



NEW ZEALAND COUNCIL OF TRADE UNIONS  
*Te Kauae Kaimahi*

**Submission of the  
New Zealand Council of Trade Unions  
Te Kauae Kaimahi**

to the

**Education and Science Select  
Committee**

on the

**Education Amendment Bill (No 2)**

**P O Box 6645  
Wellington  
April 2014**

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# NZCTU Submission Education Amendment Bill (No 2)

## Summary

- The CTU supports the submissions of its affiliates, the New Zealand Education Institute (NZEI), the Post Primary Teachers Association (PPTA), the Tertiary Education Union (TEU), the Tertiary Institutes Allied Staff Association (TIASA), the Independent Schools Education Association (ISEA) and the Public Service Association (PSA) on this Bill.
- This Bill is a serious attack on the democratic representation and participation processes for educational governance bodies.
- The Bill provides for the ability to exert political control over these councils and reduce their representative, democratic and professional power through smaller, less representative councils with a higher proportion of ministerial appointments.
- The Bill represents a move to model education governance on a private corporate model.
- There is no evidence as to how these proposals will lead to better decision making or examples of how this or similar models have succeeded elsewhere.
- Changes to the composition of the body responsible for the regulation of teachers run counter to the important principle of professional self-regulation.
- The Bill continues the dangerous policy of placing charter schools outside the rules and regulation of the public education system.
- A change to the appointment process of the body regulating teachers, without any elected members, is not in keeping with the processes for the regulating bodies of other professional occupations.
- The change for the teachers regulation body to be an independent statutory body is welcomed but this independence is undone if the members of the council are all ministerially appointed.

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- The ability to increase the number of Limited Authorities to Teach (LATS) will be to the detriment of educational standards, the quality of education and will reduce the right of students to an all-qualified and registered teaching workforce.
- There is no mandate from the outcomes of the 2013 consultation process for governance changes on university or wānanga councils.
- Union representatives should be on university and wānanga councils to represent and advocate for the rights and needs of workers and their education and training, and to play a role in the governance of public institutions.
- The union representing staff in wānanga, TUIA, who are a CTU affiliate, do not support the exclusion of staff and students from governing boards of education institutes.
- Staff representation on university and wānanga councils is necessary for the contribution they are able to make to their institutions' governance and development and to be represented in the governance of their institutions.
- The removal of the staff and student positions on university and wānanga governance bodies challenges fundamental higher education and university principles of the protection of academic freedom, institutional autonomy and threatens the role of critic and conscience played by universities.
- We support the PSA in their submission on this Bill that the Select Committee recommends including a schedule in the Bill that sets out the transfer protocols and industry standard protections for employees who are transferring from the Teachers Council to a new regulatory council for teachers.

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## 1. Introduction

- 1.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 330,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU supports the submissions of its affiliates, the New Zealand Education Institute (NZEI), the Post Primary Teachers Association (PPTA), the Independent Schools Education Association (ISEA), the Tertiary Education Union (TEU), and the Tertiary Institutes Allied Staff Association (TIASA) on this Bill.
- 1.4. The education unions represent approximately 80,000 union members working in the early childhood education, school and tertiary education sectors. Unions are the industrial and professional bodies for teachers, academics, teaching support staff and special education staff in these sectors. High union membership in the education and tertiary education sectors testifies to the highly valued role of unions.
- 1.5. We endorse the submission and concerns of the Public Service Association (PSA) who represent state sector workers affected by the changes to the Teachers Council.
- 1.6. This Bill affects other CTU affiliates who have members on university and wānanga councils. Under the current Education Act the CTU is entitled to nominate positions on university and wānanga councils. This Bill removes that right.
- 1.7. This CTU submission focuses primarily on the provisions in the Education Amendment Bill No 2 that would change the composition and size of the

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governance structures of the former Teachers' Council and the eight university and three wānanga councils.

- 1.8. The CTU, like our affiliates, sees this Bill as an attack on democratic representation and participation of the sector's workers in educational governance and the regulatory council for teachers. The current Act provides assured places on the Teachers Council for the teacher unions and staff, student and union positions on university and wānanga councils.
- 1.9. The changes proposed in the Bill to the governance arrangements on the Teachers Council, and university and wānanga councils are similar in their intent. The similarity is that the Bill gives the Government the ability to exert political control over the councils and reduce their representative, democratic and professional power. This is achieved through smaller, less representative councils with a higher proportion of ministerial appointments.
- 1.10. Our concern is that this reduction in democracy and accountability is a precursor to controversial (and in many cases poorly-thought through) changes that the Government seeks in the education sector and in education policy.
- 1.11. In the case of university and wānanga councils, the Bill removes student representation, staff representation and union representation and establishes smaller councils with either 3 or 4 government appointments depending on the size of the council. On the former Teacher's Council, (renamed as the Education Council Aotearoa New Zealand), the governance board would be wholly ministerial-appointed.

