

Education Report: Regulation of English Language providers

To:	Hon Jan Tinetti, Minister of Education		
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Purpose of Report

The purpose of this paper is to outline concerns raised by English New Zealand (English NZ) around English language schools being considered as a separate category within Private Training Establishments (PTEs) and to provide advice on how to respond to these concerns.

Summary

- Based on a request from English NZ, the previous Minister of Education, Rt Hon Chris Hipkins, agreed to progress a change to allow the Minister of Education to recognise PTE's as a separate category in the Education and Training Act 2020 (the Act). The Ministry of Education's (the Ministry) advice at the time was to maintain the status quo and not make English language providers a separate category in legislation.
- English NZ has raised a number of concerns and believe these can be resolved by specific regulations changes for English language schools. These concerns are:
 - A misfit with the New Zealand Qualifications and Credentials Framework (NZQCF)
 - A duplication of quality assurance
 - An issue related to unregistered providers
 - An issue with monitoring of visa requirements
 - Export Education Levy rates being too high.
- The Ministry, Immigration New Zealand (INZ) and the New Zealand Qualifications Authority (NZQA) do not consider these issues as a significant concern and do not believe recognising English language schools as a separate category within PTEs will resolve these issues. Therefore, the Ministry recommends maintaining the status quo and not recognising English language schools as a separate category, which is also the position of INZ and NZQA. If you agree with this option, the Ministry will draft a letter to send to English NZ outlining this decision.
- An alternative option is to recognise them as a separate category, either with or without regulatory changes. If you agree with this option, the Ministry will develop a Gazette Notice and provide further advice on the regulatory changes you wish to enact.
- This Education Report was prepared in consultation with NZQA, INZ and Education New Zealand (ENZ).

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that the previous Minister of Education, Rt Hon Chris Hipkins, previously agreed to progress a change to allow the Minister of Education to recognise English language schools as a separate category in legislation.

Noted

- b. **agree** with:

- i. Option 1: Maintain the status quo meaning not issuing a Gazette to recognise English language schools as a separate category (recommended option)

Agree / Disagree

OR

- ii. Option 2: Issue a Gazette to recognise English language schools as a separate category.

Agree / Disagree

- c. If you agree with Option 2, **indicate** if you want the Ministry of Education to explore regulation changes specifically for English language schools:

- i. Develop no regulatory setting changes for English language schools.

Yes / No

- ii. Exempt English language schools from some quality assurance requirements.

Yes / No

- iii. Increase the requirement of classroom time within immigration settings for English language schools.

Yes / No

- iv. Decrease the EEL premium rate for English language schools from 0.85% to 0.5% of tuition fees in 2019.

Yes / No

- d. **agree** that the Ministry of Education release this briefing in full once it has been considered by you.

Agree / Disagree



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29/05/2023



Hon Jan Tinetti
Minister of Education

11/06/2023

Background

1. The previous Minister of Education, Rt Hon Chris Hipkins, agreed to progress a change to allow the Minister of Education to recognise English language schools as a separate category in legislation [METIS 1192963 and 1216484 refers]. The Education and Training Act 2020 (the Act) incorporated the power for the Minister of Education to recognise different categories of PTEs and criteria for defining them, by notice in the Gazette (section 342). This power has not been used to date.¹
2. This change was sought by English NZ in 2018. It was included as an action in the International Education Strategy 2018-2030 and has been carried over into the refreshed version released in August 2022. This work was deprioritised due to COVID-19.
3. English NZ is a provider membership organisation, currently comprising 13 PTE English-language-only schools, one PTE “mixed” provider of English-language and other courses (AIS), and two university English Language Colleges (Waikato, Otago). English NZ is recognised as the de facto peak body for English language schools and is consulted with regularly on that basis. English NZ sets requirements for its members, such as meeting internationally recognised quality assurance standards, which include minimum qualifications for academic staff, management and teaching.
4. English language schools are defined as PTEs that specifically teach English and are a sub-set of the unfunded providers. There are around 10 English language schools that are not members of English NZ. A further 22 PTEs offer English language to non-native speakers, as do the remaining six universities and 15 Te Pūkenga subsidiaries.
5. In 2019, there were 28,475 international students studying at English language schools, dropping to 3,040 studying at English language schools in 2021. Further, there were 5,230 additional international English language students in government funded providers in 2019. Around two thirds of English-language students at English language schools were trained by English NZ members.²
6. English NZ sees English language schools as unique in the following ways:
 - a. Some of their students study for a short time (less than 12 weeks).
 - b. Their courses do not lead to qualifications on the NZQCF.
 - c. Their courses do not have the same outcomes as those of other PTEs.
 - d. Many English language providers exclusively enrol international students, including some on visitor or working holiday visas.
 - e. English NZ has their own quality standards and strict requirements on its members to achieve and maintain high quality.
7. English language schools are already treated differently by agencies in the following ways:
 - a. *Work rights:* As part of the consultation process on the Immigration Rebalance, the Ministry of Business, Innovation and Employment (MBIE) and the Ministry consulted on changing the in-study work rules for English language students. The purpose of this change was to continue to encourage enrolment in New Zealand’s high quality English language sector, while being clear that the ability to work is only for longer term students.
 - b. *Data collection:* Reporting on international students through EEL data collection also differentiates English language schools.

