Submission to the Education and Science Committee on the Education (Update) Amendment Bill 2016

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Introduction

1. The Human Rights Commission (‘the Commission’) welcomes the opportunity to provide this submission to the Education and Science Committee on the Education (Update) Amendment Bill (‘the Bill’).

2. While the Bill introduces a number of significant updates to the legislative framework governing the primary and secondary education sector, the Commission is concerned that several important issues are overlooked by the Bill and recommends a number of amendments to rectify these omissions. In particular, the Commission wishes to highlight the need to legislatively address the right to inclusive education for disabled children; the need to more specifically address bullying prevention and capture of data about instances of bullying; and the need to address the provisions regarding school stand-downs, suspensions, exclusions and expulsions. Concerning the latter, the Commission emphasises the need to ensure that the Bill’s proposed introduction of video or teleconference attendance for school suspension hearings does not compromise fair hearing rights for students and their families.

3. Further, the Commission notes that the Bill could have provided an opportunity to review the provisions of the Education Act 1964 concerning religious instruction in state primary schools\(^1\). This is an issue of some contention within the community and has recently been subject to legal proceedings concerning the consistency of those provisions with human rights standards. It therefore might be timely for the Committee to consider and review the legal framework governing this area.

Background and Overview of Submission

4. The reform process that led to the Bill can be traced back to the May 2014 report of the Taskforce on Regulations Affecting School Performance (‘the Taskforce report’), which examined the case for a review of the Education Act 1989 (‘the Act’) and issued several recommendations for its improvement and modernisation. The following year, the Ministry of Education’s released its discussion document Updating the Education Act 1989, which officially launched (what it described as) the first fundamental review of the Education Act 1989 (‘the Act’) since it was enacted over 25 years ago.

\(^1\) Section 77-80, Education Act 1964
5. Any fundamental reform of the laws governing the education sector is going to have human rights implications – the right to education is a human rights principle of core economic and social importance. It is therefore significant that human rights law and policy in New Zealand has evolved considerably since the Act came into force in 1989. During that time, the New Zealand Government has, among other things, ratified the UN Convention on the Rights of the Child (‘UNCROC’) and the UN Convention on the Rights on Persons with Disabilities (‘UNCRPD’). Both these treaties contain provisions concerning the right to education that are of direct application to the New Zealand education system and its legislative framework.

6. New Zealand’s performance in meeting and upholding the right to education has recently been subject to the scrutiny of the UN Committee on the Rights of the Child (UNCROC Committee), as part its 5th periodic review of New Zealand under UNCROC. The UNCROC Committee’s resulting report on New Zealand, and the recommendations contained within it, provides an important contemporaneous point of reference for assessing of the Bill’s consistency with human rights standards.

7. In addition, the General Comment of the UN Committee on the Rights of Persons with Disabilities (UN CRPD Committee) on the right to an inclusive education under Article 24 of the UNCRPD and the corresponding interim report of New Zealand’s Independent Monitoring Mechanism (IMM) on the UNCRPD on the right to inclusive education under Article 24 (both issued in 2016), are equally pertinent to the Education and Science Committee’s consideration of the Bill.

8. In summary, the Commission welcomes a number of the amendments that the Bill seeks to introduce. In particular, we welcome the setting of values pertaining to inclusion, diversity, cultural identity and Te Reo Māori within the intended framework for the statement National Education and Learning Priorities (introduced by clause 1A) and the introduction of an inclusive education obligation upon school boards under Schedule 6. We also note the forward-thinking approach behind the introduction of provisions that are intended to govern the nascent Communities of Online Learning policy. In addition, the Commission welcomes the Minister’s recent announcement that supplementary legislation will be introduced that will explicitly prohibit the use of seclusion rooms in schools.

9. However, the Commission also considers that there a number of significant missed opportunities within the Bill. It does not update the rights to education under sections 3
and 8 of the Act to incorporate the contemporary human rights principle regarding the right to an inclusive education. Nor does it attempt to amend the Act’s substantive provisions that establish the disciplinary regime of stand-downs, suspensions, exclusions and expulsions\(^2\). Furthermore, the Bill does not provide for any requirement to monitor, evaluate and report on school outcomes regarding inclusive education, nor student safety and well-being (including bullying).

