

**SUBMISSION TO THE EDUCATION AND SCIENCE  
COMMITTEE OF THE HOUSE OF REPRESENTATIVES**

**ON THE**

**TEACHER REGISTRATION BILL**

**NEW ZEALAND BUSINESS ROUNDTABLE  
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# TEACHER REGISTRATION BILL

## Introduction

This submission is made on behalf of the New Zealand Business Roundtable (NZBR), an organisation of chief executives of major New Zealand business firms. The purpose of the organisation is to contribute to the development of sound public policies which reflect overall New Zealand interests.

## Background to the bill

Under the Education Act 1989, teachers meeting certain criteria can receive one of three forms of registration:

- full registration;
- provisional registration; or
- registration subject to confirmation.

The criteria used by the Teacher Registration Board (TRB) in considering applications are: "is of good character", "is fit to be a teacher", "is satisfactorily trained to teach", "is, or is likely to be, a satisfactory teacher", and teaching experience. Registration is optional, that is, schools do not have to employ registered teachers.

The main effect of the bill would be to make the present voluntary regime compulsory.

We understand that three main reasons for making registration compulsory have been advanced:

- to ensure a minimum standard of teachers;
- to enhance the status of teaching; and
- to provide increased protection for school students against teachers of inappropriate character and, in particular, against sexual molestation.

This submission will consider to what extent, and at what cost, the bill may further these objectives.

We note that until 1991 the registration regime for teachers was compulsory. It was then made voluntary. It is, therefore, relevant to ask what has changed since 1991 and what evidence there is that the voluntary regime has failed.

We also comment briefly on the new function which clause 6 of the bill would give to the TRB, that of "promot(ing) quality education and high teaching standards", and the proposed change in its composition. The reasons for these provisions are not apparent to us.

## A minimum standard

The existing registration regime enables, but does not require, schools to check applicants for teaching positions against the statutory criteria. The normal case for making an occupational registration regime compulsory is:

- some clients are ignorant and thus will not understand the implications of the presence or absence of a qualification or registration; and/or

- error or poor quality in provision of the service concerned could have both immediate and catastrophic effects for the client.

Teaching meets neither condition. Schools understand the implications of registration by the TRB, and the effects of poor teaching build up over time rather than being immediate and catastrophic. (The issue of protection of children against abuse by teachers is another matter and is considered separately below.)

More generally, the present arrangements are in line with recent trends in public sector management which are based on the view that decisions about resources (not least staffing) should be made by those in the best position to make the relevant judgments and who have the strongest incentives to get them right. The bill reflects a lack of confidence in the ability of school managers to make staffing decisions, and is a step back towards centralised decision-making.

Further, registration is of limited value as an indicator of likely ongoing teaching quality. It is widely recognised that there are registered teachers who should not be in the profession. Improving the ability of schools to ease out underperforming teachers is, arguably, of far greater importance than trying to improve entry standards by compulsory registration. Moreover, a teacher's ability is quickly assessed by other teachers and, though not always accurately, by students and their parents. It is not the case that registration is the only quality check.

It is always tempting to try to force an increase in standards by legislation - for example by an increase in minimum training periods or, as in the present case, by compulsory registration requirements. However, such measures may increase costs significantly without commensurate benefits. As a general rule it should be left to schools to judge where the balance of costs and benefits lies.

One potential cost of the bill lies in the reduced capacity of schools to hire teachers who have not gone through a formal teacher training programme. This is likely to be significant as schools try to provide a more diverse curriculum, for example by:

- introducing vocationally oriented courses for the increasing percentage of students who are now staying on for Forms 6 and 7 and for whom the traditional 'academic' routes to university are not suitable;
- meeting new curriculum requirements, e.g. technology;
- providing education in te reo Maori; and
- enabling senior students to take polytechnic and university level courses while still at school.

It will also make it more difficult for schools to fill positions in curriculum areas where there are shortages of skilled people such as maths, science, and some languages.

