



**NOTES ON THE
EDUCATION AND SCIENCE SELECT COMMITTEE**

Thursday, 2nd and Friday, 3rd February 2017

Education (Update) Amendment Bill

Members Present:

Catherine Delahunty (Green)
Sarah Dowie (National)
Chris Hipkins (Labour)
Brett Hudson (National)
Melissa Lee (National)
Tracey Martin (NZ First)
Todd Muller (National)
Jenny Salesa (Labour)
Jian Yang (National, Chairperson)

Evidence Presented by:

Trina Sellers

Hilary Stace

Disabled Persons Assembly

Paula Booth, Policy and Relationships Analyst

Esther Woodbury, Policy and Relationships Analyst

Association of Proprietors of Integrated Schools and New Zealand Catholic Education Office

Susan Apáthy, Deputy Chief Executive

Paul Ferris, Chief Executive

New Zealand Playcentre Federation

Susan Bailey, co-president of the New Zealand Playcentre Federation

Giovanni Tiso

National Council of Women of New Zealand

Suzanne Manning, Convenor, Education Standing Committee

Judy Whitcombe, Member, Parliamentary Watch Committee and Education Standing Committee

Te Ora Hou Ōtautahi

Simon Britten, Attendance Service Manager

CCS Disability Action

David Matthews, Chief Executive

Sam Murray, National Policy Coordinator

Nick Svensen, Policy Advisor

University of Canterbury E-Learning Lab

Niki Davis, Professor of E-Learning

Action for Children and Youth Aotearoa, IHC New Zealand and YouthLaw Aotearoa

Andrea Jamison, Advocate, IHC New Zealand

Heather Lear, Advocate, IHC New Zealand

Kenton Star, Solicitor, YouthLaw Aotearoa

Sarah Te One, Chairperson, Action for Children and Youth Aotearoa

Human Rights Commission

Paul Gibson, Disability Rights Commissioner

Erin Gough, Human Rights Specialist

John Hancock, Senior Legal Advisor

Chris Abercrombie

New Zealand Public Service Association

Ben Barclay, National Secretary

Jean Ottley, Delegate at Careers New Zealand

Amanda Pickett, Delegate at Careers New Zealand

Azaria Howell

Stephen N Chick

Deaf Action New Zealand

Rachel Noble, Member, Director of Ennoble

Lynette Pivac, Member, Lecturer in NZSL and Deaf Studies

Education for All

Heather Lear, Co-Convenor, Inclusive Education Action Group

Bernadette McCartney, Member

Rachel Noble, Member, Director of Ennoble

Mark Potter, Member, Principal of Berhampore School

Deaf Aotearoa

Bridget Ferguson, General Manager, Strategy

Victoria Manning, General Manager, Services

Canterbury Primary Principals' Association

Graeme Barber, Executive Member

New Zealand Post Primary Teachers' Association, Te Aho o Te Kura Pounamu Branch

Jan Gould, Executive Member

Don Laing, Executive Member

New Zealand Post Primary Teachers' Association, Taita College Branch

Simon Hirini, Member

Stephanie Longhurst, Member

Desiree Mulligan, Member

CORE Education

Derek Wenmoth, Director of e-Learning

New Zealand Principals' Federation

Whetu Cormack, President

Liz Hawes, Executive Officer

Office of the Children's Commissioner

Children's Commissioner Andrew Becroft

New Zealand Educational Institute

Linda Stewart, President

New Zealand Post Primary Teachers' Association

Jack Boyle, President

Tom Haig, Deputy General-Secretary, Advisory

Save the Children

Heidi Coetzee, Acting Chief Executive

Trisha Nally, Education Programmes Manager

Giarne Harrison

New Zealand Council for Educational Research

Graeme Cosslett, Director

Heleen Visser, General Manager of Research and Development

Bernadette Macartney

Mpowered NZ

Helen Wildbore, Director

Education Council Aotearoa New Zealand

Pauline Barnes, General Manager, Professional Services

Andrew Greig, Manager, Teacher Practice

Graham Stoop, Chief Executive

The Education and Science Select Committee met to hear evidence in its consideration of the Education (Update) Amendment Bill. The Bill's explanatory note states that it would make amendments to the Education Act to more comprehensively articulate the roles and

responsibilities of school boards of trustees, put in place new planning and reporting processes for schools, and give a power to the Minister to set national performance measures for schooling. The interventions regime in the Act would be changed to enable faster, more tailored responses.

The Act's provisions related to the establishment of schools would be updated to remove outmoded administrative processes and to change Part 12 to allow the Minister to require two or more schools to be administered by a single board where one of the schools is not performing well, and to create a single establishment process for schools that have a designated character under sections 155 and 156 of the Act. The Bill also allows communities of learning to adopt a more formal agreement with the Secretary for Education about the delivery of joint services. The Bill also allows schools to require children to start school as a group at the beginning of a term instead of on their fifth birthday. Children would be able to begin school at the beginning of the term before their fifth birthday if that birthday falls before the mid-point of the term. Once enrolled, five-year-olds would be required to attend school.

The Bill establishes a Competence Authority as part of the Education Council of Aotearoa New Zealand and includes amendments that address aspects of the law that have become outmoded or inefficient, such as for enrolment schemes. The Bill enables the responsible Minister to accredit providers as communities of online learning (correspondence education), including schools, tertiary education providers or other corporate entities. An updated framework for State integrated schools is also proposed, along with the repeal of the Private Schools Conditional Integration Act. The responsible Minister would be able to require financial or any other information from a proprietor or potential proprietor of a State integrated school in certain circumstances, and a proprietor of such as school would be required to have take into account matters of importance to the Crown. The Bill would also disestablish Careers New Zealand and create a new careers service within the Tertiary Education Commission from 18 April 2017.

A Supplementary Order Paper with proposed amendments to the Bill was tabled in Parliament on 29 November 2016 by Hekia Parata. It provides that there be no seclusion of children at or on behalf of a registered school or early childhood service, that a teacher or authorised staff member must not physically restrain a student unless they reasonably believed that the safety of the student or of any other person is at serious and imminent risk and the restraint was reasonable in the circumstances, and that rules and guidelines on restraint be made by the Secretary for Education.

Trina Sellers

Trina Sellers submitted that any move to replace physical schools with completely online learning sites would be detrimental to youth and society. Online learning had its place, but blended learning was the way to go, she said. The main reasons for retaining bricks-and-mortar schools were the importance of community and the importance of caring. Learning face-to-face communication was important, and there was evidence that early introduction to the use of devices resulted in a reduction in people's ability to communicate.

Tracey Martin (NZ First) asked whether there was the capacity to expand funding for blended learning in physical schools. Sellers replied that she would support that. Private, for-profit providers should be restricted from setting up virtual schools, but they may have a role in developing and delivering individual courses. Catherine Delahunty (Green) asked whether there should be some piloting and reference to research before the Bill was passed into law.

Sellers agreed and said reforms should not be rushed into. Systematic work to improve and expand online learning options for students was needed.

Hilary Stace

Hilary Stace submitted that section 8 of the Education Act 1989 created a landmark in legislating for the right of all children to attend their local school. The world was entering a new era of threats to public education with the rise of the fascist regime in the United States, Stace said. New Zealand needed its laws to be robust, in case the country ended up with an Education Minister similar to the US's Betsy DeVos. She asked what was wrong with strengthening Te Kura, which had decades of experience in distance education. She also warned that the sector did not know what dictates there would be in the National Education and Learning Priorities.

Todd Muller (National) asked about Stace's submission that statements on National Education and Learning Priorities could be made on a whim, given the Bill's requirements for those. Stace replied that there had been a poor record of consultation in education in New Zealand over many decades. Many things had been imposed by ministers.

Disabled Persons Assembly

Paula Booth, policy and relationships analyst for the Disabled Persons Assembly, submitted that the 1989 Act was in need of an update and the Government was to be congratulated for undertaking that. Much had changed in the understanding of disability since 1989. In 2001 the Government had published the first New Zealand Disability Strategy, which had been a world-first. The Disabled Persons Assembly had played a significant part in its development. 12 years after the passing of the Act, objective 3 of the strategy had called on New Zealand to provide the best education for disabled people. In 2008 New Zealand had ratified the United Nations Convention on the Rights of Persons with Disabilities. Article 24 of the Convention provided for the right to education. The Assembly called on the Government to include a commitment to meeting that obligation in the Education Act.

Esther Woodbury, policy and relationships analyst for the Disabled Persons Assembly, added that many schools made it clear that disabled children were not welcome, saying they did not have sufficient resources for them. She warned that educational achievement of disabled children was falling. The Assembly supports the Supplementary Order Paper's ban on the use of seclusion and limits on physical restraint.