10. In its submission on the Bill, the Commission has focused on the following issues:

a. Part 1AA – A Statement of National Education and Learning Priorities  
b. Including the right to education in Part 1  
c. Inclusive education for school boards  
d. Addressing bullying in schools  
e. Communities of online learning  
f. Stand-downs, Suspension, Exclusions and Expulsions  
g. Monitoring and reporting

11. The Commission has made recommendations pertaining to each of these areas, a summary of which is included in an annexure to this submission.

Part 1AA - A Statement of National Education and Learning Priorities

12. The most significant amendment to the purposive section of the Act is brought about by clause 1A of the Bill, which introduces a new Part 1AA that empowers the Minister to issue a statement of National Education and Learning Priorities, to be published in the New Zealand Gazette.

13. The Commission notes that in its 2016 report on New Zealand, the UNCROC Committee prefaced its education-related recommendations with reference to Target 4A of the UN Sustainable Development Goals (SDGs) which includes the provision of safe, non-violent, inclusive and effective learning environments for all\(^3\). The New Zealand Government has confirmed its commitment to meeting the SDG targets by 2030 and formation of an implementation plan that “identifies actions, builds ownership and measures results”\(^4\).

\(^2\) Section 13-18, Education Act 1989  
\(^3\) Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of New Zealand, CRC/C/NZL/CO/5, 30 September 2016, paragraph 37  
14. The Commission welcomes the emphasis placed in clause 1A(3)(b) upon “instilling” in students the values regarding inclusiveness, diversity, cultural identity, Te Reo Māori and the Treaty of Waitangi. As well as being reflective of the SDG Target 4A, it also responds to some degree to the recommendation of the 2014 Taskforce report for the establishment of a new purpose statement that sets out the “desired outcomes” of the primary and secondary education system. The Taskforce considered that such a purpose statement should be “enduring, inclusive, student-centred and embrace a breadth of desired student outcomes”\(^5\).

15. However, the Commission considers that a statement of National Education and Learning Priorities should be equally aimed at “instilling” a commitment to deliver those values within schools and the administrative, commercial and government entities that oversee them. Without such a corresponding commitment, the task of instilling such values in students will be difficult to achieve. The Commission accordingly recommends an amendment to clause 1A to ensure that such a commitment is expressed within a statement of National Education and Learning Priorities issued under that provision. The Commission also recommends the inclusion of a provision that promotes among students’ respect for the safety and well-being of others.

16. The Commission welcomes the intended promotion under clause 1A(3)(a)(iii) aimed at promoting participation in community life and fulfilment of civic and social responsibilities. This development follows, in part, the 2012 recommendation of the Constitutional Advisory Panel that the New Zealand Government “develops a national strategy for civics and citizenship education in schools and in the community, including the unique role of the Treaty of Waitangi, te Tiriti o Waitangi, and assign responsibility for the implementation of the strategy.”\(^6\)

17. Given that human rights principles underpin the relationship between citizens and the state, and amongst citizens themselves, the Commission considers that clause 1A(3)(a)(iii) provides an ideal opportunity to further the provision of human rights education in schools and raise awareness of the human rights concepts that underpin the values of diversity and inclusiveness. However, in order to reinforce this (and respond to the recent recommendation of the UNCROC Committee for the Government to

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\(^6\) http://www.ourconstitution.org.nz/Recommendations
increase its human rights awareness-raising activities\(^7\), the Commission recommends that express reference to developing respect for human rights is included within clause 1A.

**Recommendation 1**

The Commission accordingly recommends that:

Clause 1A(3)(c) is amended to read as follows “to ensure a commitment by teachers, principals and school administrators to instil within each child and young person an appreciation of the importance of the following…”

Clause 1A(3)(a)(iii) is amended so as to “promote the development, in each child and young person, of the following abilities and attributes… participation in community life, fulfilment of civic and social responsibilities and respect for human rights”

Clause 1A(3)(b)(ii) is amended as follows… promote the development, in each child and young person, of the following abilities and attributes:

(ii) good social skills, respect for the safety and well-being of others, and the ability to form good relationships

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18. At present, when read together, section 3 (which establishes a general right to education) and section 8 of the Act (which provides for equal rights for students with special education needs) provide a rights-based statutory purpose statement that forms the foundation for operational policy and practice. However, the concept of equality of access to education, encapsulated currently under s 8, has been super-ceded by the emergence of the right to an inclusive education by way of Article 24 of the UNCRPD\(^8\). The update of the Act accordingly provides an important opportunity to update s 8 so that it explicitly recognises and affirms the right.