In such cases, schools may benefit enormously by hiring as teachers people who have not been through colleges of education but who have the necessary personal qualities as well as subject knowledge and teaching ability. The bill will force schools to hire registered teachers even where more suitable unregistered teachers are available. In situations where there are insufficient applicants for positions they may wish to hire unregistered teachers if this is seen as preferable to going without a teacher. Shortages of trained teachers, either across-the-board or in certain subjects, are inevitable from time to time, depending *inter alia* on demographic trends and pay relativities, and the bill will significantly restrict schools' ability to respond flexibly to them.

Flexibility at the school level is vital if choice, innovation, 'seamless' education, and diversity are to be enhanced in the New Zealand educational system. The costs of the bill's restrictions on schools will be paid for, ultimately, by the students. The benefits will be secured by colleges of education who have a more assured client base, college graduates who will face less competition from non-graduates, the teacher unions (since raising entry barriers protects their members), and the teacher registration bureaucracy which will have more power and influence.

Clause 4 of the bill - "limited authority to teach" - seeks to provide some flexibility. However, the provision would make those with limited authority to teach second class citizens in the school both because of that limited authority and because it is subject to annual renewal. These effects are liable to discourage able people from entering or remaining in teaching and could be divisive within the school.

It might be argued that the clause 4 procedure is straightforward to operate and does little to constrain the school's ability to hire unregistered teachers. But if this is the case, the bill is ineffective in raising standards, imposes extra paperwork and costs on schools, and, by conferring the inferior status of "limited authority", reduces the number and quality of teacher applicants. Also, under the present voluntary arrangements, a school can already use the expertise of the TRB to determine whether an applicant is of good character etc., by requiring the applicant to seek (provisional) registration.

The bill applies to people currently working as teachers (clause 3 and new s65(2) "or continue to employ in"). This would effectively preclude from teaching people who may not wish to register or who do not qualify for registration because of a lack of formal teacher training but who have been employed in good faith under the present voluntary regime. They would presumably have to apply for "limited authority to teach" if they wish to remain in teaching. Current unregistered teachers, many of whom are presumably considered satisfactory by their principals, therefore face effective downgrading or dismissal by Act of Parliament; the equity and possible costs (e.g. in compensation) of such a step do not appear to have been considered.

In sum, the case for the bill in terms of raising standards is lacking. The costs are liable to far exceed the benefits. Flexibility in curriculum development and delivery is reduced, and standards of teaching are likely to be lowered to the extent that barriers to entry are raised. The issue of teaching standards is crucial, but attention would be better directed towards the quality of the existing training institutions, their trainee selection processes, and the ability of schools to ease out poor performers from the existing teacher force. The position in equity of presently unregistered teachers and possible costs to compensate them for the effects of the bill on their careers do not appear to have been addressed.

## **Enhancing the status of teaching**

To achieve and maintain high status, a professional body requires the means to ensure ongoing competence, and disciplinary procedures. These are critical if entry to the occupation is limited to members of the professional body. Professional bodies should represent the interests of clients - not their members - by enforcing a code of ethics, if necessary against the interests of particular members of the profession. The Ministry of Justice has spent some time working with various professional bodies to improve their disciplinary procedures - both to ensure that parties from outside the profession are adequately represented and that the subject of a complaint is protected by due process.

Under the Education Act 1989, a registered teacher's certificate of practice is subject to renewal every three years, the present criterion being whether teachers can demonstrate they have been teaching for two of the last five years. We understand

that clause 5(2) of the bill has the effect of requiring teachers to satisfy the TRB that they have been *satisfactorily* employed for two years in education if their certificates of practice are to be renewed. Although the bill would make registration compulsory, it introduces no procedures to ensure that judgments about past performance conform to the requirements of natural justice. The onus of proof is on the teachers - who may have difficulty if they have had a disagreement with their principals - and final judgment rests with the TRB.