Chris Hipkins (Labour) suggested that legislating would not change the attitudes of school principals. Woodbury said there had to be both a legal right and a significant culture change.

Association of Proprietors of Integrated Schools and New Zealand Catholic Education Office

Paul Ferris, chief executive of the Association of Proprietors of Integrated Schools and the New Zealand Catholic Education Office, said that members of the Association were reluctant to support changes to the Act. Early in 2016 the Ministry had asked the Association to agree to modernise the Act and allow changes to the Ministry of Education's ability to have conversations with it about sustainability and viability. The Association made a resolution to support the Act as long as the original protections were carried forward. The Association signed a memorandum of agreement with the Secretary for Education to support the Bill. However, in the Bill's initial drafting words were changed that had the capacity to change the

intent of the agreements. The current Bill breached the legal agreement, as it did not continue existing protections for integrated schools and diminished the rights of proprietors to manage their school in the way the memorandum intended, he said. If the Association's suggested changes to the Bill were taken on, it would be able to support it.

Martin asked whether the Bill made a trade-off between funding related to property for integrated schools in the case of changes dictated by the Ministry, such as for Modern Learning Environments, and the State's capacity to look into a school's books. Ferris did not think there was a connection. The discussion about "quantity funding" was long-standing with the Government. The new legislation said the State would meet 85 percent of that, recognising that the proprietor had an interest and should also contribute. That was not conditional on the capacity to look into a school's books.

Martin asked what was the basis for the Minister's new power to look inside a school's books. Ferris agreed that was a new power, but said a Minister could always see the financial side of integrated schools, because they were registered charities, but there had been times when not all the assets of all proprietors were included in the charity's books.

Jenny Salesa (Labour) asked whether the Bill would prevent some parents from having an agreement to pay attendance fees with any of the Association's schools. Ferris commented that attendance dues were a legal charge and there was no change to that. The schools had to have the ability to charge dues. Susan Apáthy, deputy chief executive of the Association of Proprietors of Integrated Schools and the New Zealand Catholic Education Office, added that the Association's submission had suggested the addition of an extra phrase to remove doubt that that would not be prevented.

New Zealand Playcentre Federation

Susan Bailey, co-president of the New Zealand Playcentre Federation, said its members were concerned that the Bill made learning and achievement of young children central to the Act, which may introduce testing into the early-childhood sector. Currently playcentres in particular used a holistic way of learning, following the child's lead and involving and acknowledging parents as their children's educators.

The Federation was also concerned that the provisions on cohort entry to school did not meet children's needs and were driven by a administration and a desire to streamline the process for schools. Less-confident children may not be acknowledged in a cohort entry, but if they started school on their own they would get special attention. She also noted that the provision requiring compulsory attendance once a child started school would take away parents' rights to choose for their child. Often it did not become apparent that a child was not ready for school until they had been there for a week or two. The number of children approaching the age of six who were still attending playcentre was growing, which showed that parents were choosing to keep their children in early-childhood education for a bit longer, until they felt there were ready for school. Research showed that seven was a better age to start school, but in New Zealand it was expected a child would go at five, even though the legal requirement was to start by six.

Hipkins asked how the Government should measure successful outcomes in the early-childhood sector. Bailey replied that children who had been allowed more freedom to explore in early-childhood education would be more engaged in the long term, so any assessment should focus on long-term outcomes and look at how children respond, how confident they

were, their ability to be social and independent. Those things were measurable but subjective.

Delahunty asked whether Bailey was concerned that the Bill and the review of Te Whāriki were pushing in the direction of more specific measurables rather than recognising the holistic nature of the early-childhood experience. Bailey replied that she was. Some changes in Te Whāriki had moved away from the holistic view.

Giovanni Tiso

Giovanni Tiso recommended that the Government legislate for the rights of disabled children according to New Zealand's international commitments. The Government had been told that the current system was not working, and currently every family of a disabled child going through the education system in New Zealand encountered discrimination. He explained that he is a trustee and a parent of two children with autism. He was lucky that his local school was very inclusive. The process of demonstrating the child's need to the Ministry was a form of psychological abuse and was expensive to run and to audit, he said. The Ministry's standard defence that it spent \$500 million a year on the sector did not mean anything; parents wanted to see outcomes consistent with the human rights of their children, and much of the money was being spent to run bad policies and discriminate against children with particular conditions. There was also talk the Government planned to remove the supports for 18 to 21-year-olds at university. Ironically, the Ministry of Education recognised as "inclusive" only schools with special units that segregated students with special needs.

Delahunty asked whether Tiso's school was being penalised for being a magnet school without the resources to meet the needs of the children who needed it. Tiso replied that it was only penalised to the extent it wanted to be inclusive to children outside its area who needed it.

National Council of Women of New Zealand

Judy Whitcombe, a member of the parliamentary watch committee and the education committee of the National Council of Women of New Zealand, said its membership had supported the idea of having objectives for the education system, and they should include enabling people to participate in Aotearoa New Zealand society. The concept of a broad education was supported. Education played a key role in the empowerment of girls and women. She reported that mixed views were expressed in response to the proposal on cohort entry. Starting school on the fifth birthday was seen as a long-standing tradition in the country, but children could benefit from starting school with a small group.

The proposal on communities of online learning caused the most concern among the Council's members. They raised points related to the importance of socialisation in the development of young people, through interacting with other young people and adults, which would not be achieved by sitting alone with a computer. There were already virtual learning networks in the current school system, but they operated through the school the child attended. Participation in sport was also important in the development of young people. The proposal introduced the idea of private providers and competition for profit, which Council members thought was not the best way to meet the needs of students. It was considered that the money spent on implementation and management would be better spent on existing schools. Too much money had already passed from State schools to private and charter schools, resulting in the downgrading of the once-excellent school system. For-profit enterprises would result in education dollars going into private pockets instead of education.

The need for children under 14 to be supervised in a learning environment at their home would impact on mothers and erode women's choices, said Whitcombe.

On the Bill's provisions on career guidance and counselling and the functions of principals, Whitcombe submitted that career guidance was particularly important for girls, who had not always received advice on the full range of career options available for them. Council members were also concerned at provisions that would allow the merging of schools at the Minister's discretion, and said there was a need for the whole community's views to be considered in such cases.

Delahunty asked how it was proposed in discussion documents that supervision of under-14-year-olds studying online at home would be managed. Suzanne Manning, convenor of the education standing committee of the National Council of Women, replied that appropriate supervision arrangements were to be negotiated with the centre for online learning, the school and the parents. The Council's concern was that there was an expectation on women and the reality was that mothers had little power.

Martin commented that the Bill created correspondence learning as a possible norm. Manning responded by saying that the Council's members did not want that. They wanted online or correspondence learning as a good option, not a substandard option.

Te Ora Hou Ōtautahi

Simon Britten, attendance service manager at Te Ora Hou Ōtautahi, submitted that his service considered it important for five-year-olds to attend school, and welcomed the proposal in the Bill that would require students to attend if they were enrolled in school. He raised an issue about five-year-olds who started school, came out of school again, then dropped off the radar. The current systems meant there could be a time delay before his service could respond to that, because they made it hard to keep track of and get back in touch with those students.

Martin asked whether Britten's organisation was part of the mechanism by which the State tracked six-year-olds from birth records. Britten replied that it was not. It mostly knew about them if they had enrolled and then dropped out or if someone in the community became aware of them.

CCS Disability Action

Sam Murray, national policy coordinator for CCS Disability Action, said that the Bill introduced a variety of interventions that the Education Ministry could use when a school was not complying with the Act, which his organisation had recommended and supports. That gave the Ministry the flexibility to respond in situations where there was a small number of students involved.

Murray submitted that section 8 of the Act, which gave students with disabilities the right to enrol, on paper, had not worked well in practice. He said the section should be integrated into the other parts of the Education Act so that it became more a part of the planning processes of administrators and governance.

Murray commented that families of children with disabilities tended to give up if there were issues with enrolling in early-childhood education because it was not compulsory. A study in Oklahoma showed that students with disabilities benefited just as much as those without. He

was concerned that there were currently no initiatives in New Zealand aimed at raising the participation rate of children with disabilities.

It made sense to outlaw seclusion, Murray said, which raised the more general issue of the need for more oversight of the way schools were teaching and treating students with disabilities. Oversight was needed by people who were trained in what to look for and who understood disability. The Education Review Office visited schools quite infrequently and did not always know what warning signs to look for. Students with disabilities were at a high risk of abuse and neglect, especially those with communication and behavioural difficulties, who were likely not to be believed if they raised issues, and in some cases could not communicate in a conventional way. On paper, the jurisdiction of the Health and Disability Commissioner should apply to disability services that students receive in schools, but in practice there was no evidence of that happening.