¹ The new section replaced a section in the Education Act 1989 allowing the Minister to recognise *community tertiary education providers*. However, there are no regulations recognising *community tertiary education providers*.

² This is EEL collected data however there have been persistent problems collecting data for English language schools so should be taken only as indicative.

- c. *Quality assurance:* Since 2012, NZQA has worked with English NZ to tailor the External Evaluation and Review (EER) to the English language schools (PTEs only). The most recent document reflecting the understanding between the two parties, External Quality Assurance of English Foreign Language Provision in Private Training Establishments, is dated September 2016.
8. Issuing a Gazette notice is the next step in progressing the decision behind the change made to the legislation. While this may satisfy some of the reputational concerns of parts of the sector and signal the Government's commitment to further changes, it will not make any of the regulatory changes needed to address English NZ and agencies' central concerns. A coherent package of changes to regulations administered by INZ, NZQA and the Ministry also needs to be considered.

Regulation change requests from English NZ

9. From English NZ's perspective, government agencies already implicitly recognise English language schools as a distinct sub-sector of PTEs and so the Gazette notice would make formal that which is currently informal. However, agencies also implicitly recognise a range of other sub-sectors without any unique statutory recognition, such as first aid courses. Making this change could set a precedent for these other sub-sectors to seek similar changes.
10. English NZ has persistently raised a number of concerns and consider that these problems warrant bespoke regulatory arrangements. Education agencies do not consider that issuing a Gazette notice will help address any of English NZ's concerns. Below is an overview of the concerns raised and our response to the concerns.

Fit with New Zealand Qualifications and Credentials Framework

11. English NZ indicate that English language providers' education products do not fit the requirements for listing on the NZQCF. The Education and Training Amendment Bill (No. 2) has replaced training schemes with micro-credentials which are listed on the NZQCF. English NZ consider these changes are designed for vocational/university education and micro-credentials are not a globally recognised currency for English language.
12. English language providers only issue a certificate of completion which is not an award under the Act. Section 10 states that "an award means a certificate or other document granted in recognition of a student's achievement in and completion of a micro-credential." Further, it states that "micro-credential means study or training that leads to an award."
13. The Ministry and NZQA consider that micro-credentials are flexible enough to capture what English language providers offer. Providers can call micro-credentials what they wish and market them in line with internationally recognised terms. A micro-credential is an education product that certifies the achievement of a set of skills and knowledge that:
 - a. Meets an employer, industry, and/or a community need.
 - b. Must include an assessment component.
 - c. Is ideally between 5 to 40 credits (and can be at any level of the NZQCF).
14. The existing training schemes do not meet the requirements to award a micro-credential as they are not currently assigned a level on the NZQCF and we would expect there to be some kind of assessment component. One option is for the English language courses to use internationally recognised tests as a form of assessment, such as the International English Language Testing System. Another option is for the sector to develop its own micro-credential(s). NZQA is working with English NZ to review the current English language micro-credentials (which were formerly training schemes, local courses, or other courses) to see how they can best meet the requirements of the NZQCF.

Duplication of quality assurance

15. English NZ indicate that the NZQA quality assurance requirements overlap with and/or replicate some of their own processes and create an unnecessary financial and time burden. English NZ have requested to set different rules for quality assurance purposes by allowing some English language providers to be subject to a modified EER.
16. While we acknowledge some overlap, there are important distinctions with the NZQA focus being on outcomes and the English NZ focus on inputs. Self-assessment is expected of all TEOs. There is, however, no legislative or policy barrier to EERs being bespoke to the sector (or to not being usually required). EER is only one component of quality assurance by NZQA which includes registration of the provider, the approval listing and approval of education products on the NZQCF, monitoring, risk assessment, and the administration of the Tertiary and International Learners Code of Practice 2021 (the Code). As such, we do not agree that there is a duplication of quality assurance.