19. Article 24 includes the following elements:

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\(^7\) CRC/C/NZL/CO/5, 30 September 2016, paragraph 12(a)

\(^8\) In addition, the limitation under s 8(2) regarding stand-downs and suspensions also jars with the High Court’s decision in A v Hutchinson [2014] NZHC 253, which indicates that schools do have obligations to consider whether appropriate resources and supports are being provided to a student with a disability before resorting to statutory disciplinary measures (see [73]-[78])
a. The right to access an inclusive, quality education on an equal basis with others [Art 24(2)(b)].

b. Reasonable accommodation of the student’s requirements [Art 24(2)(c)].

c. The right of students to receive support within the general education system, and that such support measures are effective, individualised, provided in environment that maximises academic and social development, and consistent with the goal of full inclusion [Arts 24(2)(d) and (e)].

20. Since New Zealand’s ratification of UNCRPD in 2008, the Ministry of Education has taken steps to reflect the right in policies and initiatives. This has included both confirmation, as a matter of policy, that the UNCRPD places a binding obligation upon New Zealand to provide an inclusive education system and the development of the now-concluded Success for All programme which was launched in 2010 with the goal of achieving inclusive education practices across all schools by 2014.

21. Compliance with Article 24 requires a legislative commitment. In its General Comment on the Right to Inclusive Education under Article 24, the UNCRPD Committee states that:

The right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility….

It requires an in-depth transformation of education systems in legislation, policy, and the mechanisms for financing, administration, design, delivery and monitoring of education [emphasis added]

22. The UN CRPD Committee went on to confirm that implementation of the right requires States Parties to include it within the relevant legislative framework, stating that “a comprehensive and co-ordinated legislative and policy framework for inclusive education must be introduced” which includes (among other things):

a. Compliance with international human rights standards.

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9 Ministry of Education, Supports and Services for Learners with Special Education Needs/Disabilities, April 2012
10 Committee on the Rights of Persons with Disabilities, General Comment No 4, Article 24: Right to inclusive education, CRPD/C/GC/4, 2 September 2016, paragraph 9
11 CRPD/C/GC/4, 2 September 2016, paragraph 61(a)-(c)
b. A clear definition of inclusion and the specific objectives it seeks to achieve at all educational levels. Inclusion principles and practices must be considered as integral to reform, and not simply an add-on programme.

c. A substantive right to inclusive education as a key element of the legislative framework.

23. Furthermore, the monitoring of New Zealand’s compliance with the UNCRPD has led to a call for inclusion of the right to inclusive education within the education statutes as a means to achieving full implementation of Article 24. In its 2013/14 report on UNCRPD implementation in New Zealand, the IMM recommended that the Government establish an enforceable right to inclusive education within legislation. In its 2014 review of New Zealand, the UN CRPD Committee concurred with the IMM’s position and made a similar recommendation in its inaugural Concluding Observations on New Zealand.

24. In addition, in its recent 5th periodic review of New Zealand, the UNCROC Committee has emphasised the incorporation of inclusive education principles within the auspices of the more general right to education conferred under UNCROC and expressed by s 3 of the Act. Within the context of its general recommendation that “the New Zealand Government ensure that the ongoing review of the Education Act 1989 complies with the provisions and principles of the Convention”, the UN Committee recommended that the Government “set up comprehensive measures to develop inclusive education.”

Recommendation 2

The Commission recommends that an unqualified right to inclusive education is included within Part 1 of the Act, through an amendment to section 8 as follows:

8 The right to inclusive primary and secondary education

(1) People who have differing educational needs (whether because of disability or otherwise) have the right to an inclusive primary and secondary education.

(2) The right to an inclusive primary and secondary education under subsection (1) includes:

(a) The right to access an inclusive, quality education on an equal basis with other students.

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13 CRPD/C/NZL/CO/1 para 49, 50
14 CRC/C/NZL/CO/5, 30 September 2016, paragraph 37
15 Ibid para 37(a)
Inclusive education requirements for school boards

25. While Commission welcomes clause 5(2)(a)(i) of Schedule 6 to the Bill, which imposes a general obligation on school Boards of Trustees to ensure that their school “is inclusive of and caters for students with differing needs”, as a step towards implementing inclusive education principles within the operational provisions of the Act. However, the clause does not identify specific elements that are indicative of an inclusive education approach are, nor does it set in place specific objectives or practices.