David Matthews, chief executive of CCS Disability Action, suggested that section 9 of the Act, which allows the Ministry to direct a young person to a special facility even though it was not what they or their parents wanted, needed to be changed or even thrown out. It sent the wrong message to learners that there was an “us” and a “them” in the system. The Education Act needed to create the same opportunities for everyone, irrespective of whether at some stage they may need additional support. The Bill’s review of the Act should send a strong message to students that they were all welcome and valued, and they had a right to go to their local school. That was not the case at present.

Nick Svensen, a policy advisor at CCS Disability Action, submitted that his disability, which was only one category of his life, should not dictate where he went to school. He had been lucky enough to go to an inclusive school, but the Bill had not recognised the change in thinking that had slowly taken place. If his parents had not been so strong and his school had not been so keen to make things work, he may have had a different trajectory. He said section 8 of the Act should be embedded to make it enforceable.

Delahunty said that in 2016 the Ministry had threatened a family with truancy charges under section 9 because they had not wanted to send their child, who had been excluded from State schools, to a residential facility. She asked if that concerned CCS Disability Action. Matthews replied that it did concern the organisation, because the alternatives frequently became the easy option, rather than figuring out what would work in the local educational environment.

Martin asked whether section 9 was only being used for children with disabilities or if it was also being used for general behavioural issues. Murray replied that the section referred to “special education needs”, but it was intended that it be changed in future to “learning support needs”.

Martin asked if the organisation advocated for parental choice. Matthews replied that it did, but it also advocated for equal parental choice, not a choice between schools with differing amounts of resources. There was not real choice at the moment.

Delahunty asked whether behavioural issues, for which children were being excluded, were masking unmet learning-support needs. Matthews replied that the Act gave them a right to an education but not the right to go to a local school. That opened the door for difficult people to be siphoned off into other facilities.

Martin asked whether the organisation had figures that showed the number of students in special schools was rising. Murray replied that numbers in special schools were going up. Matthews added that data for special units would be similar.

Sarah Dowie (National) asked why some parents were not putting their children with disabilities into early-childhood education. Matthews replied that it was a question of why they were not welcomed, which was because it was non-compulsory, was a private-sector provision, and there were issues about support.

Dowie asked Svensen if he had attended early-childhood education. Svensen replied that he had gone to a local kindergarten. Murray added that some early-childhood education centres were getting good at being inclusive about behaviour needs, autism spectrum disorder and a range of disabilities, but were getting more skittish about health and safety and health issues, such as seizures.

University of Canterbury E-Learning Lab

Niki Davis, professor of e-learning at the e-learning lab of the University of Canterbury, said the practice of e-learning had spread quickly in North America, which had brought big changes over the last five or ten years. Some of those had been challenging for the school system to absorb and even for profit-making companies to develop business models for. Davis submitted that there were many misleading preconceptions about who could get involved in online learning. E-learning had knock-on impacts for other parts of the education system that to some extent reached world-wide.

Delahunty asked if there was a risk of children with disabilities being dumped onto online learning. Davis replied that online courses could be designed that included children with disabilities, but it was probably impossible to design an online course that included everybody. She gave the example of her initial hopes for screen-reader software, which had compatibility issues that made it impossible for one of her blind students to use. Massachusetts Institute of Technology had been taken to court over the promotion of its Massive Open Online Courses, to make the point that it needed to capture video.

Delahunty asked about the risk of social exclusion. Davis replied that Te Kura did great work using learning advisers who worked extensively with students, and health schools had students continuing to be enrolled in their State schools, to support children at risk of social exclusion.

Action for Children and Youth Aotearoa, IHC New Zealand and YouthLaw Aotearoa

Sarah Te One, chairperson of Action for Children and Youth Aotearoa, opened the joint oral submission from her organisation, IHC New Zealand and YouthLaw Aotearoa. She noted that article 12 of the United Nations Convention on the Rights of the Child articulated the right to be informed and consulted about matters that concerned them and to have their views taken into consideration when making decisions about them. The United Nations Committee on the Rights of the Child had repeatedly called on governments to respect the views of children in any new legislation. In its latest report, it addressed the lack of engagement with mokopuna Māori, Pacific children and children with a disability. Children are the experts on their experience at school and should be asked about it. It was therefore puzzling and disturbing that the Bill was completely silent on how children and young people could have a say about the changes or as active partners in the provision of education.

Action for Children and Youth Aotearoa also requested that the Committee consider the higher-level purposes for education found in UN documents and comments about children's rights. Access to affordable, available and adaptable education services was essential to an inclusive education system.

Heather Lear, an advocate for IHC New Zealand, said that the Supplementary Order Paper to the Bill was an attempt to provide better protection and support for children, which her organisation supports. She recalled that it had been prompted by a story about a 10-year-old boy on the autistic spectrum who had been subject to frequent seclusion. In her view there were systemic issues that had led to the practice, which was certainly a breach of health and safety laws. Despite the Education Review Office having looked specifically at seclusion, there had been a lack of system-level oversight. Lear also suggested there be an enforceable right to inclusive education.

Kenton Star, a solicitor for YouthLaw Aotearoa, supported the creation of enduring objectives in the Act, but said that the Bill's provision for those would make them disconnected from the rest of the Act. Schools were not required to consider those, and there was no purpose statement. Objectives needed to include equal access. Star recalled a court case that had found the right to education in the Act was too broad to be enforceable. It was now appropriate and necessary for the Act to set out all rights and responsibilities in the education system.

Andrea Jamison, also an advocate for IHC New Zealand, submitted that the Bill should ensure that all New Zealand children have the right to an inclusive education. At the moment there was discrimination, which communities of online learning had the potential to exacerbate. The UN Committee on the Rights of the Child had recommended that any such Bill should recognise rights and establish mechanisms for enforcing them. Jamison also recommended that greater investigative powers be given to the Ombudsman with respect to education. Te One added that the groups' joint submission was that the changes in the Bill should be aligned with and referenced to a child-rights framework.

Delahunty asked whether there was information available on how to consult with children. Te One replied that even within the Ministry, most educational research now involved children and young people and there were diverse methodologies, but that was ill-understood at a policy level. Delahunty asked whether the provisions on the National Education and Learning Priorities needed to be rewritten to include the conventions and rights approach. Te One replied that they did. Delahunty asked whether other countries were including that approach in their laws. Star replied that they were; the US and the United Kingdom had comprehensive legislation covering everyone's roles, obligations and responsibilities in the education system.

Human Rights Commission

Paul Gibson, disability rights commissioner at the Human Rights Commission, submitted that inclusive education should be a principle at the start of the Bill to underpin the whole Act, focusing not only on school boards but on the whole education system. Two relevant UN conventions had been signed by New Zealand, but it had yet to update its legal system. There also needed to be resourcing to make a genuinely inclusive education system. It was recognised by the sector, amongst families and disabled people that inclusiveness was the key area in need of attention, energy and change. The Commission's written submission had provided details about how the Bill could do that. His own consultation with disabled children and others had shown the main area of concern was bullying, followed by the need to have

friends. That needed to be reflected in legislation. The Commission welcomed the national statements of learning priorities and the legislative banning of seclusion, Gibson said.

John Hancock, senior legal advisor for the Human Rights Commission, submitted that section 8 of the Act should be updated, as it was over 25 years old and pre-dated the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. The Commission's written submission had recommended language for the Bill on the right to inclusive education, which would not be a departure from policy, as the Ministry acknowledged that the latter convention already bound New Zealand to deliver an inclusive education.

Schedule 6 of the Act set out the functions, powers and responsibilities of boards of trustees. The Commission suggested that a new provision require regulations to be developed regarding inclusive education that would set out practices and procedures, accessibility standards, a suite of indicators, processes for early identification and the policies and principles that apply.

The Bill should also update the provisions relating to suspensions and stand-downs, Hancock submitted. It did introduce video or teleconferencing in cases where a student may not be able to attend a hearing, and the Commission cautioned that it should not become a default position. It should be a last resort and used with the agreement of the family. Other areas not addressed in the Bill were alternative dispute resolution measures, review processes and thresholds for the placement of students back into school after exclusion. The Commission welcomed the statement on National Education and Learning Priorities as providing an opportunity to build on the recommendation of the constitutional advisory panel to promote civics and human rights. It recommended that human rights be specifically referred to in the objectives. The objectives should also include respect for the safety and well-being of others.

The proposal for communities of online learning did not appear to have had any piloting project or evaluation provisions, Hancock said. There were omissions and questions arising from the policy, particularly with respect to the way they would be used. He asked how communities of online learning would meet the pastoral care requirements of students who had been excluded for disciplinary purposes. Any online system needed to be physically accessible and economically accessible.

