



# **NZSTA Submission**

**on**

# **Education (National Education and Learning Priorities) Amendment Bill**

**Due 13 April 2018**

## Introduction

1. This feedback is presented by the New Zealand School Trustees Association (NZSTA) on behalf of its member boards.
2. School boards of trustees are the largest single group of crown entities in the country, accountable directly to the government and their local community for the effective delivery of education in their school.
3. NZSTA is a national body representing the interests of approximately 2,232 member school boards of trustees (92 percent of the total number). There are approximately 18,000 people currently serving on 2,426 state and state integrated school boards.
4. As part of its service delivery function, NZSTA provides a comprehensive support service to school boards of trustees, including free access to employment and governance advisory services, a full range of professional development and access to an 0800 Advisory and Support Centre. NZSTA is also an active party with the Ministry of Education in negotiating Collective Agreements with unions.
5. NZSTA as a membership organisation surveys member boards from time to time on issues of current or potential significance to school boards of trustees.
6. This feedback draws on NZSTA's:
  - ongoing dialogue with individual school boards and principals, and elected board of trustees representatives at local, regional and national levels
  - experience in supporting boards of trustees with governance and accountability issues through our 0800 Advisory and Support Centre, and our national network of professional governance and employment advisers
  - Collective Agreement negotiations
  - formal Professional Development and targeted support for boards of trustees.
7. We can be contacted at NZSTA, PO Box 5123, Wellington, phone 471 6422, fax 473 4706, email [lkerr@nzsta.org.nz](mailto:lkerr@nzsta.org.nz).
8. We do not wish to appear before the Select Committee.

## NZSTA Comment

9. The Bill proposes amendments to S1A of the Education Act.
10. NZSTA has reservations about these changes.

## Statements of diversity of education provision

11. The Bill deletes clause 2(b) which permits the Minister to make 'statements of the diversity of education provision.'
12. NZSTA has no objection to this change.

## System objectives – excellence and equity

13. The Bill proposes to replace the wording of S(3)(a) which currently reads:

*(3) The objectives of the system for education and learning that is provided for in the specified Parts (that is, early childhood and compulsory education) are—*

**(a) to focus on helping each child and young person to attain educational achievement to the best of his or her potential; ...**

with :

**(a) to provide learning experiences that support children and young people to reach their potential and a system that aims to achieve equitable outcomes for all...**

14. NZSTA applauds the addition of equity as a system objective but we have reservations about the drafting of this amendment.

### **Student focus v institutional focus**

15. The present wording reflects a focus on the student's progress and achievement, whereas the amended wording is focused on institutional inputs ahead of student outcomes and dilutes the onus on schools to help each student to achieve their potential to a more indirect responsibility to "provide learning experiences."

### **Developing clear shared understandings**

16. We also have reservations about the wording (although not the intent) of the provision relating to equitable outcomes. We applaud the government's intention, but we are concerned about the unintended consequences if this intention is misconstrued.

17. What may be statistically true at a macro level does not necessarily remain valid at a micro level. We accept that over time at a system level, equity of opportunity will be demonstrated by equity of outcomes, however this does not necessarily hold true for individual classes or cohorts. Yet this is the level at which the objectives will be applied in practice. There is a substantive difference in the short term, and for small groups such as a class or school cohort, between equity of opportunity and equality of outcome.

18. The risks attached to confusing *outcomes* (e.g. redressing the ethnic imbalance in youth justice statistics, promoting individual and collective wellbeing) and *outputs* (e.g. NCEA results, course completions) can be significant, and have been problematic within the education sector in the past.

19. An unambiguous and well-nuanced definition of terms is necessary, along with strong protocols to identify valid proxies for measuring 'equity of outcome', to avoid the risk of being interpreted in a way that understands 'equity of outcomes' as 'uniformity of outcomes'. Such an interpretation would actively undermine the concept of excellence and responsiveness to individual needs.

20. For example a classroom teacher, syndicate, or school seeking to demonstrate equity of outcomes for a group of 25 year-10 students may find that the most convincing way of doing so is to ensure that all students achieve the same or similar grades (i.e. *uniformity of outcomes*, / equality of *output*) regardless of those students' individual needs or abilities.

21. Determining equity of individual outcomes requires a much more long-term and nuanced analysis including a shared understanding of the relationship between assessment results and outcomes, and what makes an outcome 'equitable'. This can undoubtedly be done, but we are not there yet. To do so requires developing shared understandings both within the sector and across the community, that will ensure appropriate application of this provision.

22. This issue needs to be carefully worded if we are to avoid a return to practices that present consistently mediocre results from all students as evidence of equitable treatment, and excellent results as de facto evidence of privileged treatment. We recommend that this amendment is reworked to focus more on the desired behaviours (inputs) that will create genuinely equitable outcomes for all students.

## Alternative approaches to promoting equity

23. One possible alternative for framing this aspiration is to adopt Dr Mason Durie's *Whare Tapa Whā*<sup>1</sup> model. While this model does not refer explicitly to equity as an output, it does identify the necessary preconditions for providing a genuinely equitable approach to promoting both equity and excellence, through a system that nurtures each individual's physical, social, spiritual, mental and emotional wellbeing.