26. In its General Comment, the UNCRPD Committee identified several elements that are demonstrative of an inclusive education system. These include:16:

a. A guarantee for students with and without disabilities to the same right to access inclusive learning opportunities, within the general education system, and for individual learners to the necessary support services at all levels.
b. A requirement for all new schools to be designed and built following internationally benchmarked accessibility standards.
c. Introduction of comprehensive quality standards for inclusive education.
d. Introduction of accessible monitoring mechanisms to ensure that policy, together with the requisite investment, is implemented.
e. Recognition of the need for reasonable accommodations to support inclusion, based on human rights standards.
f. A consistent framework for the early identification, assessment and support required to enable persons with disabilities to flourish in inclusive learning environments.
g. Establishment of legislation that guarantees all persons with disabilities, including children with disabilities, the right to be heard and their opinion considered within the education system as well as mechanisms through which to challenge and to appeal decisions concerning education.

27. The Commission considers the general nature of clause 5(2)(a)(ii) raises implementation problems. Without a degree of prescription as to what constitutes an inclusive approach that “caters” for differing needs, school boards will have to make assumptions as to what

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16 CRPD/C/GC/4, 2 September 2016, paragraph 61(d)-(l)
is required. These assumptions will inevitably vary between different school boards and lead to inconsistent practices and uneven outcomes. Accordingly, the Commission considers that regulations ought to be developed that specify the inclusive education standards, practices and procedures that are required to demonstrate compliance with clause 5(2)(a)(ii). These standards, practices and procedures should reflect the international human rights standards as regards inclusive education that are identified by the UNCRPD Committee in its General Comment.

Recommendation 3

The Commission accordingly recommends that Schedule 6 is amended to enable the development and passing into law of regulations that set out the inclusive education practices and policies that school boards must implement/demonstrate in meeting their obligation under clause 5(2)(a)(ii). This could be done through the insertion of a new clause 5A along the following lines:

5A Regulations regarding inclusive education -

The Governor-General may, by Order in Council, make regulations in respect of the obligation of school boards under clause 5(2)(a)(ii) that prescribe (but are not limited to) any or all of the following:

(a) inclusive enrolment practices and procedures
(b) accessibility standards as regards school buildings, facilities and equipment
(c) a comprehensive suite of indicators regarding quality standards
(d) processes and practices for early identification, assessment and provision of additional support
(e) policies and principles that apply to decision-making fora, including as regards:

   (i) the right of students and parents to participate
   (ii) the right of students and parents to obtain independent advocacy
   (iii) review and appeal procedures.

Addressing bullying in schools

28. There is currently no legislative responsibility placed upon Boards to address bullying in schools, nor is there any specific obligation on Boards contained in the National Administrative Guidelines (NAGs) that are set by the Minister under section 60A of the Act. This is despite the landmark 2011 report submitted to Parliament by the Ombudsman.
which recommended that it should be compulsory for all schools to implement an anti-bullying programme, through an amendment of NAG 5.¹⁷

29. On the international stage, the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Rights of the Child, and the UN Committee on Persons with Disabilities have, in recent years, all noted their concern at the incidence of bullying in New Zealand schools and have recommended that the Government intensify its efforts to address it.¹⁸ In particular, the UN Committee on Economic, Social and Cultural Rights, specifically recommended that the Government:¹⁹

a. systematically collect data on violence and bullying in schools;

b. monitor the impact of the student mental health and well-being initiatives recently introduced in schools on the reduction of the incidence of violence and bullying; and

c. Assess the effectiveness of measures, legislative or otherwise, in countering violence and bullying.

30. In addition, in its recent review of New Zealand under UNCROC, the UNCROC Committee recommended that the New Zealand Government implement anti-bullying programmes as a preventative measure.²⁰

31. In its current form, the Bill retains legislative silence on the issue of bullying. It does, however, incorporate the NAG 5 obligation on school Boards to provide a safe, physical and emotional environment into the set of Board responsibilities set out in Schedule 6 of the Bill (clause 5(2)(a)(i)).

