

Education Report: Options to restrict the offering of NCEA offshore

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| To: | Hon Chris Hipkins, Minister of Education | | |
| Date: | 31 July 2018 | Priority: | Medium |
| Security Level: | In Confidence | METIS No: | 1139557 |
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| Messaging seen by Communications team: | No | Round Robin: | No |

Purpose of report

In response to your request in May 2018, this report provides you with options to restrict the offering of the National Certificate of Educational Achievement (NCEA) by schools and tertiary organisations to students based offshore.

Summary

Over recent years, some schools and education providers have expressed interest in offering NCEA to students based offshore. Recent advice to you on a specific request from Westmount School [METIS 115424 refs] clarified that while state and state-integrated schools are unable to offer NCEA offshore because it is outside their roles and functions under the Education Act 1989 (the Act), there are no legislative or regulatory barriers to prevent private schools or Tertiary Education Organisations (TEOs) from doing so.

Restricting the offering of NCEA offshore will help protect the quality, integrity and reputation of the qualification, both in New Zealand and internationally. NCEA has been developed specifically for a New Zealand context, and is closely linked to the New Zealand Curriculum, Te Marautanga o Aotearoa, and New Zealand's vocational training programmes. It relies on important elements of the New Zealand system, including highly trained teachers and a rigorous quality assurance system.

The risks to the quality, integrity and reputation of NCEA posed by offering it offshore warrant creating a legal authority to restrict providers who are currently able to offer NCEA offshore from being able to do so. However, it is important that legislative or regulatory changes made now do not unduly restrict the offering of NCEA to New Zealanders overseas, and allow government and providers to be well-placed to respond to any future opportunities as they emerge.

We recommend amending the Act to allow NZQA to make Rules to prohibit or restrict institutions from offering NCEA offshore. Amending the Act and using the NZQA Rule making

mechanism would create a legal authority to prevent private schools and TEOs from offering NCEA offshore, but would also allow for future flexibility, including managing any specific risks which might emerge during implementation. The amendments could be done through the next available Education Amendment Bill, being considered for 2019.

Recommended Actions

The Ministry of Education and the New Zealand Qualifications Authority recommend you:

- a. **Note** that private schools and Tertiary Education Organisations can currently offer NCEA to domestic and international students based offshore
- b. **Note** that offering NCEA offshore poses risks to the quality, integrity and reputation of the qualification, and the wider New Zealand education system
- c. **Agree** to restrict the offering of NCEA offshore by amending the Education Act 1989 to either:

OPTION 1 (not recommended) - explicitly prohibit the offering of NCEA offshore in the Act **AGREE / DISAGREE**

OPTION 2 (recommended) - allow NZQA to make new Rules to restrict the provision of NCEA offshore, and to prohibit the offering of NCEA offshore unless the institution meets the requirements of these Rules **AGREE / DISAGREE**

- d. **Agree** that the Ministry of Education progress your preferred option through the next available Education Amendment Bill, being considered for 2019

AGREE / DISAGREE

Proactive Release Recommendation

The Ministry of Education and the New Zealand Qualifications Authority recommend you:

- e. **Agree** that this Education Report be proactively released as part of the next publication of documents, with appropriate redactions

AGREE / DISAGREE

Kate West

Kate West
**Acting Group Manager International
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31/07/2018

Karen Poutasi

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31/07/2018

Hon Chris Hipkins
Minister of Education

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Background: There has been some recent interest in offering the National Certificate of Educational Achievement (NCEA) to students offshore

1. Over recent years, a number of schools and other education providers, both in New Zealand and overseas, have expressed interest in offering the National Certificate of Educational Achievement (NCEA) to students based offshore (both New Zealanders and international students). In March 2018, Westmount School, a private school with satellite campuses across New Zealand and partner schools in Argentina, wrote to you to request a meeting to discuss options for them to offer NCEA to students at their Argentinian partner schools.
2. The Ministry of Education provided you with advice on the legal situation regarding Westmount School's ability to offer NCEA to students based offshore [METIS 1115424 refers]. You requested further advice on options to restrict the offering of NCEA offshore, including ensuring consistency between state and private schools.