## **2. CTU Principles and Policy**

- 2.1. The CTU is a values-based organisation. Our responses, campaigns and actions are shaped by CTU values and policy.
- 2.2. An underpinning union value is that of participation - the right of workers and their representatives to have an active voice in their workplaces and industries,

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- and in their institutions and communities. The changes in this Bill run directly counter to this value.
- 2.3. Diversity is provided on councils by processes that enable particular groups and stakeholders to be represented and express the views of the groups for whom they speak.
  - 2.4. Section 171 (4) of the Education Act states that university councils should seek to reflect the *'ethnic and socio-economic diversity of the community served by each institution'*. Councils should be representative in terms of gender, ethnicity and social background of the community they serve.
  - 2.5. The model, which ensures representation of those who are stakeholders in institutions and who may not hold positions unless they are reserved for them, is a critical and common feature of the governance of public institutions and is an important democratic principle and practice.
  - 2.6. We oppose the moves by the Government manifest in this Bill to model education governance on a private corporate model. The appointments by the current Minister of Tertiary Education on educational governance bodies are now heavily skewed towards people with business backgrounds: CEOs, company directors, accountants or commercial lawyers.
  - 2.7. Education is a public good and as such belongs to society for the greater good of society. Because education is a public good and belongs to all of us, its governance should be independent, democratic and representative.
  - 2.8. The changes proposed are not backed by sound evidence. For example, the explanatory note to the Bill states that *"Councils tend to be large which may not support efficient decision making"*. There is no evidence in any of the Cabinet papers as to how these proposals will lead to better decision making or examples of how this or similar models have succeeded elsewhere. Smaller councils may well make decisions more quickly but whether these are *better* decisions is a very different matter.

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- 2.9. Changes to the makeup of the body responsible for the regulation of teachers overturn the principle of professional self-regulation. The principle of self-regulation is that professionals have a contract with the government and society in which they are responsible for protection of the public good. Because of the training, skills and advanced knowledge of the profession, they determine the rules of the profession including educational standards, entry processes and disciplinary rules.<sup>1</sup>
- 2.10. The role of a regulatory body is different to that of a professional association and also to that of unions. We and our affiliates appreciate and take this distinction seriously. The education unions have consistently nominated people to the Teachers Council who have the necessary skills, competence, experience and training to be on the body that is responsible for the regulation of the profession.
- 2.11. Provisions in this Bill could facilitate the suppression of dissent at a governance level if the Government attempts to push through more significant changes to education policy. A recent example of concern is the exemption of charter schools from the requirement for teachers to be qualified, putting in question the value ostensibly placed on sound registration processes.
- 2.12. The Bill continues the policy of placing charter schools outside the rules and regulation of the public education system and increases educational risks through the exemption for unqualified people acting as teachers in charter schools.

### **3. Teachers Council**

- 3.1. The Bill disestablishes the Teachers Council and establishes a new body – the Education Council of Aotearoa New Zealand (EDUCANZ). The CTU shares the concerns of its affiliates, the PPTA and NZEI and ISEA about the establishment of this new Council.

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<sup>1</sup> [http://www.oavt.org/self\\_regulation/docs/about\\_selfreg\\_randall.pdf](http://www.oavt.org/self_regulation/docs/about_selfreg_randall.pdf)

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- 3.2. The Bill gives the Minister the right to appoint every member of EDUCANZ. There is no requirement to have practising teachers, principals or educational professionals on the body responsible for the regulation of teachers.
- 3.3. These changes are directly at odds with the statement by the Minister of Education for *“a strong independent body that provides leadership to and is owned by the teaching profession”*.<sup>2</sup> The proposed arrangements will reduce and remove any sense of ownership by the teaching profession.
- 3.4. An expert profession has a critical role in setting and maintaining its own standards. This is the teaching profession’s own body and is funded by teachers through practicing certificates. Their sense of ownership and representation is critical. The teaching profession would be disenfranchised by the provisions in this Bill.
- 3.5. Political appointments will influence the Council members into being overly responsive to the Ministers’ wishes and move away from the principle of professional autonomy. The teachers’ unions see this as exerting political control:
- “It’s clear from the Bill that the intention isn’t so much to raise the status of teaching as to remove professional autonomy and bring teachers firmly under the control of politicians.”*<sup>3</sup>
- 3.6. There is no requirement in the Bill for the regulatory body to be broadly representative of the teaching profession. The only requirements are to have regard to the collective skills, experience and knowledge of the council members, and to take into account a number of individual skills, which include governance, leadership experience and financial skills.
- 3.7. A change to the appointment process for the council regulating teachers is not in keeping with other professional occupations. The Nurses Council has re-