Unregistered providers

17. English NZ indicates there are ongoing concerns about unregistered providers teaching English to people on a visitor visa, working holiday visa or providing top ups to student visa holders, who are able to avoid NZQA quality assurance and the Code requirements. This may create a free-rider problem and reputational risk for the sector.
18. The Ministry and NZQA believe that current legislation and regulation regarding unregistered providers are well enough defined. Under the Education (Exempt Training Schemes) Notice 2012, the following classes of training schemes (now called micro-credentials), which are of less than three months duration, are exempt from registration:
 - a. training schemes that are recreational in nature;
 - b. corporate training, but not including corporate training schemes that are designed for the purpose of meeting regulatory requirements for occupational registration, occupational licensing, or health and safety in the workplace; and
 - c. training schemes with less than a credit value of ten credits, but not including training schemes that are designed for the purpose of meeting regulatory requirements for occupational registration, occupational licensing, or health and safety in the workplace.
19. In any other circumstances, a PTE cannot enrol international students in a training scheme unless it is registered, a signatory to the Code, and has approval to provide a micro-credential (section 527 of the Act).
20. In 2017 and 2019, NZQA's risk team investigated issues of unregistered providers and it was not evident that there is a breach of the legislation of NZQA Rules by the provider most often cited by English NZ. Home tutorial services can, within limits such as no more than 10 hours, operate outside of the Act if they are not issuing nor claiming to issue an award. Arguably, it is unreasonable to unduly restrict informal learning of the English language in an English-speaking country.

Monitoring of visa requirements

21. English NZ believe that the visa requirements specifying the minimum hours of attendance are not being monitored sufficiently. For example, some registered providers may be offering a significant proportion of self-directed learning, rather than face-to-face educational instruction with a tutor in the classroom, in order to meet the 20 hours full-time study attendance requirements for student visa holders at PTEs offering English language courses. There are also inconsistencies in how lunch and other breaks are counted by PTEs in addition to the classroom time component.
22. The Ministry could create a stricter definition of attendance and INZ could more rigorously enforce the classroom time requirement. However, there are some challenges with doing this. On the one hand, education agencies are generally neutral with respect to the mode of delivery (online or onsite). On the other hand, the on-site attendance requirement helps manage some risks around work being a primary reason for coming to New Zealand and associated risks of exploitation. It also helps prevent social isolation that is unique to international students.

23. 9(2)(f)(iv)

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Export Education Levy (EEL)

24. All PTEs are covered by the “insurance” function provided through the EEL whereby it can cover a full refund to students enrolled at PTEs where the quality has been deemed so low that it is not recognised by NZQA, and the provider is unable or unwilling to pay the refunds. As PTEs, English language schools must pay the PTE rate which is now higher than the rate for public providers who do not benefit from this coverage.
25. English NZ believe it is unfair that their members have had to pay the premium associated with being a PTE (0.85% rather than the 0.5% of tuition fees paid by other education providers). English NZ believe English language schools generally provide “learning time” so it is unlikely that students at these schools are unable to complete a qualification triggering reimbursement. Prepaid fees are secured in a Trust account, with compliance monitored by NZQA, as required by the Act. English NZ claim it often brings poor provider practice to the attention of NZQA. English NZ is particularly frustrated when it is the same registered providers that trigger a reimbursement.
26. Full refunds linked to quality-related PTE closures do not occur solely because no NZQF credits can be awarded — they occur due to unacceptably low-quality provision. In closure situations, students in English language providers are generally easily transferred to another provider. We are not aware of full reimbursement for these students having occurred, but we believe this situation could arise in relation to an English language school. These schools, therefore, do benefit from this coverage, and their students are eligible for full refunds. We, therefore, do not recommend considering changes to the way English language schools are treated for the purposes of the EEL. Note that Cabinet recently made decisions on the EEL policy [METIS 1266742 refers].

Options analysis

Option 1: Maintaining the status quo

27. Based on the above assessment, the Ministry does not recommend changing regulations for English language schools. We do not believe that creating a separate category within PTEs will be appropriate, because:

- English language schools are private education businesses and are well-placed within the current PTE legislative framework.
- Solutions to their current issues (such as quality assurance) can be found through rules and regulations already in place, such as the NZQA Rules and quality assurance processes.
- Due to the complexity of the broader English language sector, new legislation for English language schools would only be likely to introduce new regulatory oddities that would not facilitate the cross-sector delivery of quality English language provision.
- Similarities and differences between the different subsets of the English language sector are sufficient, which creates complexities in defining an English Language Provider.

Option 2: Recognise English language schools as separate category

28. As indicated above, from a regulation perspective the Ministry does not see benefits of recognising English language schools as a separate category. However, creating a separate category for English language schools could provide an acknowledgement that the Government sees them as different. It would also enable the opportunity for new regulations to be targeted specifically for English language schools.

29. If you decided to approve this option, there are the following potential regulation changes:

- Exempt English language schools from some quality assurance requirements.
- Change immigration settings to increase the requirement of classroom time for English language schools.
- Change EEL regulations to decrease the EEL premium rate for English language schools from 0.85% to 0.5% of tuition fees in 2023.

Next Steps

30. If you agree not to recognise English language schools as a separate category, the Ministry will draft a letter to English NZ indicating the decision made by the Minister of Education.

31. If you agree to recognise English language schools as a separate category, the Ministry will draft the appropriate Gazette notice and ensure it is signed off accordingly. We will provide further advice on specific regulation changes as requested.