Status quo: Tertiary Education Organisations and private schools can currently offer NCEA offshore, but state and state-integrated schools cannot

3. Under current settings, state and state-integrated schools in New Zealand are unable to enrol or offer NCEA to students offshore, because it is outside their roles and functions as set out in the Education Act 1989 (the Act). Te Aho o Te Kura Pounamu | the Correspondence School (Te Kura) is able to offer NCEA to a small number of New Zealand students based offshore, as this is consistent with their mandate and enrolment policy. In 2017, 274 domestic students based offshore (from a total of 510 such students) were enrolled in NCEA courses with Te Kura.
4. There are no current legislative or regulator barriers to private schools enrolling students offshore, and therefore offering NCEA to these students. Private schools would still have to meet all the requirements for offering NCEA to similar students onshore, including obtaining a consent to assess against standards from NZQA, and, if enrolling international students, becoming a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016.
5. NZQA has not granted approval to assess for NCEA to any schools based offshore, except for schools in Niue and the Cook Islands. This reflects New Zealand's special protectorate relationship with these countries, both of which are self-governing countries in free association with New Zealand. There is no intention of granting approval to schools in other jurisdictions to offer NCEA offshore.
6. At the tertiary level, Tertiary Education Organisations (TEOs) with a consent to assess against standards may award an NCEA qualification. Non-university providers proposing to deliver a qualification on the New Zealand Qualifications Framework (NZQF) must apply to NZQA for programme approval and accreditation¹. If they wish to offer programmes offshore, they must also meet the NZQA Offshore Programme Delivery Rules, which ensure offshore programmes have outcomes of comparable quality to programmes delivered in New Zealand. As NCEA is made up of many standards, and includes standards used towards other programmes of study, it is difficult to determine how many TEOs may be involved in offshore delivery of assessment that contributes to the award of NCEA.
7. Section 252A of the Act allows NZQA to impose conditions on a consent to assess against standards. However, this provision cannot be used to restrict private schools or TEOs from offering NCEA to students offshore. It can only be used once quality issues are evident. It

¹ Under section 249(7)(c) of the Act, programmes cannot be approved for NCEA

cannot prevent the initial granting of the consent to assess, but can lead to its removal because of poor performance.

Restricting the offering of NCEA offshore will protect the quality, integrity and reputation of the qualification

NCEA has been developed for a New Zealand context, and is not readily transferable to other jurisdictions

8. NCEA has been developed specifically for the New Zealand context, and is designed to operate within the framework of the New Zealand educational system. NZQA requires teachers administering internal assessment to have a high degree of training and experience, have a solid understanding of formative, outcomes-oriented and standards based assessments, and be part of a community of teaching practice to ensure skills and knowledge are continually developed.
9. In its current form, students can study towards NCEA through programmes structured around the New Zealand Curriculum (NZC) and Te Marautanga o Aotearoa, vocational training teaching and learning programmes, or a combination of both. NCEA includes both internal and external assessment methods, which are supported by a formal quality assurance process to ensure that the assessment of each standard is fair across all students, regardless of the school they attend. This includes internal moderation, external moderation and assessment system checks.
10. The quality assurance system, led by NZQA, has been embedded across the New Zealand education sector over a period of time, and to a high degree of rigour. In schools, it operates primarily to ensure the quality and robustness of both internal and external NCEA assessments. The system includes internal moderation, external moderation, and assessment system checks. Extending this system offshore would pose significant challenges to both the capability and scale of this quality assurance system, as the connections with the New Zealand context, curriculum and education system, including quality assurance, are likely to be weakened.
11. Although some standards have been adapted to fit local contexts in the Cook Islands and Niue, NCEA in these countries has been closely developed in line with New Zealand settings. NCEA is not readily able to be adapted to other educational systems and contexts.

Protecting the quality, integrity and reputation of NCEA is paramount

12. The quality, integrity and reputation of NCEA is an important part of the New Zealand education system and protecting this is integral to the success of our system. Significant time, effort and resources have gone into ensuring that the New Zealand public, especially employers, parents and students, understand NCEA and have confidence in its quality and integrity. NCEA is also well-recognised overseas, and is included in the international reference guide *International Qualifications for Entry to University or College*. NZQA also has specific recognition arrangements for NCEA with nine countries, plus Europe.
13. Poor implementation offshore could negatively impact on this reputation, with a possible reduction in the demand for NCEA as a qualification in New Zealand and the ability of domestic students to undertake further study or employment overseas. Poor implementation could also impact on the perceived quality of the New Zealand education system more generally, and may reduce the number of international students coming to New Zealand.
14. There may be some benefits to offering NCEA offshore, including financial benefits to providers, growth in New Zealand's offshore education product offering, possible strengthening of the pathway to a New Zealand education for international students, and

growing awareness of New Zealand as a quality international education destination [METIS 1115424 refers]. However, the risks associated with offshore delivery mean that it would be very difficult (and costly) to guarantee the quality, integrity and reputation of NCEA in this environment.

Additional challenges to operating internationally could also compromise the quality of NCEA offered offshore

15. As well as the issues unique to offering NCEA offshore, providers would also need to manage the complex challenges of operating a business offshore. This includes, for example, managing foreign jurisdictional issues, the relationship with offshore partners, and possible volatility of the market (including exchange rate fluctuations and changes in local and global conditions affecting student numbers). These challenges may pose risks to the quality of implementation of NCEA offshore.

