

House of Representatives

Supplementary Order Paper

Wednesday, 12 April 2017

Education (Update) Amendment Bill

Proposed amendments

Chris Hipkins, in Committee, to move the following amendments:

Clause 2

In *clause 2(3)*, delete “**38**,” (page 12, line 12).

After *clause 2(5)* (page 12, after line 22), insert:

- (5A) **Section 38** comes into force on a date after **31 December 2019** appointed by the Governor-General by Order in Council, provided that—
- (a) the Minister has first commissioned an independent research organisation with expertise in the New Zealand education system to prepare a comprehensive report that—
 - (i) assesses how the policy proposals in **section 38** are likely to impact on the objectives for education and learning that are outlined in **section 1A(3)**; and
 - (ii) assesses how the policy proposals in **section 38** are likely to impact on public education provision; and
 - (iii) assesses how the policy proposals in **section 38** are likely to impact on vulnerable students and those with learning or behavioural difficulties; and
 - (iv) assesses how the policy proposals in **section 38** have worked in comparable overseas jurisdictions; and
 - (v) identifies any risks associated with the policy proposals in **section 38**; and
 - (b) a copy of the report prepared pursuant to **paragraph (a)** has been presented the House of Representatives at least 30 days

prior to the date appointed for the commencement of **section 38**.

Clause 38

In *clause 38, new section 35T* (page 24, lines 4 to 36), replace “Minister” with “Secretary” wherever it appears.

In *clause 38, new section 35T*, replace *subsection (1)* (page 24, lines 5 to 10) with:

- (1) A registered school may apply to the Secretary for provisional accreditation as an enrolling community of online learning or a supplementary community of online learning.

In *clause 38, new section 35T(2)*, delete “, or is likely to meet,” (page 24, line 13).

In *clause 38, new section 35T(2)*, after “the criteria in **section 35X(2)**” (page 24, lines 13 and 14), insert “and the body has not been provisionally accredited in the previous 5 years”.

In *clause 38, new section 35T(3)*, replace “may” (page 24, line 33) with “must”.

In *clause 38*, after *new section 35T* (page 24, after line 36), insert:

35TA Secretary must publish application information

- (1) The Secretary must publish all information provided by an organisation applying to become a community of online learning on the Ministry’s website.
- (2) The information provided under **subsection (1)** includes any supplementary information that may have been provided after the initial application was received.
- (3) The information must be published as soon as possible after the Secretary has received the information.

In *clause 38, new section 35V*, delete *subsection (2)* (page 25, lines 23 to 29).

In *clause 38, new section 35V(3)*, replace “may” (page 25, line 30) with “must”.

In *clause 38, new section 35W(2)(a)*, replace “between 6 and 12 months after” (page 26, line 1), with “within 6 months of receiving”.

In *clause 38, new section 35W*, after *subsection (4)* (page 26, after line 8), insert:

- (4A) The Chief Review Officer must, as soon as practicable after the written report prepared under **subsection (4)** is finalised, ensure that a copy of the report is made publicly available and published on the website of the Education Review Office.

In *clause 38, new section 35X*, after *subsection (1)* (page 26, after line 26), insert:

- (1A) Before making a final decision under **subsection (1)**, the Minister must,—
 - (a) ensure that all information relating to the provisionally registered community of online learning that was provided

- through the initial application process or provided supplementary to either the provisional or full application process is published on the Ministry’s website as soon as possible after receipt; and
- (b) ensure that the review report prepared under **section 35Z** is publicly available and published on the Ministry’s website; and
- (c) publish a notice in the *Education Gazette* signalling an intention to fully accredit the relevant community of online learning and inviting submissions from the public; and
- (d) 28 days after a notice is published under **paragraph (b)**, consider any relevant submissions received as part of this process.

In *clause 38, new section 35X(2)(h)*, replace “learning of its type.” (page 27, line 9), with “learning of its type; and”, and after *paragraph (h)* (page 27, after line 9), insert:

- (i) employed teachers who are registered in New Zealand with current practising certificates to teach all of the students enrolled at the community of online learning with no more than a 26:1 student to teacher ratio.

In *clause 38, new section 35X*, after *subsection (2)* (page 27, after line 9), insert:

- (3) A community of online learning must—
 - (a) teach the New Zealand Curriculum suitable to the age range and level of its students; and
 - (b) be able to demonstrate an understanding and ability to fulfil its legal responsibilities, including those under the—
 - (i) Education Act 1989:
 - (ii) Privacy Act 1993:
 - (iii) Vulnerable Children Act 2014:
 - (iv) Harmful Digital Communications Act 2015:
 - (v) Health and Safety at Work Act 2015.

In *clause 38, new section 35Y(1)(c)*, after “set a maximum roll” (page 27, line 16), insert “that is no more than 26 students for every registered teacher with a current practising certificate who is employed by the community of online learning”.