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<sup>2</sup>

<http://www.minedu.govt.nz/~media/MinEdu/Files/TheMinistry/NZTCReviewProposals2013/NZTCReviewQandA.pdf>

<sup>3</sup> <http://teu.ac.nz/2014/03/government-teachers-council/>



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- established a process by which some members are elected from the profession. Medical professionals have always had the right to elect members on to the Medical Council.
- 3.8. We support the change to make the teachers regulatory body an independent statutory body. But this independence will be jeopardised if the members of the council are all appointed by the Minister.
- 3.9. The concerns about the political nature and intention of these changes is reinforced by the recent comments of Dr. John Morris, the chair of the current Transition Board for EDUCANZ. In a recent report for the business group, The New Zealand Initiative, *Teaching Stars – Transforming the Education Profession*, Dr. Morris outlined a role for EDUCANZ in developing pay performance systems and referred to a plan to bring in standards-based performance pay.
- 3.10. It was entirely inappropriate for Dr. Morris to make these comments in his role as Chair of the Transition Board. But by doing so he clearly established his position that EDUCANZ is a body to pursue performance pay in the teaching profession. Not only would this heavily politicise EDUCANZ and bring it into long-lasting conflict with teachers, but it would be an attack on collective bargaining which the union movement would strongly oppose.
- 3.11. This Bill is an attack on teachers and the teaching profession and the CTU shares the concerns that it is imposing greater control to further a political agenda for education.

### **4. University Governance**

- 4.1. This Bill was preceded by a consultation document which proposed decreasing the size of councils and introducing ministerial appointments.
- 4.2. The CTU's submission to this consultation process stated:

*"The proposals in the documents are a challenge not only to values supported by the CTU of democratic participation and diversity representation, but also*

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*to fundamental higher education and university principles of protecting academic freedom, institutional autonomy and the critic and conscience role played by universities”.*<sup>4</sup>

4.3. We also expressed concern that this process had a predetermined outcome despite its stated purpose to be a consultation document:

*“We are very concerned that this is a process with a predetermined outcome and the consultation process and document has been constructed to advance these proposals rather than to commence a genuine and open discussion about university and wānanga governance”.*<sup>5</sup>

4.4. There is certainly no clear mandate from the outcome of that consultation process for these governance changes. The summary report from the consultation process noted that:

*“Universities are mixed in their support. Business NZ and Business Central both support the proposals .....Unions and staff generally oppose the proposals as do student submitters and their associations including NZUSA and Te Mana Ākonga. Most other submitters also oppose the proposals”.*<sup>6</sup>

4.5. The key themes from the analysis of the submissions were:

- *Staff and student representation on councils is valuable in informing council decision-making.*
- *Council members should have the appropriate knowledge, skills or experience to govern universities, as long as these are broadly defined to recognise the value that students, staff and other stakeholders can bring to councils.*
- *Smaller councils, without required representational membership, would lack the diversity needed to link universities to their stakeholders and communities.*
- *Universities are unique institutions and are different from other organisations (for example, institutes of technology and polytechnics (ITPs) and private-sector organisations), and this uniqueness should be reflected on universities’ councils.*

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<sup>4</sup> <http://union.org.nz/policy/ctu-submission-university-and-wananga-governance>

<sup>5</sup> Ibid

<sup>6</sup> <http://www.minedu.govt.nz/theMinistry/Consultation/ReviewofUniversityAndWanangaGovernance.aspx>

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- *The proposed changes would negatively impact institutional autonomy and academic freedom.*
- *Insufficient detail and evidence has been provided regarding the proposals for change and the rationale behind them.*