The TRB, in making decisions about renewal of registration, will have to depend very largely on the advice of school principals. What constitutes "satisfactory" employment is not defined in the bill, and principals and others are likely to have widely varying ideas about what it implies. The potential for 'politically correct' notions colouring such judgments is significant. Recourse to the High Court for judicial review may be possible but, in view of the expense involved, is hardly likely to be a practical route to follow for teachers who consider that they have been unfairly treated. Also judicial review is not an appeal procedure. Thus the bill appears to introduce a form of ongoing monitoring of professional competence without the usual safeguards.

Section 129 of the Education Act 1989 gives powers to the TRB, on application from a principal, to cancel the registration of a teacher where it is satisfied that the teacher is no longer a satisfactory teacher, subject to the teacher being given notice of this intention and the opportunity to make a submission to the TRB. We understand that this power is rarely used. However, the effect of clause 5(2) would be different. While s129 requires a principal to actively seek a teacher's deregistration and provides some procedural safeguards, clause 5(2) appears to allow a principal's expression of dissatisfaction with a teacher's performance to trigger expiry of registration and provides no safeguards.

As with the provisions in clause 4 about limited authority to teach, the proponents of the bill cannot argue that the provision for registration renewal is both nominal and effective. A process which is nominal would have little or no value as a safeguard of professional competence - principals and other senior school staff would merely issue 'satisfactory performance' reports every three years irrespective of the actual level of performance. If the process is intended to be effective in ensuring professional standards, so that unsatisfactory teachers are deregistered, it needs to incorporate procedures that can be relied upon and ensure that those making final decisions possess the necessary information and judicial skills or experience.

As with the issue of raising standards, it is tempting to seek to confer higher status by legislation. In practice, this is not usually so readily achieved. In seeking to limit school teaching to registered teachers, the bill seeks to elevate the TRB to the position of the controlling body of a professional organisation. Yet it is not structured along the lines of such a body and, as noted above, incorporates none of the usual disciplinary procedures. To impose a 'professional' type body on school teachers in this manner is highly arbitrary and raises deeper questions which clearly have not been addressed by the proponents of the bill. In our view, there are three processes which should be kept distinct:

- membership of a 'professional' body which sees its role as protecting the interests of its clients - school students - and which would police membership with this concern in mind and with proper safeguards. Whether this model is suitable for the school teaching occupation is a complex issue which needs separate examination. However, if such an organisation were to be established, membership should, in our view, be voluntary;
- voluntary registration by a statutory body (such as the TRB) which provides some minimum safeguards for schools and their students; and

- the employment contract between school boards and their staff.

In our view, problems of under-performing teachers need to be tackled in the context of the school/teacher employment contract and not by means of compulsory registration.

### **Providing increased protection for school students**

Schools clearly have a responsibility to provide a safe environment for students while in their care. Protection from sexual molestation is an important aspect of this wider issue. The issue concerns all employees in schools - not just teaching staff. The question is whether the bill will assist in providing this protection and, to the extent it may do so, whether the compulsory regime for teacher registration is necessary.

We understand that in the last 12 months 16 registered teachers from the state sector have been taken before the courts on charges of sexual molestation. Clearly, registration can provide no guarantee in this area. We have no information which might suggest that unregistered teachers are a greater problem in this respect than registered teachers.

The TRB is one of a limited number of national bodies to which, under the Privacy Act 1993, the police are prepared to disclose information on persons' criminal records. Schools cannot directly access this information. If it is believed that access to such information is helpful in safeguarding school students, there may be a case for providing access to that information in respect of the appointment of non-registered as well as registered teachers. (Indeed, that is one of the effects of the clause in the bill relating to limited authority to teach.) But such access does not require a compulsory registration regime for teachers. Appropriate access to police records might be provided through the TRB or otherwise and, if through the TRB, might conceivably lead to the issue of a simple certificate of clearance.

To the extent that unknowing employment of people with previous convictions for certain offences against children is a problem, emphasis could be put on disclosure when making a job application. Failure to disclose a conviction for those offences could be grounds for dismissal when discovered. This may require the amendment or over-riding of other Acts.