Hancock went on to note that the provisions on religious instruction in schools in the 1964 Act were not addressed by the Bill. They had been in place for 50 years, the Commission had received complaints and they had been the subject of litigation. The Bill was an opportunity for the Committee to look at that.

Erin Gough, human rights specialist at the Human Rights Commission, stated that the Commission supports the Supplementary Order Paper as a concrete step towards enhancing the rights of children with disabilities at school by improving their safety and improving compliance with the UN conventions. Seclusion and restraint have a disproportionate impact on children with disabilities, she said, particularly those with learning and communication difficulties. The impact was lasting and traumatic, so the Commission welcomed the ban on seclusion and the limiting of physical restraint. The Commission recommended rules and guidelines on those matters were required to be issued by the Secretary of Education, and that current guidelines be updated. It also recommended introducing a "last resort" provision for the limitation on physical restraint to better reflect the Convention on the Rights of the Child. A third recommendation called for the implementation of those amendments and

inclusive education to be monitored by the Ministry and the Education Review Office in conjunction with other agencies.

Martin asked whether, given the resourcing required, there should be a staged introduction of inclusive education over a period of three to five years. Gibson replied that resourcing was not the whole problem. The need for additional resourcing was not as great as people sometimes imagined. Education of disabled children was probably a lead candidate for an investment approach, where costs could be saved in the long term.

Martin asked if staggering funding would be an acceptable solution for the Commission. Gibson replied that there needed to be more of a visionary statement about what the education system should look like in 10 to 12 years, from which one should work backwards to see where resources should be put into things like professional development.

Delahunty asked whether time was needed to re-educate the teaching community that did not receive initial teacher education on the issue. Hancock pointed out that the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill contained requirements that referenced to the two UN conventions discussed, so that part of the social-services sector was using that type of approach.

Martin expressed concern that legislating for inclusiveness would make boards of trustees liable, if they were not given the resources to deliver. Gibson said that boards should not be let off the hook in terms of their current obligations, but support structures needed to be built up. There was generally a willingness to do the right thing.

Delahunty asked what “reasonable accommodation” of student requirements meant. Hancock replied that the term came from the Convention on the Rights of Persons with Disabilities, and the Ombudsman had developed useful guidelines on how that worked in practice. It applied to all Government agencies delivering services to disabled people, not just in education. It was about accommodating that person’s needs in that environment. Gibson added that how a small business might “reasonably accommodate” a disabled employee would be different to how a Government department would.

Delahunty asked about the Commission’s recommendations on suspensions and stand-downs. Hancock replied that there had been calls for many years from organisations regarding the need for those provisions to be addressed to ensure that the number of students being excluded from the education system was minimised.

Delahunty asked whether monitoring was sufficiently well described in the Supplementary Order Paper. Gough replied that there needed to be guidelines on who monitored, how often and how it was to be carried out. Gibson added that the fact the issue had emerged showed there was not strong enough monitoring. Locking up vulnerable autistic six-year-olds was not a minor breach of someone’s rights. More energy needed to go into looking after the most vulnerable. There needed to be layers of safeguards to protect people.

Chris Abercrombie

Chris Abercrombie opposed the changes in the Bill that enabled communities of online learning, saying small isolated and rural schools would face issues such as a reduction in base funding and staffing proposed in the education funding system review. There was a risk that face-to-face education would become redundant. There also were issues relating to child safety, the ownership of the child’s data and who would be responsible for protecting it.

Delahunty asked whether there should be a pilot of communities of online learning and discussions with the sector about the proposal. Abercrombie replied that there should be at the very least. Muller asked about Abercrombie's experiences with small rural schools using online platforms to support blended learning. Abercrombie replied that his experience had been with subjects that would not otherwise have been taught because of the small number of students taking them, using qualified teachers within the NZQA system to provide support.

Muller asked whether it mattered who provided the service as long as the quality of the education was good enough. Abercrombie replied that State ownership of education mattered to him because education was a public good. Also, that provided safeguards to the students against a provider going bankrupt.

New Zealand Public Service Association

Ben Barclay, national secretary of the New Zealand Public Service Association, focused on the Bill's provision disestablishing Careers New Zealand and transferring its functions to the Tertiary Education Commission. He said the Association is opposed to the transfer. Its members were concerned about the impact on the quality of careers advice in New Zealand in changing economic times.

Amanda Pickett, a delegate for the Public Service Association at Careers New Zealand, submitted that New Zealand was turning into a disruptive society and things were changing for the country. Technology was impacting on jobs. People were talking about the fourth industrial revolution. New Zealanders needed to be made aware of that. The workforce was precarious and people were moving from health, agriculture and horticulture into areas like high technology. Only one percent of Māori, for example, were studying technology, and that needed to change. Careers New Zealand's incorporation into the Tertiary Education Commission would not help in the future of work. A strong, centralised career service was needed. People had to know the information they got from it was not tied to the funding of any tertiary organisation. Careers New Zealand was an independent, impartial organisation that was telling the truth, even when it meant saying an industry was dying and people needed to retrain. Careers New Zealand had been providing such advice.

Pickett submitted that Careers New Zealand staff were not consulted about the change in the Bill. It was disappointing that the Ministry of Education was not aware of the breadth of Careers New Zealand's services. Its website had 4.24 million visits in 2016 and its Facebook page had 18,000 likes. 21,000 people accessed its career-advice services in the last period, of which 88 percent trusted its advice. International research said that careers advice should not be fragmented. The Bill was designed to stop fragmentation, but it would actually increase the fragmentation that currently existed, Pickett said, which was a result of work being done in the Ministry for Business, Innovation and Employment and other agencies. The Committee needed to be aware that Careers New Zealand had not been giving careers advice to students in schools for years; it was influencing employers to make connections with schools so that students would have interactions with them. It was known that if a student had four interactions with an employer, they were five times less likely to be in need when they left school.

Jean Ottley, also a delegate for the Public Service Association at Careers New Zealand, submitted that in 2012 Careers New Zealand had gone through restructuring and fixed any fragmentation that might have existed. Some of the information that went into the Bill did not take that into account. It had taken on a national work-streams approach. Careers New

Zealand's key points of difference included its labour-market research, which was articulate through its award-winning website in plain English. It was informed by career theory and research and believed in lifelong career development. She submitted that it was not a good idea to merge the organisation with the Tertiary Education Commission, because it would lose one of those points of difference, which was its ability to deliver professional development to community leaders, career influencers, whanau and family, because that idea would be lost in the emphasis on "education to employment".

Delahunty asked whether the Tertiary Education Commission had a focus on lifelong career development in its brief. Pickett replied that was a part of their brief, but the submitters think it is linked too far into tertiary education. School leavers and mid-life career changers would have to face the fact that their jobs would be gone because of technology improvements, so the focus needed to be broader than tertiary education.

Muller asked why the submitters thought Careers New Zealand's independence, objectivity and impartiality would be lost under the new regime. Pickett replied that the Tertiary Education Commission was primarily set up to fund organisations, which created a conflict when advising students about tertiary transitions. She asked whether Careers New Zealand would be able to release information that suggested most degrees would not be useful in the future, for example, when the Commission was funding universities.

Salesa asked whether it would be difficult for Careers New Zealand to be in an organisation that dealt with tertiary organisations, when it also monitored high schools. Pickett replied that it would be difficult, especially where it had contracts with the Ministry for Social Development to enable second chances for people like prisoners and sole parents. Ottley added that Careers New Zealand was a recognised brand and its point of difference was that it stood for lifelong career development.

Martin asked whether the Ministry of Education had the capacity to deliver professional development for careers and transition advisers. Pickett replied that reports to the contrary were taken seriously by Careers New Zealand. She did not think the Ministry currently had that capacity. Ottley added that the Ministry came to Careers New Zealand for that.

Azaria Howell

Azaria Howell explained that she is a 13-year-old student at Cashmere High School. She pointed out that teachers went through a lot of training to do their job, and locking children with behavioural issues and sometimes even learning disabilities in a room could not be justified. The Government had known about that method of confinement for a year and had failed to act strongly during that time, in her opinion. It was better late than never, and she was happy the Supplementary Order Paper would stop the use of seclusion rooms. She said educators needed a better education on how to deal with students with behavioural problems. They should learn how to deal with behavioural and developmental issues during their training, so children doing things wrong could be helped with behavioural therapy and support. She pointed out that seclusion rooms often had no means of escape for the child, so would present a great threat in an earthquake. Howell made a comparison between seclusion rooms and solitary confinement, saying people locked in seclusion rooms were often there for quite a while, and some were even forgotten about until the end of the day. Studies had shown solitary confinement had a negative impact on mental health, and she guessed seclusion rooms would have a similar effect.

