

## Summary

This paper examines further courses of action PPTA could take to influence the shape of the Education Amendment Bill (no. 2) that aims to replace the Teachers Council with a government appointed body. The paper seeks to build on the influence PPTA members have already had on the bill at the select committee stage and explores the implications of various General Election results.

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## 1. Introduction

1.1 This paper is being written at a time of considerable uncertainty about the 2014 election result, but will be considered by Annual Conference at a stage when at least the general shape of the new government is likely to be known.

1.2 This means that the recommendations have to provide for two general scenarios. It will be up to Annual Conference delegates to determine at the time whether it is appropriate to vote on only one of the substantive recommendations, or on both, as it is possible that the final shape of the government will still be under negotiation.

## 2. The PPTA campaign so far

2.1 PPTA members excelled themselves in their response to Executive's call at the Paid Union Meetings for large numbers of submissions to the Select Committee, including submitters requesting oral presentations in order to delay the proceedings of the Committee.

2.2 Those who submitted orally impressed Select Committee members from all parties by their knowledge, their eloquence, and their passion for the cause of having a registration body for teachers that is led by teachers.

2.3 As a result, one significant change was able to be agreed by all the parties represented on the Select Committee and included in the Bill when it was reported back to the House:

2.3.1 The insulting wording "A maximum of 5 of the members must be people who are registered under section 353" was changed to read "At

least 5 of the members must be people who are registered under section 353 and hold a practising certificate under section 361.”<sup>1</sup>

2.4 This amendment meant that the second of PPTA’s bottom lines as set by Annual Conference 2013, i.e. a majority of practising teachers, was met.<sup>2</sup> (A shift from crown entity to statutory authority status was already achieved in the Bill.)

2.5 Another benefit of members’ sterling efforts at the submissions stage was that a Bill that the Minister attempted at its First Reading to convey as uncontroversial, describing it as “the result of a 3-year conversation”, suddenly appeared to the government to be a hot potato. As a result, it did not even get “above the line” on the order paper when it was reported back, signalling that it would not be debated before the election.

2.6 This does not mean, though, that a newly elected National-led government, full of the confidence of victory and in the first year of a new term, would not immediately leapfrog it to the top of parliament’s order paper.

### 3. Why the campaign must continue

3.1 It is Executive’s view that the amended Bill is still seriously flawed and cannot be allowed to pass in its current form.

3.2 Furthermore, the government is claiming that its single concession to the hundreds of concerned submitters, to change the “maximum of 5” to “at least 5”, shows that they have listened and responded. This can be seen, however, as a cynical ploy to appear to be responsive

1. The amended Bill can be seen at [http://www.parliament.nz/en-nz/pb/sc/documents/reports/50DBSCH\\_SCR56752\\_1/education-amendment-bill-no-2-193-2](http://www.parliament.nz/en-nz/pb/sc/documents/reports/50DBSCH_SCR56752_1/education-amendment-bill-no-2-193-2)

2. Five would not be a teacher majority in the current Council of eleven, but it is for the new Council which is reduced to nine members under the Bill.

while failing to address most other major issues raised by submitters.

3.3 Two of PPTA’s bottom lines have still not been met: elections for teacher positions, and the right of PPTA to nominate a member to a position that is reserved for a PPTA nominee. The Minister retains the power to select all Council members from a general pool of nominations received and from people she chooses herself.

3.4 In addition, the Minister’s offensive name for the Council remains, meaning that we would have the only teacher registration body in the world whose name does not include either the word “teacher” or “teaching”. The symbolism of this was not lost on members in their submissions.

3.5 Members noted that the name went along with a dangerous loosening of the ability for untrained people to obtain a Limited Authority to Teach (LAT), with the Bill allowing such people to obtain a LAT to tout themselves around a range of schools, rather than only to fill a vacancy in a particular school that is unable to fill it with a trained and qualified teacher.

3.6 The Code of Conduct which PPTA submitters found so repugnant remains.

3.7 The burdensome audit and moderation of 10% of practising certificates remains, only it has been reworded in a way that makes it clearer but worse: “auditing and moderating the appraisals made for at least 10% of the practising certificates issued or renewed in each year”. This implies a level of interference in school processes that would be quite intolerable.

3.8 The purpose and functions of the Bill remain as wide as ever, and likely to distract the new council from its proper focus on its core business.