In *clause 38, new section 35Y(1)*, replace *paragraph (e)* (page 27, lines 18 to 21) with:

- (e) specify that communities of online learning that are not registered schools must employ sufficient registered teachers with current practising certificates to teach all enrolled students, with a maximum student to teacher ratio of 26:1.

In *clause 38, new section 35Y(3)*, after “community of online learning” (page 27, line 28), insert “and in consultation with the public”.

In *clause 38, new section 35Y*, replace *subsection (5)* (page 27, lines 37 and 38) with:

- (5) The Minister must—
 - (a) publish in the *Gazette* any conditions imposed on, amended, revoked, or changed in respect of a community of online learning under **subsection (4)**; and
 - (b) give written notice to the community of online learning of any changes to conditions made under **subsection (4)**.

In *clause 38, new section 35Z(3)(c)*, replace “imposed on its accreditation.” (page 28, line 14), with “imposed on its accreditation:”, and after *paragraph (c)* (page 28, after line 14), insert:

- (d) whether there have been any issues raised by the public or through the course of the review that the review officer considers need to be addressed, including a recommendation to the Minister that—
 - (i) there should be additional or amended conditions imposed on the community;
 - (ii) the accreditation for the community be suspended or withdrawn or, in the case of a community with provisional accreditation, that full accreditation not be granted.

In *clause 38, new section 35Z*, after *subsection (3)* (page 28, after line 14) insert:

- (3A) The report must be published on the Education Review Office’s website.

Explanatory note

This Supplementary Order Paper amends *clauses 2 and 38* of the Education (Update) Amendment Bill.

Clause 2 is amended to delay the commencement of *clause 38*, which provides for the creation of a new legislative framework for communities of online learning, until there has been a thorough analysis of these policy proposals. An organisation like the New Zealand Council for Educational Research or the educational research unit within a New Zealand university is best placed to prepare this report, being a body that is both independent of Government and with considerable expertise in researching the compulsory education sector in New Zealand. This report needs to be published and shared with Parliament so that it can consider whether it is appropriate to continue with this policy direction.

There does not appear to be any evidence supporting the contention of a need for this policy—the Regulatory Impact Statement merely states that “...continuing the arbi-

rary legislative distinction between correspondence education and face-to-face education may be constraining further development of online learning”.¹

The Regulatory Impact Statement also states that “The Act discourages other providers from entering the market”²—this is the basis for changing the legislation to create competition for students. The intent of the original Education Act 1877 and subsequent legislation is that public education is not intended to be a marketplace but is a legal right.

Fundamentally, there is no evidence to show that competition is going to lead to better educational or social outcomes for students, but there is evidence in the Regulatory Impact Statement accompanying the Bill that “online learning reduces visibility of students and may mask wellbeing concerns such as illness, abuse, and neglect”.³ The Regulatory Impact Statement has noted that open access may also be a way for schools “to ‘move on’ their troublesome students”.⁴ Creating open access is not going to meet the “best interests of the child” test, which is a core principle in the United Nations Convention on the Rights of the Child.

The requirement in *new clause 2(5A)(b)* for the report analysing this policy proposal to be presented to the House of Representatives at least 30 days before *clause 38* commences will give time for Parliament to consider the contents of the report and to make its voice heard in the decision as to whether this policy proceeds in its current form, or at all.

The amendments to *clause 38* would ensure that communities of online learning are of a standard that will ensure that students enrolled in these communities are not penalised by experiencing an inferior education.

New section 35T is amended to replace references to the Minister with those to the Secretary of Education. This is to ensure that it is not a political decision as to whether a body becomes provisionally accredited as a community of online learning.

New section 35T(1) is amended to delete *paragraphs (b) and (c)* to ensure that only registered schools are eligible to be accredited as a community of online learning rather than also extending it to bodies corporate and tertiary education providers.

It is important that all primary and secondary students are able to access high quality, free public education that is delivered by registered teachers with practising certificates. Only then can parents be assured that their children are learning from professionals who have training in teaching the New Zealand Curriculum to these age groups, have professional responsibilities towards the students and the school community, and are able to form meaningful relationships with the students and their parents and whānau.

¹ *Regulatory Impact Statement: Establishing a regulatory framework for online learning*, p. 2.

² *Regulatory Impact Statement: Establishing a regulatory framework for online learning*, p. 6.

³ *Regulatory Impact Statement: Establishing a regulatory framework for online learning*, p. 10.

⁴ *Regulatory Impact Statement: Establishing a regulatory framework for online learning*, p. 10.