Howell suggested extending the Supplementary Order Paper's definition of a teacher to include private schools, with respect to the ban on seclusion, and implementing a regime of checking to ensure seclusion rooms were not used. Another suggested change from Howell was the addition of New Zealand residents to the requirement to compulsorily attend school, which currently only included citizens.

Delahunty asked whether people who were not trained teachers should be allowed to exercise physical restraint. Howell replied that guessed it would be acceptable in the most severe cases, but it had to be a last resort. Delahunty asked whether the use of video links should be with the permission of parents. Howell agreed that it should.

Stephen N Chick

Stephen N Chick submitted that there was a fundamental disconnect between the Education Ministry and the rest of society. He believes there is an issue with narrow leadership in the education industry. There was a degree of indoctrination in the industry and amongst teachers. His written submission had proposed a minor change to the Bill.

Deaf Action New Zealand

Rachel Noble, a member of Deaf Action New Zealand and director of Ennoble, communicated in New Zealand Sign Language (NZSL) through an interpreter. She told the Committee that her group's members believe that all modes of communication, spoken, sign and written, were equally valuable and should all be available in the education system, so that when a deaf child becomes an adult there were confident and could make their way in the world. It was children's right in New Zealand to have access to signed, spoken and written language. It was not a question of choice for a deaf child; they had the right to all modes, which extended to their family and whanau. Deaf education needed to be taken into account in legislation, as supported by the Convention the Rights of Persons with Disabilities, so that all deaf children could be engaged in the system.

Lynette Pivac, a member of Deaf Action New Zealand and a lecturer in NZSL and Deaf Studies, also communicated with the Committee in New Zealand Sign Language, which was translated into English by an interpreter. She said she had to constantly lobby for access to the Curriculum for her two deaf daughters. She lobbied for over 20 years for an interpreter for them. It was important they have access to English and New Zealand Sign Language so they could have equal status with hearing students. There were still no educational interpreters in NZSL in New Zealand. Deaf people were also still waiting for subtitles on television.

Noble acknowledged that a lot of good work had taken place and progress had happened. Deaf Action wants the Act to be more assertive about deaf people within the education system. Noble said that those without access to the modes of communication they needed were less successful in their education and in society. Communities of online learning were not accessible to deaf people at the outset, she warned.

Pivac explained that she trained NZSL interpreters, and said that Workbridge should be able to provide interpreters so that deaf people were treated as equals. Deaf students should be able to access the curriculum in order to become good citizens.

Martin asked whether there should be a developed classroom progression for NZSL from year 1 to 13 to run alongside the New Zealand Curriculum, as there was supposed to be for te reo Māori. Noble replied that there should.

Davis asked whether Deaf Action wanted the law to be specific about New Zealand Sign Language and the need for the right to interpreters. Pivac replied that there needed to be access to both New Zealand Sign Language and written English in the form of subtitles and scripts. Noble added that the Act should make direct reference to the Convention on the Rights of Persons with Disabilities, which mentions deaf needs.

Delahunty asked whether the expression “personal characteristics” to explain learning difference should be dropped from the Bill. Noble replied that it should. It was OK to be a deaf person and to call a deaf person “deaf”.

Education for All

Bernadette Macartney, a member of Education for All, submitted that the changes to the Act would not go far enough or make a big enough difference. The group recommended inclusive education be mandated and included in the Act, and that a purpose statement about that be added to it. It was a question not only of education but of everyone’s participation in New Zealand society.

Mark Potter, a member of Education for All and principal of Berhampore School, said the Education Act was often quoted to justify why schools could not support children. His school had at least three children a year coming to it because they could not be included in a school within Berhampore’s radius. Schools were just not well-adjusted to include them. The purpose of the Act should be to provide the most inclusive education system in the world. There was value for all students in having well-established, capable schools. The learning was richer because there was a broader range of teaching skills present. He gave an example of a child with no discernible disability who achieved better in a dyslexia class than her peers in the mainstream class. Potter also submitted that there was the need for a formal provision for special education needs co-ordinators (SENCO’s) in schools. He also supported the Supplementary Order Paper’s provisions against seclusion, but commented that a lot of subtle seclusion went on.

Rachel Noble, speaking as a member of Education for All, said that after taking part in the UN Committee’s discussion on inclusive education in Geneva, the group wanted the law to reflect and align with the Convention on the Rights of Persons with Disabilities. She wanted the Committee to make sure that reasonable accommodation occurred, and that universal design principles were enforced. Professional development for inclusive education needed to be ensured at all levels, she added. There were currently no relevant general courses available, other than a Master’s paper.

Heather Lear, co-convenor of Education for All’s inclusive education action group, submitted that the Bill was an opportunity to change the Act to embed inclusive education. She had advocated for her daughter, and said the Bill, although it contained good things, did not go far enough. She said it should contain a provision for an enforcement body that was independent of the Education Review Office.

Martin asked whether a body that would mediate disputes would be acceptable, rather than an enforcement body. Lear replied that parents needed something that was accessible and available at the lowest level, so that issues could be resolved as quickly as possible. Mediation was good, but somebody independent was needed who could make a decision. Noble added that an advocate for the child was also needed.

Delahunty asked about subtle seclusion in the context of the Supplementary Order Paper on seclusion rooms. Potter replied that seclusion could arise from the child simply not being present because someone has determined some learning is not for them, for example, in the case of technology education.

Deaf Aotearoa

Bridget Ferguson, general manager for strategy at Deaf Aotearoa, said that a key difference for deaf students was that inclusive education or main-streaming was often not the “least restrictive environment”. Deaf learners needed to be with other deaf learners so that there could be direct transmission of language, not mediated through a teacher aide. Such environments were currently only available in Auckland and Christchurch. Children were being identified as deaf at 24 hours of age. At three months cochlea implants were potentially being used. However, language development needed to happen from birth. Deaf Aotearoa wanted the education system to allow not only academic success but also the development of children’s identity, culture, sense of self and connection to their wider deaf community. They did not want deaf learners to be lumped in with inclusive education; they wanted it stipulated that they had a need to come together. There were many models out there to achieve that, such as day schools where half a day was spent in a deaf centre and half in a mainstream school. She made the point that assisted-listening devices did not mean sign language was not needed. Sign language was not a tool; it was a language that carried with it a culture, a history and access to a community.

Victoria Manning, general manager for services at Deaf Aotearoa, added that the World Federation for the Deaf had recently rewritten its policy with regards to education, making direct reference to the Convention. Deaf children needed role models and to see their language and culture embedded in the educational context, in the same way that Māori-language learners did.

Manning referred to the Human Rights Commission’s formal inquiry into New Zealand Sign Language, which had recommended ways to improve educational outcomes for deaf children and provide access to an equivalent education. She said that a number of points highlighted in the report had not yet been taken up. For example, the recommendation that high-school students have access to interpreters so they could access their subjects normally. There was no funding for that in the system and no work had been done on it by the Ministry since.

Delahunty asked whether the day school model Ferguson referred to would be the equivalent of Kura Kaupapa Māori and whether English-medium schools should embrace teaching NZSL to all children. Ferguson agreed, and said her family wanted their daughter to be able to sign to anyone she met and be understood, but did not want them to be at a disadvantage to hearing children in the classroom. Martin asked whether it could be something like the programme that was run for gifted and talented children, which would provide deaf children with a cohort of peers. Ferguson replied that it could, and acknowledged that the Ministry had made great improvements since the inquiry.

Muller asked how recent technology had enabled the deaf community to be more engaged in the education system. Ferguson replied that Skype and FaceTime gave the opportunity to learn NZSL from one of Deaf Aotearoa’s local offices without a staff member having to drive to where they live.

Canterbury Primary Principals’ Association

Graeme Barber, executive member of the Canterbury Primary Principals' Association, submitted that the modern way of doing things in education was to be very clear about the purpose, to be visionary and have clear principles and guidelines that connect the vision or purpose to what was happening. Research showed that children disengaged from learning in schools because of failure, fear of failure and the humiliation associated with failure. When students became disengaged they got annoyed and opted out. Energy needed to be put into making the system work, not arguing with it. Caring people with a custodial role in education were needed to shake things up. The system needed to empower children, teachers and principals. That required collaboration on all levels. There were times when it was necessary to push people, times when it was necessary to pull them along, and times when it was necessary only to nudge them to achieve change in education. There were good things happening. He was concerned that communities of online learning went against those things. He asked whether children would be put in a situation where they had no contact with anybody else, with no opportunity for face-to-face coaching and mentoring. He submitted that the Bill needed to be clear about their purpose. Students needed to be set up for success.