32. While the Commission welcomes the incorporation of NAG 5 into legislation, we concur with the 2011 recommendation of the Ombudsman that there should be a specific legal obligation on Boards to undertake measures to address and prevent bullying. This would ensure that bullying prevention is prioritised as a matter of legal compliance which, in turn, would help reinforce the 2014 guidelines for schools produced by the Bullying

¹⁷ Report of David McGee, Ombudsman on complaints arising out of bullying at Hutt Valley High School in December 2007

¹⁸ See, UN Committee on Economic, Social and Cultural Rights, 2012, para 19; UN Committee on the Rights of the Child, 2011, CRC/C/NZL/3-4, paras 44(c) and 45(f); UN Committee on Persons with Disabilities, 2014, CRPD/C/NZL/CO 1, para 49

¹⁹ Concluding observations of the Committee on Economic, Social and Cultural Rights, on the third periodic report of New Zealand on the implementation of the ICESCR (2012). Para 19.

²⁰ CRC/C/NZL/CO/5, 30 September 2016, paragraph 37
Prevention Advisory Group and build upon current bullying prevention programmes and resources.

**Recommendation 4:**
The Commission recommends that clause 5(2)(a)(i) of Schedule 6 of the Bill is amended in order to include a requirement that Boards undertake measures to prevent bullying in schools. This should include the implementation of bullying prevention programmes, monitoring and evaluation of such programmes; and data collection or prevalence and outcomes.

**Communities of Online Learning**

33. Part 3A of the Bill sets out the legislative framework for a new type of educational entity – a community of online learning (COOL).

34. The Bill provides that a COOL must either be operated by either a registered school (state, state integrated or private), a body corporate or a tertiary education provider.

35. Provisional accreditation of a COOL is granted at the sole discretion of the Minister and lasts for between 6-12 months. Full accreditation also rests at the discretion of the Minister, who, in doing so, must consider a report by a ERO review officer that assesses the COOLs performance or capacity in meeting a set of specified criteria.

36. Part 3A sets out a number of provisions which are designed to safeguard the quality of education provided by a COOL. For example, like state schools, COOLs are required to provide guidance and counselling and inform parents of matters that are preventing or slowing their child’s progress or that are harmful to their child’s relationship with their teachers. In addition, section 35X provides that, in order for accreditation to be granted and maintained, COOLs must demonstrate that they provide, among other things, a safe and secure learning environment, an appropriate curriculum, pastoral care facilities, reporting mechanisms and suitable equipment, management and premises. Section 35ZH also provides the Secretary of Education with a discretionary function to enrol a student who has been suspended or expelled from a COOL back into a state school, although it is notable that the grounds for suspension or expulsion from a COOL are not specified, in contrast to the requirements for state and state integrated schools under sections 13-17 of the Act.
37. However, despite the operational detail of Part 3A and the safeguards contained therein, it is notable that the Bill does not contain any provision that establishes what the purpose of a COOL is and how it relates to the conventional school system, nor does it prescribe eligibility criteria for students who enrol at a COOL. Much of this detail is to follow in regulations established under section 35ZO.

38. On the face of it, COOLs provide another option for students who may be better suited, due to their circumstances, to an on-line learning environment. In addition, as the RIS indicates, the establishment of open access COOLs increases contestability in the education sector and makes the regulatory framework more responsive to 21st century information technology and learning preferences.

39. However, due to lack of any purposive section or indeed any clear link to the purposive sections under Part 1 of the Act, it is very difficult to assess what the impact of COOLs are likely to be upon the students who attend. The Regulatory Impact Statement (RIS) indicates that the Ministry will monitor COOLs, following their establishment, and that ERO and NZQA will develop their own processes for monitoring and reviewing them.\(^\text{21}\) However, it is notable that neither the RIS nor the Bill provides specificity as to the timeframes to establish these capabilities, nor do they indicate (or require) any formal evaluation of the policy.

40. Furthermore, like partnership schools, COOLs may also be operated by a private enterprise in the form of a body corporate. Delivery of public services through a private, for profit entity brings into consideration the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs require, among other things, human rights due diligence processes in respect of private agencies who wish to deliver public services and robust monitoring and evaluation of the delivery of those service by external private providers.\(^\text{22}\)

41. While Part 3A of the Bill provides some ‘due diligence’ provisions by way of the accreditation requirements, it notably contain no requirement that the COOL provide an inclusive, accessible service, consistent with CRPD principles. Furthermore, Part 3A does not require any systemic evaluation of the COOL policy nor does it specify the monitoring and reporting requirement that individual COOLs will be subject to once full

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accreditation is provided (although section 35ZO provides that this may be specified in regulations).