3.9 The permissive nature of the legislation remains unchanged. This means

that key elements of the current regulatory framework could be altered by the new body without notice. These include the Code of Ethics, the Registered Teacher Criteria, the registration framework, or the teacher education course approval requirements, all of which are the product of extensive consultation with the profession.

3.10 And perhaps even worse, the Bill remains very poorly drafted, with problems that the Teachers Council submission highlighted as positively dangerous to the safety of students but which the Select Committee failed to address. (The Teachers Council offered to help the Ministry correct these faults in the Bill, but this offer was never taken up.)

3.11 These drafting problems are generally in the competence and discipline parts of the Bill, e.g.

3.11.1 There is no provision for cancelling the registration (as distinct from practising certificate) of a teacher who has been found to be incompetent whereas they can for misconduct;

3.11.2 The maximum fine the Disciplinary Tribunal can impose in response to any breaches of its orders such as a suppression order to protect student complainants is \$1,000, a paltry amount for a media organisation or community group determined to breach such an order;

3.11.3 There is no time period specified within which a Court Registrar must report the conviction of a teacher, which means that a teacher convicted of a serious offence could continue teaching for a considerable time before a report is received by the Council.

3.12 However, while the Bill has been reported back with the amendments that the Select Committee was able to agree on, this does not mean that further amendments cannot be made. This would be done during the committee stages of

the Bill, by Supplementary Order Papers put forward by parties other than National (as sponsors of the Bill), and it might be possible to get sufficient support for at least some of these to be incorporated into the Bill.<sup>3</sup>

## 4. Positions of the political parties

4.1 The National Party's position is pretty clear. They intend to proceed with the Bill if re-elected on September 20. In this, they will most likely be supported by whatever support parties they line up in the new parliament, although there may still be room to persuade these support parties to vote against the Bill unless it is amended further.

4.2 Labour would not proceed with the Bill as it is currently drafted. Its Manifesto says only that "Labour will support a self-governing teaching profession through the introduction of a democratic process for appointing the Board of the new Education Council". The wording of this suggests that more work would need to be done with Labour, if they were in government, about a number of matters. These include the absence of "teachers" or "teaching" from the name, the value of union nominees on the council, and other matters. Their minority report in the amended Bill does, however, show awareness of the issues around democratic representation, the code of conduct, the purpose and functions, the 10% audit and moderation requirement, and the extended LAT.

4.3 New Zealand First's minority report in the amended Bill makes it clear that they understand the issue of the name, the risks from expansion of the LAT status, and the dangers of the overly broad purpose and functions in the Bill.

3. For an explanation of the stages through which a Bill goes to become law, see <http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/laws/00CLOOCHowPWorksLawsHow1/how-a-bill-becomes-law>

4.4 The Green Party's minority report agrees with submitters' concerns about the purpose and functions, the name, the expanded LATs, and the code of conduct.

4.5 It is likely, therefore, that a government consisting of Labour, New Zealand First and the Greens would be likely to replace this Bill with legislation that PPTA members could be comfortable with.

## 5. Scenario 1: A National-led government is returned

5.1 Recommendation 2 provides a set of possible actions with the goal of achieving further changes to the Bill at the committee stage.

5.2 The recommendation asks Executive to initiate a campaign including the elements listed and other elements as appropriate.

5.3 The development of Supplementary Order Papers (SOP's) would be a way to assist opposition parties to make amendments to the Bill in the committee stages. SOP's drafted could be offered to a number of opposition spokespeople as part of lining them up to oppose the more offensive aspects of the Bill.

5.4 It is also feasible that a new Minister might be given the responsibility for education after the election. This could open up the possibility of the government itself agreeing to make further changes to the Bill at the committee stage.

5.5 While members might be feeling weary from what has been a long struggle on these issues, the tried and true strategy of lobbying local MPs can help to firm up their parties to oppose particular aspects of a Bill. Unless National has won the election with a simple majority and has no need of support parties, there is always scope to line up one or more support party alongside opposition parties on particular aspects of a Bill.

5.6 The media have shown very little interest in this issue so far, but after the election they might be more interested in stories of this kind.

5.7 Recommendation 2.d. recognises that other ideas for suitable action will emerge from discussion of this paper in branches, regions, and at annual conference, and gives Executive the authority to add these to the campaign strategy.