Barber submitted that no one wanted a one-size-fits-all approach to school charters and strategic plans, and he struggled to understand where the proposal was coming from. Members of his Association support the New Zealand Curriculum and Tomorrow's Schools. His community of learning struggled with the fact that some people were getting more resourcing than others, he added. They needed to be resourced differently to ensure disparities were not created.

Barber commented that the Bill's provision on the school starting age would be advantageous for some, but that communities needed to be engaged on the policy, as factors such as transport, the availability of early-childhood education and parents' work habits would have a bearing on it. There was already flexibility in the law, as children could start school between the ages of five and six.

Hipkins asked what Barber's concerns were about the statements of National Education and Learning Priorities. Barber replied that he worried about a possible narrow, dictatorial approach to achieving the content, as well as the possible content itself. Murray questioned the use of the word "dictatorial". Barber acknowledged it was probably the wrong word, but said it was a reference to the deficit approach as opposed to the asset-based approach. When things came from an outside person without engagement, people were disempowered.

Martin asked what Barber thought of the Bill's granting the Minister a capacity to appoint board members, who could also be chairs of a board. Barber replied that top-down approaches needed to be used with caution and there would need to be clear parameters for that.

Dowie asked why a good community of online learning could not establish meaningful relationships with students using modern technology. Barber replied that that could be done now; it did not need a change in the Act. Schools could buy in external programmes if they needed them.

New Zealand Post Primary Teachers' Association, Te Aho o Te Kura Pounamu Branch

Don Laing, executive member of the Te Aho o Te Kura Pounamu branch of the New Zealand Post Primary Teachers' Association, said that in school classrooms where a teacher was present to work in a blended manner, online material was enriching and extending the learning. The difference between that situation and fully online learning was that the teacher

was on hand to direct the learning plan and to help students. There was also often a technical back-up person on hand in the school.

At Te Kura, Laing said, courses were fully online, which was what would be happening with communities of online learning under the Bill. Many students had fallen by the wayside in spite of the excellent pastoral care provided by Te Kura. Those most at risk were those who were at risk of not achieving literacy or numeracy or achieving NCEA level 1. That was because of the complexity of working on one's own at home without technical support or a teacher on hand. Being expert at using a game console or a smart-phone was quite different from working with an online teaching and learning system, which may have been based on a tertiary system. There was a myth that all children were "digital natives". That was not Te Kura's experience; at least a third of children were quite flummoxed by online learning. Laing warned that a community of online learning would not have the same expertise and understanding of pastoral care as Te Kura did. Face-to-face schools could suffer drops in their rolls because of the "parking" of students in communities of online learning.

Te Kura wanted to become a community of online learning, Laing said, but it would be better served by renegotiating its strict enrolment gateways with the Ministry to loosen them and allow students to enrol who were not necessarily geographically isolated, having social or psychological difficulties or excluded from a school. That would fix most of Te Kura's issues, he said. The Association's members also felt that Te Kura becoming a community of online learning would take the emphasis away from those full-time "charter" students.

Laing went on to say that Te Kura monitors students who were at risk of self-harm and that communities of online learning might not have the understanding to look for those signs and alert teachers to problems. The Association's members also felt that they would not have the staffing and expertise to offer full courses, but that parents may not realise that and students may end up with only a partial curriculum. They were also concerned that Te Kura may employ teachers who were not qualified and registered. Also, reclusive students who spent a lot of time gaming and wanted to avoid socialisation may be attracted by communities of online learning.

Martin asked whether alternative schools should be funded appropriately so their students could transition back into mainstream schools rather than opening up communities of online learning for privatisation. Jan Gould, also an executive member of the Te Kura branch of the Post Primary Teachers' Association, replied that Te Kura had good relationships with alternative schools, so students were tracked if they went in and out of them.

Post Primary Teachers' Association, Taita College Branch

Desiree Mulligan, a member of the Taita College branch of the Post Primary Teachers' Association, submitted that children should continue to start school when they turned five, which was a New Zealand tradition that treated each child as an individual, with a transition plan worked out with parents. Modern education emphasised treating young people as individuals, and it should not be changed to a more "factory-farming" approach.

Taita College teachers support the move to ensure children were not isolated in extreme moments, and encourage better funding for special-needs students so that they had a whole day of schooling. She also submitted that the Education Council used to have democratically-elected teacher representation like other professional bodies, but that had been undermined by the previous Minister, who had instead appointed people to it. Despite that, the Council was the appropriate body to deal with issues of competence, and it should

be further funded to meet more frequently and include democratically-elected teachers to deal with those issues. Any new authority would be superfluous. It was not appropriate for teachers to have to go to the District Court to appeal against decisions; they should be judged by their peers like other professions.

Stephanie Longhurst, also a member of the Taita College branch of the Post Primary Teachers' Association, added that making online education a more widespread and less regulated option would most affect at-risk populations, and she worried about children's resulting social and cognitive development. Research said that social interactions with positive role models and positive social groups was the biggest factor in children's success. There was no evidence that could be rebuilt at a later age. Parents were already concerned that intermediate-school students were being taught by a teacher behind a computer desk interacting via digital messaging, without physical contact or spoken language exchange. There was already plenty of opportunity for students to be learning online, with Te Kura's facilities, which were fully-regulated and run by trained teachers.

Simon Hirini, another member of the Taita College branch of the Post Primary Teachers' Association, submitted that teachers from Taita were apprehensive about the essence of the changes being made in the Bill. He did not think students were being put at the forefront of the changes. The changes would not help any of the children that those teachers saw in their classrooms. Most Taita children were in State schools, and the teachers did not see the benefits of the changes going to those schools. Hirini submitted that the regime for communities of learning should be left the way it was, with schools free to go into them when they wanted to.

Martin asked whether the submitters had seen evidence that human beings had evolved along with technology to the point where they no longer needed to interact physically. Longhurst replied that she had not seen any. Hirini added that evidence had actually shown that those who used technology moderately did better and that learning mathematics and literacy was sufficient.

Delahunty asked whether Hirini was concerned that communities of online learning would be defined by the Minister instead of being voluntary. Hirini replied that it was a danger and teachers did not want that. Teachers saw the problems in front of them and needed to come up with the solutions. Mulligan added that communities of online learning had become another item of inequality, where schools did not want to join with low-decile schools.

Martin asked whether the submitters had concerns that the replacement of charters with strategic plans would shut out the aspirations of communities for their children. Longhurst replied that teachers were scared that the political flavour of the day could end up becoming what a school or a cohort would be subjected to because of what the Minister of the day decided to fund.

CORE Education

Derek Wenmoth, director of e-learning at CORE Education, submitted that for some time the Education Act had needed some change to allow for more flexibility in the way education provision was made across all areas of the school system. The Bill was a welcome change in that respect. He was surprised, however, that the structure of communities of online learning had been specified in the Bill. That was messy, and he thought the Bill should only include the conditions for their establishment.

Muller asked whether it was not safer for the Bill to outline some detail of the accreditation requirements for communities of online learning. Wenmouth replied that he agreed with concept of the accreditation process, but the reference to the structure of a community of online learning made him wonder whether it would turn out to be expansive enough in a few years.

New Zealand Principals' Federation

Whetu Cormack, president of the New Zealand Principals' Federation, said the Federation was uneasy with some of the changes proposed by the Bill. He submitted that the Tomorrow's Schools system was not broken and should remain. School communities should determine the way in which they delivered the Curriculum in their areas. The Federation's view was that there needed to be a vision for education in Aotearoa New Zealand, based on what was best for young people, for New Zealanders to aspire to fairness, justice, lifelong learning and equitable outcomes. The Federation wished to be consulted about the development of that vision.

The Federation's members were uncomfortable with the way communities of learning were to be prescribed by the Ministry and the Minister. The notion of online learning was also an area of unease; children learned best face-to-face, when they were with adults who supported their learning, provided feedback and enabled them to develop their own learning pathways. Children working by themselves at their kitchen table had very little feedback to determine those pathways. The Federation was uneasy with the notion of communities of online learning, and felt the only benefits would be for private organisations, which would make profits.

The Federation welcomed the clarification of the roles and responsibilities of boards of trustees. Current legislation allowed for more than one school to be governed by a single board if they chose to be. The Federation did not agree with the changes in the Bill that would allow schools to be forced into that situation, for example, under the communities of learning model. Communities of learning appeared to be an administration platform to enable resources such as professional development to be delivered. The Federation was uneasy about that.

Cormack added that there was no evidence that cohort entry was the best way forward for young people. Parents expected that their child would start school at five. Entry as a cohort with a larger group a couple of times a year would have implications for child-care funding. Children could not attend kindergarten past the age of 5.