42. The COOLs initiative is certainly innovative and forward thinking. However, it raises a number of questions and challenges, particularly with regards to meeting pastoral care requirements – without the benefit of a pilot programme and subsequent evaluation, it is not clear how it intends to ensure that students in COOLs remain socially connected to their peers (either those in COOLs or conventional schools). It is also not clear how the policy will respond to economic barriers that some prospective students will inevitably face, due to cost of the computer equipment and internet connectivity required.

Recommendation 5

The Commission recommends that the Bill is amended to subject the coming into force of the COOLs framework under Part 3A of the Bill to completion of a pilot programme and Ministry evaluation. In addition, the Commission recommends that the following amendments are made to the COOLs framework set out under Part 3A of the Bill:

a. That Part 3A include, at its outset, a purposive clause that sets out the purpose of COOLs, and describes how COOLs interact with other educational establishments vested under the Act.
b. That section 35T is amended to establish a positive obligation on COOLs to operate in a manner consistent with the right to inclusive education and to address economic barriers that certain students may face.
c. That section 35X(2)(e) is amended to require that equipment, including the online interface, is accessible to students with disabilities, including students who are vision impaired.
d. That section 35ZO is amended to require that regulations are developed that establish periodic evaluation of the COOLs policy.

Stand-down, suspensions, exclusions and expulsions

43. The Bill notably does not make any substantive amendments to the stand-down, suspension, exclusions and expulsions provisions of the Act.

44. This constitutes a missed opportunity to address a number of the systemic problems that have been evident since the 1999 Education Amendment Act introduced the current regime set out in sections 13-17. These include:
a. The lack of any provision for alternative dispute resolution processes, such as restorative justice, for disciplinary matters that meet with s 14 thresholds.

b. The lack of any accessible independent review entity or mechanism23.

c. The lack of any timeframe within which the Ministry must issue a statutory direction to a school to enrol a student who has been excluded at school.

d. The disproportionate numbers of Maori students and students with learning and behavioural disabilities who are subject to disciplinary procedures under these sections. This particular issue has been highlighted recently by the UNCROC Committee24, the IMM and the Principal Youth Court Judge25.

45. The Bill does, however, make one amendment that may potentially have a significant impact on student rights. Clause 22 of the Bill provides that:

"Instead of attending and speaking at a meeting of the board in person, the student, the student’s parents, and their representatives may attend and speak by way of telephone conference or video link."

46. Traditionally, students and their parents attend board disciplinary meetings and are entitled to make submissions and have representation at those meetings. While clause 22 does not remove or supplant this right, it is possible that some school boards may promote telephone or video attendance as an easy or more convenient option for the student and parents involved. This runs the risk of expeditious procedures and decision-making that do not accord to required natural justice standards and may also hamper the ability of the student and their parents and representatives from making effective submissions to a board disciplinary committee.

47. Suspension hearings can have a serious impact on a student’s future. They can result in exclusion or expulsion, which elevates the risk of long-term disconnection from education and the formation of a pathway towards social disadvantage and entry into the criminal justice system. It is therefore imperative that these hearings are treated with the due

24 CRC/C/NZL/CO/5, 30 September 2016, paragraph 37(d)
seriousness and that current procedural protections are not treated as subordinate to administrative convenience.

48. The Commission accordingly recommends that clause 22 is amended to explicitly provide that these hearings may only be dealt with by video conference upon the request of parent and their student, and are limited to circumstances where attendance in person is unable to be facilitated due to their personal circumstances.

Recommendation 6
The Commission recommends clause 22 introduces a new section 17B(3) which states:

(3) Attendance by way of telephone conference or video link under subsection (2) may only occur:

(i) upon request of the student and their parents; and

(ii) where, due to personal circumstances, it would be unreasonable or impracticable for the student and the parent to attend in person.

Monitoring and reporting

49. The Commission notes that clause 96 of the Bill seek to introduce the establishment of regulations regarding the monitoring and reporting of a school board’s performance in meeting certain specified statutory obligations.

50. However, it is notable that clause 96 does not require a school board to monitor, evaluate or report on its performance or on outcomes related to its obligations under clause 5(2)(a) of Schedule 6 to provide inclusive education and a safe, physical and emotional environment for its students.