Doubt is also raised on the matter of student protection due to the peculiar coverage of the bill: kindergarten teachers are covered but not those in other forms of pre-schooling; and state schools are covered but not independent schools. If the aim of the bill is to protect students, such variations in coverage are inexplicable. As already noted, the ability to access police records could be provided by other means, which could readily encompass those educational establishments not covered by the bill.

In short, student protection does not require compulsory teacher registration, as the same effects can be achieved by other means which could readily encompass educational establishments not covered by the bill. However, whether such means are appropriate would itself require careful consideration in the light of the principles underlying the Privacy Act 1993.

### **Enhanced functions of, and change in the composition in, the TRB**

The Education Act (at s.128) simply requires the TRB, for the purposes of the relevant part of the Act, "to keep a list of people for the time being registered as teachers". The bill would widen the TRB's functions by requiring it, *inter alia*, "To promote quality education and high teaching standards". This is an extraordinarily wide function; it is not limited by words such as 'by maintaining a teacher registration system' and

potentially extends far beyond those activities associated with teacher registration. It is not clear what exactly is intended, but the additional function would, if it is to be carried out effectively, involve considerable costs in research and the development of policy advice - activities which are carried out by such agencies as the Ministry of Education and the Education Review Office. Additional budgetary provision will almost certainly be sought as it seems unlikely that it is intended that registration fees should pay for whatever additional activities are envisaged. A policy advice function would be inconsistent with the TRB's status as a Crown Entity. We consider that the TRB's functions should be limited to its role of carrying out its statutory responsibilities for teacher registration.

Section 132(3) requires the minister to ensure that no more than two of the five members of the TRB are teachers. Clause 7 would require the minister to ensure that there is a balance between teachers and non-teachers. "Balance" is not defined in the Bill but is presumably understood by its drafters in terms of numbers. With a board of five, the achievement of equal numbers is impossible. However, two out of five is clearly not seen by the drafters of the bill as constituting "balance"; we assume, therefore, that three out of five would be so seen. Thus the bill seems to be aiming for a teacher dominated TRB. This increases concern that the "limited authority to teach" and expiry of registration provisions could be administered in the interests of existing teachers rather than those of the wider community.

## Conclusions

We conclude that the case for compulsory registration is lacking because:

- schools are well equipped to judge whether registration should be required of applicants for teaching positions;
- the flexibility provided under clause 4 (limited authority to teach) will, if freely available, make the supposed assurance of standards meaningless and, if available only on a limited basis, reduce curriculum diversity and limit the development of Maori education, innovation, and 'seamlessness';
- the lower status of "limited authority to teach" is liable to deter able people from applying for, or remaining in, teaching positions. This could be particularly difficult for schools seeking to adjust their curriculum in line with the requirements of the increasing proportion of students staying on into the senior secondary school;
- the status of teaching will not be advanced by the bill as its deregistration provisions are inappropriate and seem likely to breach basic standards of natural justice. The issue of establishing a professional body for teachers is a complex one which needs careful analysis;
- the problem of under-performing teachers should be addressed in the context of the employment contract - not in the context of compulsory registration;
- the bill effectively downgrades or dismisses teachers who are not registered and who have been employed in good faith under the present voluntary regime. The equity and possible costs (e.g. in compensation) of such a move do not appear to have been considered;
- protecting school students does not require compulsory registration as this can be done by simpler means. Such means could also be readily extended to educational establishments not covered by the bill;
- the proposed widening of the TRB's functions would involve expensive duplication and are inconsistent with its status as a Crown Entity. A request for increased budgetary provision can be expected. The TRB's functions should be limited to activities closely related to its statutory responsibilities for teacher registration; and
- there is no evidence of which we are aware that the operation of the present voluntary regime has caused problems. By contrast, the provisions of the bill seem certain to cause problems and create costs.

Accordingly, we submit that the arguments behind the bill are not valid, and it should be not proceeded with.