- 4.6. Despite the overwhelming voice of the sector against these changes, the Bill has been introduced with proposals that are almost identical to those in the consultation document. These proposals were rejected by most submitters.
- 4.7. The proposed council composition is almost guaranteed to reduce diversity on university and wānanga councils. An analysis by the New Zealand University Students Association of the appointments made by the Minister of Tertiary Education, Hon Steven Joyce, demonstrates this. Just sixteen percent of the appointments have been women although women are 60 percent of university students. He has appointed just one Māori and no Pasifika council members. Eighty-six percent of the appointments are CEOs, company directors, accountants or commercial lawyers.
- 4.8. The union representing staff in wānanga, TUIA, who are a CTU affiliate, do not support the exclusion of staff and students from governing boards of education institutes.
- 4.9. The opposition to the Bill is unsurprisingly widespread. The Vice Chancellor of Auckland University has stated that this legislation, if enacted, *“would significantly threaten the autonomy and international reputation of universities”*.<sup>7</sup>
- 4.10. The representative body of New Zealand’s eight universities, Universities NZ Te Pōkai Tara, has stated publicly its opposition to the plan to change the composition university councils. It states that the changes are of *“great concern”* and *“undermine a model of governance that has worked well to reflect the broad range of voices universities represent”* and that *“moves to increase the proportion*

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<sup>7</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11229742](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11229742)

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*of Ministerial appointees and the control that government has over university councils will be a backwards step for New Zealand”.*<sup>8</sup>

- 4.11. Along with removing student and staff representatives the Bill removes the dedicated role for union representatives on university and wānanga councils. This disregards the role of unions in providing a collective and organised voice in education and on education institutional bodies. This must be seen as a strategy to silence this voice by changing the structures that enable voice and representation.
- 4.12. Union representation is through a nomination from the CTU as the central organisation of workers under s. 171(f)(ii). It brings an “industry” view to councils. Workers, at least as much as employers, have an interest in an education system that suits the needs of all industry participants. Their viewpoint not only brings industry experience and recognises the need for employment to grow and industry sectors to thrive but also represents the need for individual workers to maintain careers and ongoing professional development that may be independent of a particular employer or industry sector.
- 4.13. Staff representation on councils brings strong knowledge of the academic process and of the institution itself, and expertise in areas of the institution’s operation as well as channels to further information. They thus make available to the council independent and relevant knowledge which may not come through other channels such as management, either because it is not available to management or because management does not have an interest in making it available. When most or all of the council members are ‘lay’ members, valuable independent sources of information are lost and council becomes dependent on management for information. This can carry high risks, especially if management is not performing well.
- 4.14. Staff representation is about recognising the importance of democratic participation and the role of staff in autonomous institutions. Both of these

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<sup>8</sup> <http://www.universitiesnz.ac.nz/node/737>

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- practices are widely recognised in similar institutions internationally. In removing staff, student and union positions, the Bill is denying the rights of democratic participation and also reducing the diversity of representation on the councils.
- 4.15. The removal of the positions is also challenging fundamental higher education and university principles of the protection of academic freedom, institutional autonomy and threatening the role of social critic and conscience played by universities.
- 4.16. The justification given for changes to the councils of Institutes of Technology and Polytechnics (ITPs) which removed student, staff and community representation was because they were experiencing significant financial pressure. At the time it was said that universities were not in the same position and there was no need to change the arrangements on university councils.
- 4.17. But the argument was fallacious given that the majority of ITPs were performing either at, or in excess, of the Tertiary Education Commission requirements. Any improvement in financial or other performance since the changes to ITP councils therefore cannot be claimed as being attributable to the new governance model. Yet the same model is being applied to universities, with the justification that this will make universities and wānanga councils more *nimble* ”.
- 4.18. Universities are not the same as companies, with quite different objectives, communities of interest, cultures, time horizons, constitutions, statutory roles and ways of working, and yet it is the corporate model that this Bill is applying to university and wānanga councils. There are fundamental differences, and there must be, between university councils to corporate and business boards.
- 4.19. The governance of tertiary education institutions has particular characteristics. In a review of the governance of tertiary education institutions in 2002, Meredith Edwards identified governance as, “*encompassing not only processes and structures, but also relationships and the intersections between them.*”<sup>9</sup>

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<sup>9</sup> Meredith Edwards( 2002) *Review of New Zealand Tertiary Education Institution Governance* , Ministry of Education 2003

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*“Governance is concerned with the determination of values inside tertiary universities, their systems of decision–making and resource allocation, their mission and purposes, the patterns of authority and hierarchy, and the relationship of universities as institutions to the different academic worlds within and the worlds of government, business and community without. It embraces leadership, management and strategy”.<sup>10</sup>*