Hipkins asked whether Cormack saw value in having a statement of National Education and Learning Priorities. Cormack replied that there needed to be an overall vision for education in New Zealand that could not be interrupted by changes made by the Government of the time.

Delahunty asked how the priorities would fit with the current system. Liz Hawes, executive officer of the Principals' Federation, replied that the National Education Guidelines and the National Administration Guidelines worked well, and the Bill was an attempt to abolish and replaced those. The Federation wanted the New Zealand Curriculum to rule, she said.

Martin asked whether the Federation was seeking a system like Finland's, which had persisted through numerous ministers and governments. Cormack replied that it was, as New Zealand's education system was world-leading. Delahunty asked whether the

Federation would support a legal statement on the rights of children. Cormack replied that it would.

Hipkins asked about the Federation's view on the use of seclusion rooms. Cormack replied that teachers worked with challenging situations, but that all children needed to be treated with dignity and respect. Hipkins asked how the line should be drawn between seclusion and time out. Cormack replied that those details should be dealt with in a school's pastoral-care plan. Delahunty asked how much teacher education there was on learner diversity. Cormack replied that such education could be strengthened at the undergraduate level, and said there was not enough money made available for professional development.

Office of the Children's Commissioner

Children's Commissioner Andrew Becroft recommended the progress of the Bill be stopped until meaningful consultation had taken place with children. The Convention on the Rights of the Child guaranteed to children the right to express their views, and that they should be given due weight in matters that affected them. Child-centred policy added richness and quality to the decision-making and was the right thing to do. The Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill, for example, used a series of consultations with young people and much of the policy was born out of a child's view and would not have been thought of otherwise.

Becroft pointed out that there was no over-arching, enduring, locked-in statement of purpose or vision in the Act. Such a statement should be included, as it was in much other child-centred legislation. It should state that the interests of children should be a paramount consideration and that children had the right to be consulted.

Becroft submitted that the restatement of purpose setting out the National Learning Priorities was inadequate. They should not be limited to just a student's academic potential. The Office also recommended that there should be a mandatory requirement for the Minister to always consult with children. Boards should also be required to consult with children in their decision-making.

Becroft said it was concerning that the Bill did not address the lack of a prompt appeal process in the case of suspensions. No other area of rights in New Zealand lacked such a process. The only way now was to ask the board to review it, to go to the Ombudsman, a protracted process, or to the High Court, which was also expensive. Natural justice demanded an appeal mechanism. It was as if boards of trustees' decisions were immune from review. Parents and children were stuck with decisions that were, in practice, unappealable.

It was premature to formulate the proposal for communities of online learning in subordinate legislation, Becroft said. He wondered how a community of online learning was conducive to developing social relationships and pro-social skills, which was a purpose of the Act. History had shown that such provisions could be used as a back-door route to exclude the most difficult students, just as early school exemptions and exemptions for off-site learning had been used.

Becroft stated that it was timely to clarify that seclusion and solitary confinement was unlawful. The Commission had already thought that to be the case under human-rights law, health and safety law and the Building Code. Regulations and guidelines for the use of physical restraint should be developed in consultation with children and there should be more

explicit and comprehensive teacher training for those dealing with children with special needs.

Martin asked whether a child enrolled in a community of online learning could end up being deprived of their education because nobody could verify they were not “truant” from their studies. Becroft replied that that was one of the dangers of the policy initiative, which was too important to be left to subordinate legislation.

Delahunty asked what kind of appeal mechanism Becroft would recommend, given his experience in the Youth Court. Becroft replied that Youth Court judges could easily hear such issues within a week or two. There was also a local model, consisting of a chairperson, who was a lawyer, an experienced educationalist and a community or teacher representative, similar to that used by the Rugby Union.

Delahunty asked whether there needed to be something above the proposed mediation between parents and schools. Becroft replied that there did, and it needed to be fast and cheap. Delahunty asked whether expulsion had large consequences for children’s lives. Becroft replied that lack of engagement with education had led to children’s appearances in his court when he was a judge.

Hipkins asked whether the Bill should be amended to ensure consultation in the next phase, if it went ahead. Becroft replied that it should, and the Bill’s provisions on consultation must make explicit that the consultation should be with children. Martin asked whether better resourcing for alternative schools would be better than 100-percent online learning. Becroft replied that there must be some advantages in online learning, but it was outrageous that the alternative-education system had been so badly resourced. For years the most challenging students had been segregated and placed with the most idealistic, committed youth workers, who were not the country’s best teachers, with no national standards. Action needed to be taken, because some of those children were being consigned to a pathway out of the education system.

New Zealand Educational Institute

Linda Stewart, president of the New Zealand Educational Institute, expressed concern about the time frame of the Bill and the lack of consultation. There had not been high-level commitment to equity and diversity in the Bill, she said. With respect to the National Education and Learning Priorities, Stewart said the New Zealand Curriculum must come to the fore. The process of designing the Curriculum had been unprecedented in the world.

Stewart submitted that what mattered most was a system that valued language and identity. The Bill would lead to a narrowing of opportunity and a greater focus on targets, which would be set at the whim of a minister. Overseas evidence showed that that did not work for children. Communities of learning were in the early stages of a system change and their effectiveness had not been evaluated. The Bill’s inclusion of those was dangerous. On the Supplementary Order Paper’s provisions against seclusion, Stewart recommended the reference to a room from which a student or child believes that he or she cannot freely exit be removed, as the word “believes” was subjective.

Martin asked how comfortable Stewart was with the Minister’s ability to appoint board members, who could also be chairs. Stewart replied that she was very uncomfortable with it, as it would undermine boards’ ability to do their work. Martin asked whether there had been

any consultation on that aspect of the Bill. Stewart replied that the timing of the consultation had not allowed teachers to attend.

Salesa asked about the Institute's submission that schools should be "child-ready". Stewart replied that it was a comment on statements that some children were not ready for school. She said schools needed to take children with all their unique identities and take them to the next level.

New Zealand Post Primary Teachers' Association

Jack Boyle, president of the New Zealand Post Primary Teachers' Association, submitted that the Bill would promote collaboration and that its provisions allowing early interventions would help. However, the Bill would allow anyone to start a community of online learning, and that change was not supported by the literature. There was an opportunity to strengthen online and blended learning, but communities of online learning would not be accountable to the Ministry or to the public. He recommended the relevant provisions be deleted from the Bill and consultation with the sector begun.

Boyle stated that changes to Careers New Zealand were being driven by the desire for cost savings. The statement of National Education and Learning Priorities could be positive, but the lack of scrutiny in the development of the statement would limit their value. He said it was time for a review of Tomorrow's Schools, with a view to keeping the community-engagement aspects and getting rid of the failed governance model, which had been imposed based on the notion that competition in education was a good thing.

Tom Haig, deputy general-secretary for advisory at the Post Primary Teachers' Association, said it agrees with the intent of the Supplementary Order Paper. He cautioned that many schools used withdrawal rooms, and if their use was involuntary it may be illegal. He suggested removing the words "believe" and "involuntary" from the provision. The inclusion of provisions with respect to physical restraint seemed to be just for the sake of tidiness, and could have unintended consequences. Common sense should be applied rather than specifying every possible role for teaching staff.

Hipkins asked what criteria were used by the Education Council with respect to physical restraint. Haig replied that it went on a case-by-case basis, using the definition of reasonableness under the law and teachers' code of ethics. The extra rule in the Bill seemed unnecessary, he said. Hipkins asked how confident Haig was in teachers' ability to make judgements about restraint. Haig replied that it was unusual for a wrong decision to be made. Delahunty commented that some schools did not have problems because they had worked out what children's triggers were. Boyle responded by saying the Bill did not enable teachers to know what to do and how to do it in such situations.

Martin asked for the Association's views on the Bill's capacity for the Minister to appoint board members. Boyle replied that it would have concerns about the affect on the community voice on the board. Martin asked whether it would be more comfortable if the power was merely to appoint an advisor. Boyle replied that that would be less concerning and also more effective.

Save the Children

Heidi Coetzee, acting chief executive of Save the Children, submitted that the Bill was an opportunity to provide a direction and framework to support the development of each child

and young person, to build human capital for New Zealand's future and further build the country's reputation as an international leader in education. However, the current Bill did not deliver as well as it should. Too many children were left behind in the education system, and there needed to be a major culture shift to meet the best interests of every child and young person.

Trisha Nally, education programmes manager at Save the Children, said the Bill positioned children as having education done to them rather than as valuable partners in education. The Bill gave the opportunity to address New Zealand's obligations under the Convention on the Rights of the Child, she said. She warned that the proposal for cohort entry could be driven by administrative convenience rather than the needs of children.