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### Recommendation 1

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That Select Committee redrafts the amendment to s(3)(a) along the following lines to reduce the risk of unintended consequences attached to the phrase 'equitable outcomes'

*(3) The objectives of the system for education and learning that is provided for in the specified Parts (that is, early childhood and compulsory education) are—*

***(a) to provide learning experiences that***

***i) support each child and young person to experience educational success to the best of their individual potential***

***(ii) provide for each child a respectful learning environment that promotes their physical, social, spiritual, mental and emotional wellbeing (taha hinengaro, taha whanau, taha tinana, taha wairua)***

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## What constitutes adequate consultation

24. The Bill proposes a requirement that consultation must include consultation with specified interested parties.
25. NZSTA supports this change.
26. We note that the concept of 'consultation' is ill-defined in the education sector, and in practice NZSTA has experienced situations where Ministry officials may notify a stakeholder up to 48 hours in advance of an announcement or deadline, and then identify that as having 'consulted with' or 'spoken to' them.
27. We therefore recommend that this section of the Bill is expanded to include a working definition of what constitutes genuine consultation as envisaged in this section. NZSTA recently provided a substantive proposal on how this can be done in our submission on the Education (Update) Amendment Bill (see Appendix 1).

## Definition of minor change

28. The Bill proposes to insert a definition of a 'minor change' to the Statements of National Education and Learning Priorities.
29. NZSTA supports this change.

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<sup>1</sup> See: *Well-being, hauora* <http://health.tki.org.nz/Teaching-in-HPE/Health-and-PE-in-the-NZC/Health-and-PE-in-the-NZC-1999/Underlying-concepts/Well-being-hauora>; and *Trialling and Evaluating a Strengths-Based Student Engagement Framework* (Ako Aotearoa, 2012) <https://ako.aotearoa.ac.nz/download/ng/file/group-4241/trialling-and-evaluating-a-strengths-based-student-engagement-framework.pdf>

## **Statements of National Education and Learning Priorities to be legislative instruments**

30. The Bill proposes that a Statement of National Education and Learning Priorities will be a legislative instrument and has to be presented to the House of Representatives under s41 of the Legislation Act 2012.
31. NZSTA supports this change.

## Appendix 1: Adequate Consultation

1. The following extract was presented as part of NZSTA's submission on the Education (Update) Amendment Bill in November 2016:

### ***What constitutes adequate consultation***

*55. There are numerous references throughout the Education Act to the need for adequate consultation. There has been some considerable friction in the past about what constitutes adequate consultation, particularly whether or not the Minister or the Ministry has consulted, or only notified boards about matters affecting them.*

*56. The Ministry for the Environment's consultation guidelines state*

#### **5.2 Consultation guidelines**

The leading case on consultation generally is Wellington International Airport Ltd v Air NZ [1991] 1 NZLR 671 (Court of Appeal). However, the recent Land Air Water Assn decision discusses tangata whenua consultation rather than consultation more generally, and distilled the following points from the leading cases (at paragraph 453).

- The nature and object of consultation must be related to the circumstances.
- Adequate information of a proposal is to be given in a timely manner so that those consulted know what is proposed.
- Those consulted must be given a reasonable opportunity to state their views.
- While those consulted cannot be forced to state their views, they cannot complain if, having had both time and opportunity, they for any reason fail to avail themselves of the opportunity
- Consultation is never to be treated perfunctorily or as a mere formality.
- The parties are to approach consultation with an open mind.
- Consultation is an intermediate situation involving meaningful discussions and does not necessarily involve resolution by agreement.
- Neither party is entitled to make demands.
- There is no universal requirement as to form or duration.
- The whole process is to be underlain by fairness.<sup>4</sup>

*Tikanga may also provide guidance as to what is acceptable or reasonable conduct when attempting to consult. It is important to consult in a manner that is appropriate to the tikanga of the tangata whenua<sup>5</sup>*

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<sup>4</sup> Ministry for the Environment Consultation Guidelines S5.2

<http://www.mfe.govt.nz/publications/rma/guidelines-consulting-tangata-whenua-under-rma-update-case-law/5-how-consultation>

<sup>5</sup> Ministry for the Environment Consultation Guidelines S5.4 <http://www.mfe.govt> .

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**Recommendation A3**

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- a. That the Interpretation section in Part 1 of the Act is moved to sit immediately after the Commencement clause
- b. That the definitions contained in the Interpretation clause are deemed to apply throughout the Act, unless otherwise specified
- c. That a definition of consultation is inserted into the Interpretation clause, as follows: consultation means a process of actively seeking and responding to the views of other interested parties such that:
  - The nature and object of consultation is related to the circumstances;
  - Adequate information of a proposal is given in a timely manner so that those consulted know what is proposed;
  - Those consulted are given a reasonable opportunity to state their views;
  - Those consulted cannot be forced to state their views;
  - Those consulted having had both time and opportunity to state their views, cannot complain if for any reason they fail to avail themselves of that opportunity;
  - Consultation is not treated perfunctorily or as a mere formality;
  - The parties approach consultation with an open mind;
  - Consultation is an intermediate situation involving meaningful discussions and does not necessarily involve resolution by agreement;
  - Neither party is entitled to make demands;
  - The whole process is underlain by fairness and good faith on the part of the consulting party;
  - There is no universal requirement as to form or duration;
  - Consultation is undertaken in a manner that is appropriate to the tikanga of the tangata whenua.

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*Source: NZSTA submission: Education (Update) Amendment Bill (November 2016).  
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