

Contact Sarah Murphy  
11 November 2016

The Chair  
Education and Science Committee  
Parliament Buildings  
Wellington

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Dear Chair

### **Education (Update) Amendment Bill (2016)**

Thank you for the opportunity to make a submission on the Education (Update) Amendment Bill. This submission is made on behalf of the Office of the Ombudsman.

#### **OIA and Ombudsmen Act**

We consider it important to clarify that COOLs are subject to both the Ombudsmen Act and the Official Information Act (OIA), for the purposes of transparency and accountability. This accords with the former Chief Ombudsman's view regarding the need for partnership schools to be subject to both Acts.

It is an important constitutional safeguard that state sector agencies are included under the Ombudsmen Act and the Official Information Act. Inclusion of COOLs under the OIA would enable the public to access information about their operations and help to ensure appropriate standards of educational and other practices are maintained. Rendering COOLs subject to the Ombudsmen Act would ensure that parents and pupils had access to an independent complaints mechanism in the event that they are adversely affected by actions or omissions of a COOL.

Schools play a pivotal societal function in educating the next generation, and should therefore be subject to the full suite of legislative accountability mechanisms, to ensure they operate effectively, accountably and transparently.

#### **Communities of Online Learning**

While we agree that on-line learning can make an important contribution to education, we are concerned about the breadth of the proposed Communities of On-Line Learning (COOL) scheme, and in particular the apparently unrestricted ability of any student to be enrol in a COOL (clause 20 refers).

We consider that COOLs should supplement rather than replace physical schools, and should only be available as a full time education choice where there is a proven need for a pupil not to attend a physical school, such as ill health or physical remoteness.

We are concerned that full time attendance at a COOL rather than a school could have significant adverse social impacts on the attendees. In addition to the potentially isolating effect on the

learner, the likely absence of social interaction of the attendees could have downstream health implications as well as fiscal and societal costs. We also note that full time enrolment in an on line learning course, as opposed to a physical school, appears to be in tension with objectives in Clause 1A(3)(b)(ii) of the Bill of *'promoting the development, in each child and young person of the following abilities and attributes: good social skills and the ability to form good relationships'* as well as clause 1A(3)(b)(ii) of *'participation in community life ...'*.

While we consider that there is a place for on-line learning for some disabled persons, we are concerned that COOLs could, in practice, result in the exclusion of disabled persons from the school community. In addition to the above requirement that persons who attend COOLs full time have a demonstrated need for on line learning, we would support the inclusion of additional statutory safeguards to ensure that that disabled persons maintain, in practice, the right to attend physical schools. This would be consistent with objective 1A(3)(c) of the Education (Update) Amendment Bill of *'instill[ing] in each child and young person an appreciation of the importance of the inclusion within society of different groups and persons with different personal characteristics'*.

These suggested amendments would also help to ensure that New Zealand meets its obligations under Article 24(1) of the United Nations Convention on the Rights of Persons with Disabilities. Article 24(1) requires state parties to *'ensure an inclusive education system at all levels and life long learning directed to ... the development by persons with disabilities of their personality, talents, and creativity, as well as their mental and physical abilities, to their fullest potential.'* Article 24(2) obliges State Parties to ensure that persons with disabilities to *'learn life and social development skills to facilitate their full and equal participation in education and as members of the community'*.

### **Absolute discretion**

We are concerned about the multiple amendments that create powers of *'absolute discretion'* on the part of the Minister. These are in new section 35T (accreditation of communities of online learning), clause 100 (power to establish schools), clause 106 (power to change the class of schools), clause 107 (power to close schools), new section 156AA (requirement for establishing a designated character school), and clause 110 (power to merge schools).

The introduction of absolute discretion decision making powers appear to be designed to avoid judicial review.

We acknowledge the goals of the government in seeking certainty in decision making. However the need for certainty needs to be balanced against the requirement for administrative fairness in executive decision making, particularly given the far reaching impact that Ministerial decisions on schooling have on the community (Christchurch school closures being a salient example). *'Absolute discretion'* in decision making is constitutionally problematic, as the very limited ability to challenge the exercise of the discretion under judicial review can result in arbitrary and unaccountable decision making. This is of particular concern given that Ministers are not subject to oversight by the Ombudsmen under the Ombudsmen Act.

We recommend that all references to absolute discretion are removed from the Bill.

## Other matters

We consider that clause 78LC(3)(b) should be amended to require boards that are subject to performance notices to provide a report at the conclusion of the performance notice. Currently reports are optional.

We consider that the word '*procedural*' should be inserted before '*error*' in clause 98C(b) to ensure that substantive errors in board appointments can be remedied.

It is not clear under the Act who would supervise COOL students. We suggest that consideration be given to a statutory requirement that COOL attendees are supervised by an adult.

Clause 442 as it is currently drafted may be read as allowing discrimination in enrolment decisions on grounds other than religion, race, or socio economic background. We consider that it is important to add disability to the specified grounds. We also suggest that consideration be given to including the other relevant prohibited grounds of discrimination under the Human Rights Act in the clause.

We hope that these comments are of assistance to the Committee.

We would like to address the Committee on this submission. To make the relevant arrangements in this respect, Principal Advisor Sarah Murphy can be contacted at (09) 300 4200 or [sarah.murphy@ombudsman.parliament.nz](mailto:sarah.murphy@ombudsman.parliament.nz).

Yours sincerely

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