Nally submitted that a statement of enduring objectives needed to be supported by a culture change. Many children were falling behind because the system was not geared to them, and the use of seclusion rooms showed that Ministry guidance had not been followed. She also criticised the consultation process on the proposal for National Education and Learning Priorities, saying a better example of consultation was that surrounding the curriculum reform of 2004.

Delahunty asked if there was a way to have a child-centred approach and entrench the Convention into law. Nally replied that there was, and that the UK had done so. Delahunty asked whether the Supplementary Order Paper was valuable in dealing with the issue of seclusion rooms. Nally replied that it gave valuable direction, but it had no requirement on schools to report on how they dealt with the most extreme behaviours.

Giarne Harrison

Giarne Harrison submitted that there should be members on the new Competence Authority with some teaching experience and it should be clear that a teacher before the Authority had the right to a support person and that an advocate or union representative was always involved. She supported the separation of competence issues from conduct issues and the examination of competence with a focus on rehabilitation. The teachers involved might not need to lose their practising certificate, but might need some extra professional development or support. She expressed concern about the Bill's language on cohort entry. Extra funding for early childhood education was not a bad thing and had a clear benefit for society. She was in favour of the option which ensured Ministry of Social Development funding continued with the child until they went to school. Otherwise, the cohort term should be after children's fifth birthdays. She submitted that there were risks for children socially, emotionally and academically if they started school too early.

Delahunty asked whether the Ministry should run a parent-advocacy tribunal or whether it should be independent. Harrison replied that it needed to be independent to avoid conflicts of interest.

New Zealand Council for Educational Research

Graeme Cosslett, director of the New Zealand Council for Educational Research, said that the statement of National Education and Learning Priorities would filter through to the national Curriculum, boards, Te Whāriki and early-childhood education, and thorough consultation on it was needed. Problem-solving and managing self needed to be included in the priorities as important competencies. There was an opportunity to make a genuine commitment to te reo Māori, with schools' role moving from the "appreciation", as the Bill

referred to it, to one of development. There was also an opportunity for the Bill to start growing the teacher capability in te reo. The Council was concerned that there would not be significant change if care was not taken to bring everyone on board through consultation. The Bill should provide details of the consultation to be undertaken, which could be modelled on that used by and cited in the New Zealand Curriculum.

Heleen Visser, general manager of research and development at the Council for Educational Research, speaking about national performance measures for boards of trustees, submitted that there needed to be a work programme to decide on those and they needed to be embedded in an accountability framework, focusing on improvement. There were currently no measures in important areas of the Curriculum such as technology, and there were none for the objectives in the National Education and Learning Priorities. One of the key purposes was to be comparing schools, but that was not an effective way to improve practice, she said, as it could lead to the development of practices where mistakes were not learned from.

Hipkins asked how measures could be stopped from being used to compare schools. Cosslett replied that it was a matter of understanding how to make the best use of the data, which would involve educating the public. Delahunty asked whether the Bill should make te reo universal rather than a matter of appreciation.

Cosslett replied that it should.

Bernadette Macartney

Bernadette Macartney, speaking on her own behalf, explained that her daughter Maggie Rose has significant intellectual disabilities and receives funding from the Ongoing Resourcing Scheme (ORS). Macartney herself has a doctorate in inclusive education. She said the difficulties in the area in New Zealand were mainly systemic, not a result of bad teachers. It was a basic human-rights issue, which took a great toll on the mental health of families. Maggie Rose had experienced subtle seclusion or exclusion, when a head of a drama department had decided she could not take NCEA drama. It was not helpful that parents had to cite the New Zealand Human Rights Act in such situations, nor was it fair on teachers, who needed support. Good professional development was needed and schools needed an ongoing process for dealing with complaints. Inclusive education should be an enforceable right, otherwise an increasingly segregated education system would develop. A fully inclusive system would be cheaper than having to provide special units, she stated.

Delahunty asked about the proposal to transfer the responsibility for children and young people with disabilities to the Ministry for Vulnerable Children. Macartney thought it was a retrograde, exclusionary step, and that if one group was taken out from the group of all children they would miss out. The Education Ministry was where the professional knowledge and experience was, so moving those children to another ministry would isolate them and make them more vulnerable. Delahunty asked whether those children were only vulnerable because the system did not meet their needs. Macartney replied that it was the system that made them vulnerable, and moving the responsibility to another group would make them more so.

Mpowered NZ

Helen Wildbore, director of Mpowered NZ, said that, contrary to many of the submissions against exclusion, many of the families she worked with did want something different for their children. What was supposed to be inclusive in schools was not working for them. The children she worked with wanted something that met their needs more than what they were

currently getting. She characterised the Bill as “painting the scaffolding, not the house”. Parents wanted changes as the system was not working for them, and Wildbore was concerned the Bill would strengthen what was already in place.

Martin noted the submission was one of the few in favour of communities of online learning, and asked if it was possible to keep improvements in the area and the funding under the State system. Wildbore replied that she had little faith in that and did not believe that approach would provide sufficient access.

Martin asked whether parents could be expected to fund online learning under the Bill. Wildbore replied that she had read there would be options for parents and their children could be dual-enrolled. Delahunty commented that in Kapiti a State school had been able to meet students’ needs for online education. Wildbore said that had not been the case in the area where she lived. Delahunty asked whether it would not be better to have online learning available in each school rather than it being provided by a community of online learning with no educational expertise. Wildbore replied that the necessary mindset did not exist in schools, but stated that communities of online learning needed to be regulated.

Education Council Aotearoa New Zealand

Graham Stoop, chief executive of Education Council Aotearoa New Zealand, said it was in broad support of the objectives of the Bill. On the issue of seclusion, he submitted that children and young people had the right to dignity and professional behaviour. Seclusion was not an acceptable teaching practice, and the Council supports its prohibition in all schools and early-childhood centres. The Bill’s wording on physical restraint was not nuanced enough for the context, and could be misinterpreted to mean no contact at all was acceptable. If the change led to a spike in complaints, that could undermine the profession. There were many situations where it was appropriate to have physical contact, such as when giving comfort, which could be defined as restraint by the Supplementary Order Paper. The Council was comfortable that existing legislation and regulations balanced the rights, safety and well-being of children and teachers, so it would argue that guidelines rather than legislation were more appropriate in that area, and the Secretary for Education should be able to make those.

Andrew Greig, manager of teacher practice at the Education Council, submitted that a Competence Authority was the right body for cancelling teachers’ registrations and practising certificates and the Education Council supports the proposal to establish one in the Council under the Act. There had recently been a large increase in complaints due to greater awareness of competence requirements. Competence processes and outcomes were generally rehabilitative, unlike those for a disciplinary tribunal, and teachers would be assessed using specialised criteria. For that reason, the Council did not support including a layperson on the Authority, as they would not have the necessary experience or judgement. All Competence Authority members should hold current practising certificates, he added.

Stoop went on to say that the Council supports the provision for cohort entry, but that any decision in that area should focus on how it affects children. It may encourage greater collaboration between early-childhood services and schools, and may help children build relationships.

The Council supports a future education system that was not necessarily limited to bricks-and-mortar classrooms, but the online-learning framework required a balanced approach, Stoop said, with more emphasis on the role of qualified teachers, who should lead the

learning experience. The Bill's proposal to enable new partnerships between schools, online-learning providers and communities of online learning provided a more robust legal framework for what was already underway, so the Council supported that.

Martin asked whether the proposal allowing children to enter school at the age of 4 years and 10 months should be changed to limit it to five-year-olds. Pauline Barnes, general manager of professional services at the Education Council, replied that the Council was concerned about children younger than five going to school.

Martin noted that the Council was positive about the incorporation of Careers New Zealand into the Tertiary Education Commission. Barnes said that the Council was keen to see a strong connection between the transitions that young people were making in senior secondary school to programmes in university, polytechnic or transition programmes, and the Commission worked closely with providers and secondary schools. The Council was keen to see careers support going into that area in a connected way.

Delahunty asked whether there was a risk Careers New Zealand would not longer be able to take a broader view because it would not be independent of the tertiary education system. Barnes conceded there was a risk of that, but there was still an opportunity for it to think more broadly than the Tertiary Education Commission did currently. Stoop added that the Council's focus was on connections and being joined up.

Martin asked why the Council had not commented on the Minister's ability to appoint board members, and whether it would be better to provide for the appointment of just an advisor. Stoop replied that it had not asked its members about that, but he personally saw value in local community-elected boards and generally supports the current approach. Delahunty asked whether the Bill should enshrine the Convention on the Rights of the Child. Stoop replied that the Council supported the strategic focus on children, and would support any way the Bill could support that.

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