) should instead refer to situations where the Council has not been satisfied that an applicant for the renewal of a practicing certificate or a limited authority to teach meets the criteria for that renewal.
- 14 Proposed section 129(1)(c) mistakenly refers to the Teachers Council ordering deregistration under s 139AW(1)(g). This needs to be corrected to refer to the Disciplinary Tribunal, which is the body empowered to order deregistration under that provision.
- 15 Proposed section 129(1)(d) allows for cancellation by request, but only if the teacher is "not the subject of any investigation under Part 10A". This imposes unnecessary burdens and delays in cases where teachers under investigation accept that cancellation is an appropriate outcome. NZEI suggests this qualification should be deleted. NZEI understands that this proposal may be a reaction to judicial thought on the current provisions regarding the entry of names in the list of teachers with cancelled registration. NZEI suggests that it would be simpler to provide for entry on that list where deregistration has been ordered, or where a request has been received while the teacher was the subject of such an investigation.
- 16 With respect to clause 23, NZEI notes that the Bill proposes to dilute the number of Teachers Council members on the Complaints Assessment Committee and the Disciplinary Tribunal: presumably in order to address the workload of Council members. During the period when the Council was developing its rules, NZEI made submissions about the rigidity of "quorum" rules in light of the fact that the full Council only contains 11 members.
 - (a) NZEI accepts that the early experience of the Complaints Assessment Committee indicates that its workload has put undue pressure on the Council's current structure, and that change may be necessary.
 - (b) Further to (a) above, NZEI observes that the Complaints Assessment Committee's workload has in part resulted from a lack of perspective. Teachers have had their character and fitness to teach questioned on matters as minor as a single speeding ticket. In NZEI's view, the Committee needs to develop a more realistic policy about what matters do put a teacher's character and fitness to teach in question and confine its inquiries accordingly.
 - (c) NZEI has not yet had any opportunity to assess the Disciplinary Tribunal. However, while NZEI accepts that it is appropriate to delegate the Council's responsibilities for professional discipline to the Tribunal, NZEI would prefer to see the continuation of close links between the Council and the decisions being

made at the highest level of the disciplinary process. NZEI is therefore uneasy with the dilution of the Council members' majority on the Tribunal.

- (d) NZEI continues to contend that teachers, like members of other professions, should be judged by their peers. Accordingly, this should be reflected in any amendment to section 139AQ which should be drafted in a way to ensure that the majority of appointments to the Complaints Assessment Committee and the Disciplinary Tribunal should come from the teaching profession.
- 17 Further with respect to clause 23, NZEI opposes any imposition of a Ministerial appointee on the Disciplinary Tribunal. The existing statutory provisions require the inclusion of at least one "lay" member on the Disciplinary Tribunal, but empower the Council to make its own rules about the composition of the Tribunal. The Council has done so, properly reflecting this requirement for a lay member, and requiring the chair of the Tribunal to be a suitably experienced lawyer. It has also specified the appropriate characteristics of all the non-Council members, and required that their appointment follow a robust and appropriate consultation process with key stakeholders in the education sector. The imposition of a Ministerial appointee to the Tribunal cuts across all of these provisions, and is a derogation from the fundamental premise that the Council is the means by which the profession governs itself. It amounts to an unacceptable and unwarranted political interference in the profession's administration of its own discipline.

School Boards of Trustees

- 18 School planning and reporting requirements imposed upon schools following the *Education Standards Act 2000* (with its consequent amendments to the *Education Act 1989*) were justified in terms of Ministry of Education rhetoric about "obligations to communities" and interconnected statutory provisions relating to school charters, annual reports, and annual meetings. NZEI therefore notes with irony, that clause 9 of this Bill abolishes the requirement for Boards of Trustees to hold annual meetings on the grounds that they serve "no useful purpose".³ NZEI nevertheless supports the proposal in the Bill that a new section 100 would impose a requirement to make the annual report available to the public. This is an improvement on the current requirement that the annual report is merely tabled at the annual meeting.
- 19 NZEI is generally supportive of the proposal in clause 31 of the Bill whereby section 156A of the principal Act would allow the Minister, in the context of school mergers, to make certain decisions as to the nature of the Board of the continuing school. NZEI has encountered difficulties during school mergers in relation to which school Board (existing Board, or continuing Board) exercised employer powers in relation to members' entitlements under collective agreements. It is not clear however, whether the proposals will dispose of such difficulties.