51. In its 2016 interim report on the right to inclusive education, the IMM observed that, in order to assess the extent to which inclusive education practices are being implemented in schools, “accurate and co-ordinated data gathering, reporting and monitoring is required”. The IMM noted that current data collection processes used in schools “do not enable an accurate and comprehensive assessment of the extent to which inclusive education principles are reflected in policy and practice. Current data collection in this area is quantitative only and does not utilise an indicator framework against which

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26 IMM, Article 24: The Right to an Inclusive Education, E Koekoe Ana te Tūi (Interim) Implementation Report, p 19
outcomes data can be measured and evaluated”. The IMM went on to identify significant gaps in data regarding both referrals to Special Education Needs Co-ordinators (SENCOs) and development of Individual Education Plans (IEPs), both of which are essential mechanisms for identifying needs and service responses.  

52. The IMM accordingly recommended that a data strategy is developed that, among other things, can “accurately assess and monitor the implementation of inclusive education policies and practices and enable a social investment approach which takes account of human rights principles”.  

53. In addition, as noted above at paragraph 24, UN human rights treaty bodies have also recommended the systemic collection of data on violence and bullying in schools, and the monitoring and assessment of mental health initiatives and measures to counter bullying.  

54. In its current form, the Bill does not provide a statutory platform that mandates or requires the collection of data on inclusive education or outcomes related to school bullying or safety. The Commission recommends that this is rectified by amending clause 96 to include, within the scope of the regulations developed under that clause, monitoring and reporting of inclusive education and student safety and well-being outcomes (including instances of violence and bullying); and the specification of related indicators.  

Recommendation 7  
The Commission recommends that clause 96 of the Bill is amended to include regulations that enable data collection, monitoring and reporting of a school’s obligations to provide students with an inclusive education and a safe physical and emotional environment, including the outcomes of measures to prevent bullying (see recommendation 3 above).  

The Commission sets out a proposed amendment below:  

118A Regulations about planning, implementation, monitoring, and reporting  
(1) The Governor-General may, by Order in Council, make regulations that make provision for 1 or more of the following:  

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27 IMM, Article 24: The Right to an Inclusive Education, E Koekoe Ana te Tūi at p 22  
28 Ibid  
29 Ibid p 25
(d) the monitoring of and reporting of a board’s performance clause 5(2)(a) of Schedule 6 as regards inclusive education and student safety (including bullying);

(2) Without limiting subsection (1), the regulations may make provision in relation to...

(k) the information that must be included in reports on a school’s performance under clause 5(2)(a) of Schedule 6.
SUMMARY OF RECOMMENDATIONS

1. The Commission recommends that Clause 1A of the Bill, which sets out a framework for a Statement of National Education and Learning Priorities, is amended to include an express commitment on the part of teachers, school boards and administrators; and respect for human rights and a respect for the safety and well-being of others within its objectives.

2. The Commission recommends inclusion of an unqualified right to inclusive education within Part 1 of the Education Act.

3. The Commission recommends that Schedule 6 is amended to enable the development and passing into law of regulations that set out the inclusive education practices and policies that school boards must implement/demonstrate in meeting their obligation under clause 5(2)(a)(ii)

4. The Commission recommends that clause 5(2)(a)(i) of Schedule 6 of the Bill is amended in order to include a requirement that Boards undertake measures to prevent bullying in schools. This should include the implementation or bullying prevention programmes, monitoring and evaluation of such programmes; and data collection or prevalence and outcomes.

5. The Commission recommends that the Bill is amended to subject the coming into force of the COOLs framework under Part 3A of the Bill to completion of a pilot programme and Ministry evaluation. In addition, the Commission recommends that the provisions governing the Community of Online Learning are amended to include a purpose statement; obligations to provide an inclusive education and address economic barriers that may prevent access; ensure that equipment and facilities are accessible to students with differing needs (including those who are vision impaired); and inclusion of a requirement for the periodic evaluation of the policy.

6. The Commission recommends that Clause 22 is amended to explicitly provide that student suspension hearings may only be dealt with by video conference upon the request of parent and their student, and are limited to circumstances where attendance in person is unable to be facilitated due to their personal circumstances.
The Commission recommends that the Bill is amended to include regulations that enable data collection, monitoring and reporting of a school’s obligations to provide students with an inclusive education and a safe physical and emotional environment, including the outcomes of measures to prevent bullying.