- 4.20. The Government says that changes are needed to meet modern learning needs. They argue that the current council membership requirements are too inflexible but fail to explain what is meant by being more flexible or present any evidence of how smaller councils will be more flexible.
- 4.21. The explanatory notes to the Bill state that the changes to membership composition are needed to allow universities to recruit onto councils the expertise they want. This is contradictory. On the one hand the Government is saying that universities need to have more flexibility but then prescribing how many will be on the councils and also bringing in political appointments.
- 4.22. There is no case for the assertion that New Zealand university councils are too large. Most of the world’s leading universities have governing bodies larger than the current size of the New Zealand University councils. Melbourne University has a council of 20, Queensland has 22, Cambridge University has 24, Harvard University has 32. We are not aware of any university councils with as few members as the Bill proposes. Large and diverse governing bodies are the norm internationally in academic institutions.
- 4.23. There is also not an argument for saying that changes need to be made because New Zealand universities are failing. By international standards New Zealand universities are doing well. The 2013 World University Rankings from Quacquarelli Symonds placed all of the eight New Zealand universities in the world’s top 500.

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<sup>10</sup> Marginson, S. ,Considine, M. (2000) the *Enterprise University: Power, Governance and Reinvention in Australia*, Cambridge, Cambridge University Press.

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- 4.24. The Bill's provisions would skew university councils to appointees with business interests, and have strong potential to negatively impact on institutional autonomy and academic freedom.
- 4.25. Making universities more corporate-like and moving to a business governance model is in conflict with the role of councils as defined in the Education Act 1989 which sets out the function of councils:

*It is the duty of the council of an institution, in the performance of its functions and the exercise of its powers,—*

*(a) to strive to ensure that the institution attains the highest standards of excellence in education, training, and research:*

*(b) to acknowledge the principles of the [Treaty of Waitangi](#):*

*(c) to encourage the greatest possible participation by the communities served by the institution so as to maximise the educational potential of all members of those communities with particular emphasis on those groups in those communities that are under-represented among the students of the institution:*

*(d) to ensure that the institution does not discriminate unfairly against any person:*

*(e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability:*

*(f) to ensure that proper standards of integrity, conduct, and concern for—*

*(in) the public interest; and*

*(ii) the well-being of students attending the institution—  
Are maintained.*

- 4.26. It is by protecting the autonomy of tertiary education institutions that staff and students can exercise their role of critic and conscience of society without fear or favour.

## **5. Limited Authority To Teach Changes**

- 5.1. We support our affiliates' concerns regarding the clauses in the Bill which extend the provisions for Limited Authority to Teach (LATS). An increase in the number of LATS will be to the detriment of education standards and reduce the right of students to a qualified and registered teaching workforce.

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## 6. Staff Protections – Teachers Council

- 6.1. The CTU supports the submission of the PSA regarding the transition of the Teachers Council to EDUCANZ. The PSA members currently working at the Teachers Council have every reason to be concerned about the security of their jobs.
- 6.2. Currently no employee of the Teachers Council has any protection during this transition process. This places employees and their families in an unnecessarily uncertain and stressful situation. Furthermore, the lack of a clear and agreed transfer process and employment protections will impact on the establishment of the new entity. In the face of employment insecurity, those employees with the best opportunities for work in other organisations will take those opportunities. This will remove institutional knowledge and leadership and substantially increase recruitment costs.
- 6.3. The PSA is seeking to settle a collective employment agreement with the Teachers Council and an agreed process for restructuring and transfer situations. The employer has declined to agree to a collective agreement that makes any provision for change management process.
- 6.4. Therefore, in the absence of such an undertaking, we support the recommendation of the PSA that the Select Committee include a schedule to the Bill that sets out the transfer protocol and contains industry standard protections for transferring employees.

## 7. Conclusion

- 7.1. This Bill is a serious attack on the entire New Zealand education system. It follows other changes to the sector that alter the character and basis of our internationally well-regarded education system. The Bill shifts the current educational governance structures to corporate and business-based model and has the potential to significantly change the education curriculum and lower educational standards.



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- 7.2. Participation and representation of staff, student and unions on education governance boards is a means by which the voice and views of critical stakeholders improve the responsiveness and performance of educational institutions. The removal of these positions and the replacement by smaller boards appointed by the minister will impact on the democracy and autonomy of the entire education system.