Paragraphs (b) and (c) propose taking these students out of the system so that they may instead be subject to teaching by private businesses and online charter schools, which are not accountable to the school community through a Board of Trustees, do not have obligations to work with the school community, and (in the case of bodies corporate and private tertiary education providers) are not accountable or transparent through the Official Information Act 1982 or the Ombudsmen Act 1975. These businesses get given public money that is designed for educating our students and are able to keep the profits. The Regulatory Impact Statement is explicit that the Government's proposed changes to the Education Act 1989 are for the purpose of introducing other providers to enter the market. There is no evidence provided about better outcomes for students.

New section 35T(2) is amended so as to ensure that a body that is provisionally registered as a community of online learning must be able to meet all of the criteria listed in *new section 35X(2)*, rather being deemed "likely to meet" these criteria by the Minister.

New section 35T(2) is amended so that a body cannot apply for provisional registration if it has previously held provisional accreditation and failed to gain full registration after the 12-month period in the previous 5 years. It is high risk to student welfare and public finances to keep granting (or renewing) provisional accreditation to bodies in the private sector that have previously failed to meet the appropriate standard. The legislative framework needs to send a strong message that it is a privilege, not a right, for private businesses to take public money for education in this way, and that there are not going to be multiple chances for such a body to try and reach an appropriate competency level.

New section 35T(3) is amended so that a community of online learning must be subject to conditions under *new section 35Y*. The Minister should not have discretion in this case.

Provisionally registered organisations are new to providing education solely online at the primary and secondary levels in New Zealand and the risks to students and public finances are too high for there not to be any conditions placed on how they are able to operate. This is particularly risky given the lack of interventions that are available should the community of online learning fail. Unlike with state or state-integrated schools, any intervention with a community of online learning can only be applied where the interventions are "reasonable" to deal with the risk "without intervening more than necessary". Such a legal test is likely to lead to litigation and further expense to the Government from public money that would be better spent on public education. Conversely, placing conditions on all provisionally registered communities of online learning helps to prevent the problems arising to start with and becomes relevant when the body is later reviewed. It will be reasonable to intervene where a community of online learning is failing to meet its conditions.

New section 35TA is inserted so that where a body is applying to become a provisionally registered community of online learning all information associated with the application is automatically made publicly available on the Ministry of Education's

website. This will help to provide the public and relevant school communities with information about the credibility of that body to deliver a community of online learning, rather than allowing a decision of this magnitude to be made without any transparency.

New section 35V(2) is deleted to remove the ability of the Minister to renew a provisional accreditation as a community of online learning, allowing a community of learning to continue when it is failing to deliver an education that meets desired criteria.

An amendment to *new section 35V(3)* ensures that any renewal of provisional accreditation is subject to conditions under *new section 35Y*. This is an entirely appropriate safeguard for the enrolled students and public finances, given the problems that the body has already shown in gaining full certification. Granting provisional accreditation a second time without this safeguard is highly irresponsible and it should not be left to the discretion of the Minister.

New section 35W(2)(a) is amended so that any review of a provisionally accredited community of online learning occurs within a 6-month period of the organisation receiving provisional accreditation, rather than allowing such a body to operate for 12 months before there are any checks on how it is performing. This is an important check and balance in the system because otherwise there are serious risks to students' learning and wellbeing and to public finances. Twelve months is a long time in the life of a student who could otherwise be enrolled and learning face-to-face at a state or state-integrated school or through Te Kura, the Correspondence School.

Subsection (4A) is inserted into *new section 35W* so that any review of a provisionally accredited community of online learning conducted by a review officer is open and transparent by requiring that the review report is published on the Education Review Office's website and otherwise made publicly available. This would ensure that there is an opportunity for the community to provide comment on whether a body should become fully accredited.

Paragraph (i) is added to *new section 35X(2)* to ensure that students in communities of online learning are taught by New Zealand registered teachers who hold a current practising certificate. All students in New Zealand have a legal right to free and high-quality public education. This is best delivered by teachers who have both qualifications and experience to teach the appropriate learning age groups of the students, receive relevant professional learning and development, understand the New Zealand Curriculum, and are subject to professional standards as teachers.

Subsection (3) is added to *new section 35X* to ensure that students who are enrolled at communities of online learning are taught according to the New Zealand Curriculum.

New section 35Y(1)(c) and (e) is amended so that communities of online learning have as a condition of their accreditation class sizes that do not exceed 26 students for each registered teacher with a current practising certificate employed by the school.

New sections 35Y(3) and (5) and 35Z(3A) are amended so that any changes to the conditions that apply to communities of online learning are open and transparent to the public.

New section 35Z(3) is amended so that any review report prepared in relation to a community of learning includes any public concerns raised, and that the review officer is able to give free and frank advice in the report about the risks of the community continuing in its current form, with recommendations about conditions or changes or the cancellation of accreditation. The safety and education of the children and young people who are enrolled at these communities require these additional safety checks to be in place in the legislative framework.