International Education

- 20 NZEI notes that clause 3 of the Bill would add subsections 3A and 3B to section 4(3) of the principal Act and provide for reimbursement to proprietors of integrated schools, that part of the levy on foreign students "...associated with the use of capital assets owned by the proprietors".
- 21 NZEI supports the notion of boards of any school reimbursing the Crown for expenditure in relation to foreign students on the grounds that the first obligation of the school system is to educate New Zealanders. NZEI questions the distinction between

³ Explanatory notes page 8.

“capital costs” and “system costs”⁴ and further questions whether reimbursement of the Crown can ever be adequate in respect of some finite resources such as ESOL and special education expertise.

- 22 Further to paragraph 21 above, NZEI notes a disjunction between the Bill’s explanatory note which states that the fee

“...is intended to reimburse the Crown for capital costs (such as use of school buildings) and system costs (such as ESOL) ...”

and the Ministry of Education’s statement to the education sector. On its web site, the Ministry states that

“The levy will be used to support a broad range of activities and projects relating to export education industry promotion and communications, capability development, quality assurance and research.”

NZEI contends that if the Ministry statement quoted above is the correct reason for the levy, then no part of it should be reimbursed to integrated schools (or any other category of school) as all schools benefit from “export education industry promotion and communications, capability development, quality assurance and research”.

- 23 NZEI further contends that even if the Bill’s explanatory note is the correct description of the use of the levy, any gazetted formula for the payment of such reimbursement to integrated schools must proceed as follows.

- (a) The formula must take into account such factors as publicly-funded property money (\$29m for the last five-year property programme) or publicly-funded school operational funding components (such as the information and communication technologies grant, vandalism grant, property maintenance grant and heat light and water grant). Whilst the original capital assets of an integrated school may not have been funded by the state, the maintenance and improvement of such assets have been.
- (b) The formula must be the subject of wide consultation in the education sector and not just amongst the proprietors of integrated schools.

Consolidation of Education Legislation

- 24 NZEI is supportive of the updating and transfer of provisions in the *Education Lands Act 1949*, the *Education Act 1964* and the *School Trustees Act 1989* into the *Education Act 1989*. It is clearly advantageous to have a “one stop shop” approach to Education legislation. NZEI notes however, that this Bill does not achieve full consolidation: for instance several provisions have been left behind in the *Education Act 1964*. Further to this last point, NZEI contends that all the remaining provisions should be incorporated into the 1989 Act. In particular NZEI is most concerned to ensure that sections 77 - 81 (inclusive) of the 1964 Act do not become overlooked. These provisions preserve the secular nature of state primary education and should not be lost from view.

- 25 NZEI contends that for the “one stop shop” approach to have any meaning however, the government must address the fact that the last reprint of the *Education Act 1989* occurred in 1995. Since that date, the Parliament has dealt with three significant Bills affecting this statute (*Education Standards*, *Public Finance (State Sector Management)* and now this Bill) not to mention a host of smaller pieces of amending legislation. NZEI further contends that it is only possible to read the substantive Act electronically and a reprint is urgently required.

⁴ Explanatory notes page 7

Conclusion

- 26 This Bill was introduced on the last day of November 2004. For schools, this was followed by the busy end-of-school-year period in December and the subsequent summer break. Consultation with our members has therefore only been possible in February 2005 and the start of the school year is also a hectic period. NZEI therefore reserves the right to make further submissions both to this Select Committee and to government.
- 27 NZEI urges that this Bill proceed without undue haste and that we have the opportunity to be consulted about Supplementary Order Papers.

Colin Tarr
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Te Manukura
March 2005