5.8 Recommendation 3 provides for a situation where the government has ignored the opposition and passed the legislation regardless. It empowers Executive to develop a programme of actions by members that would constitute non-cooperation with the new body. The aim of this would be to show that members do not recognise the authority of the new body and are acting as if the Teachers Council is still in place. It would involve Executive consideration of:

5.8.1 Refusing to comply with the new code of conduct but being meticulous about observing the Code of Ethics;

5.8.2 Gathering evidence against the current Registered Teacher Criteria but not supplying it for the 10% audit;

5.8.3 Refusing to gather evidence against any new standards;

5.8.4 Refusing to re-register with the new body;

5.8.5 Refusing to participate in any activities called by the new body;

5.8.6 Using members' capacity to take industrial action once the STCA expires;

5.8.7 Other actions proposed by members.

5.9 It is important that the Executive not be restricted to a particular course of action because it might not be the most appropriate at the time. This is an ever-changing landscape which requires Executive to be nimble, thus Recommendation 3 is a general rather than specific authority.

## 6. Scenario 2: A Labour-led government is elected

6.1 This scenario would not be likely to require members to continue the struggle on a national scale, but would require Executive and staff of PPTA to work closely with the new government (including all its support parties) to ensure that any replacement legislation avoided all of the dangers of National's Education Amendment Bill No.2.

6.2 One option to pursue would be a very simple Bill which changed the status of the current Teachers Council from crown entity to independent statutory authority, but retained most other elements of the current legislation.

6.3 There are some other improvements that PPTA has sought over the years, particularly in the area of reducing the functions of the current Council to ensure that it focuses on its core business. These could be incorporated in such a Bill.

6.4 Minor changes such as these would achieve all of the requirements set out in Recommendation 4.

6.5 If the new government were determined to introduce more major legislation to "reform" the Teachers Council, then Recommendation 4 sets out the elements that PPTA would seek to have included in such a Bill.

## 7. Conclusions

7.1 Members have shown very clearly that they want a teacher registration body which is led by the profession. This includes both elections and union nominees.

7.2 At the same time, members have shown that they understand that all such bodies include some ministerial appointees, and that this is reasonable in order to represent the public interest.

7.3 However, the idea that teachers should be "led" by a body which is entirely ministerially appointed is simply offensive. For the government to claim that Education Amendment Bill No.2 delivers an "independent" teacher registration body is bizarre.

7.4 The future of the Teachers Council rests largely on the election result. The timing of Annual Conference, 10 days after the election, will ensure an interesting debate on this paper.

## 8. Recommendations

- ~~1. That the report be received.~~
- ~~2. That in the event of a National led government being returned to power, PPTA Executive be asked to initiate a programme of action to seek further amendments to the Bill, to include the following:~~
  - ~~a. Provision, to opposition and support party MPs, of amendments to be presented as Supplementary Order Papers;~~
  - ~~b. Lobbying materials for members to use with local MPs from all parties;~~
  - ~~c. Media materials for use nationally and by regions;~~
  - ~~d. Other elements as determined by Executive.~~
- ~~3. That in the event of Education Amendment Bill No.2 being passed into~~

law without sufficient improvements being made, Executive be empowered to initiate a programme of non-cooperation with the new body.

4. That in the event of a Labour led government winning the 2014 election, PPTA lobby the new government to drop Education Amendment Bill No.2 and replace it with well drafted legislation which meets PPTA's four bottom lines and also addresses other key issues, i.e.:

- a. Statutory authority status instead of a crown entity;
- b. A majority of practising teachers;
- c. Elections for teacher positions;
- d. The right of PPTA to nominate a member to a position reserved for a PPTA nominee;
- e. A name which includes either "teachers" or "teaching";
- f. Greatly reduced purpose and function statements;
- g. No relaxation of the current rules about Limited Authorities to Teach;
- h. No Code of Conduct;
- i. No requirement to audit and moderate a set percentage of practising certificate renewals each year.

## Demolition or Restoration: The Election and Our Fight for the Teachers Council

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1. THAT the report be received; and
2. THAT PPTA Executive be asked to initiate a programme of action to seek further amendments to the Bill; and
3. THAT in the event of Education Amendment Bill No. 2 being passed into law without sufficient improvements being made, the Executive shall determine to what extent PPTA will co-operate with the new body; and
4. THAT any programme of action by members proposed by Executive against the new Council be subject to a membership vote.