Restricting the offering of NCEA to students offshore

16. The risks to the quality, integrity and reputation of NCEA posed by offering it offshore warrant creating a legal authority to restrict providers who are currently able to offer NCEA offshore from being able to do so. It is important, however, that any fiscal, legislative or regulatory changes made now do not unduly restrict the current provision through Te Kura to New Zealanders overseas, and allow government and providers to be well-placed to respond to any future opportunities as they emerge.

17. NCEA is currently being reviewed, and future changes may have fiscal, legislative or regulatory impacts on the education system, which may in turn impact on how NCEA could be delivered offshore. Consultation on the Ministerial Advisory Group's *Big Opportunities for NCEA* was launched on 27 May 2018. These Big Opportunities could have an impact on the design and delivery of NCEA as a qualification, including the components of the qualification, and the teaching practices around NCEA.

18. In addition, the International Education Strategy, which you will be taking to Cabinet on 6 August 2018, includes an action to "explore opportunities to deliver education and education products offshore and online". It is important that any changes we make now do not restrict the ability to respond to future opportunities in this area, as appropriate.

Options for restricting the offering of NCEA to students offshore

19. The criteria used to evaluate the options to restrict the offering of NCEA to students offshore are whether the option:

- Creates the legal authority to restrict the offering of NCEA to students offshore; and
- Maintains flexibility to allow the offering of NCEA offshore in certain circumstances, both now and in the future, with appropriate conditions.

20. We have assessed two options against these criteria:

- **Option 1** – amend the Act to explicitly prohibit the offering of NCEA to students based offshore
- **Option 2** – amend the Act to allow NZQA to make new Rules to restrict the provision of NCEA offshore, and to prohibit the offering of NCEA offshore unless the institution meets the requirements of these Rules

21. These options are summarised in Table 1.

Table 1: options for restricting the offering of NCEA to students offshore

| Option | Does the option... | |
|---|--|--|
| | Create legal authority to restrict the offering of NCEA to students offshore? | Maintain the flexibility to allow offering of NCEA offshore in certain circumstances, both now and in the future, with appropriate conditions? |
| Status quo comparison (continue to allow private schools and TEOs to offer NCEA offshore, and try to manage quality assurance and other risks on a case-by-case basis through the use of conditions on consent to assess) | NO <ul style="list-style-type: none"> State and state-integrated schools cannot offer NCEA offshore Cannot prevent private schools and TEOs from offering NCEA offshore | NO <ul style="list-style-type: none"> Some schools and providers can offer offshore, but there are no conditions specific to offshore delivery |
| Option 1: amend the Act to explicitly prohibit the offering of NCEA offshore (not recommended) | YES <ul style="list-style-type: none"> No providers would be able to offer NCEA to any students offshore | NO <ul style="list-style-type: none"> Would prevent Te Kura from offering NCEA to New Zealanders offshore Further legislative change would be required to permit providers to offer NCEA offshore in the future |
| Option 2: amend the Act to allow NZQA to make new Rules to restrict the provision of NCEA offshore, and to prohibit the offering of NCEA offshore unless the institution meets the requirements of these Rules (recommended) | YES <ul style="list-style-type: none"> Would create the authority to put restrictions on providers wanting to offer NCEA offshore (for example, approval processes or other conditions), including preventing providers from doing so where appropriate | YES <ul style="list-style-type: none"> Would allow Te Kura to continue offering NCEA to New Zealanders offshore Would include scope to enable providers to offer NCEA offshore at a point in the future, with appropriate conditions |

Status quo

22. We do not recommend the status quo, as it does not meet either criteria.

Option 1 (not recommended)

23. We do not recommend Option 1, as it does not fully meet both criteria. Option 1 would be overly restrictive, with no flexibility to allow Te Kura to offer NCEA to New Zealanders offshore. It would also require further legislative change to permit providers to offer NCEA offshore in the future, restricting the ability of government and providers to respond to future opportunities as they emerge.

24. The prohibition in the Act could allow for stated exceptions, or for exceptions to be added later by Order in Council. However, Option 2, which allows NZQA to make relevant Rules,

is clearer for institutions and would be consistent with other NZQA Rule making powers (for example, the Offshore Programme Delivery Rules for tertiary level programmes).

Option 2 (recommended)

25. We recommend Option 2, as it fully meets both criteria. Under Option 2, the legislation would be amended to allow NZQA to make Rules to restrict or prohibit the provision of all or some of the elements of a course of study, the successful completion of which will result in the award of an NCEA qualification, to students in a country other than New Zealand, the Cook Islands or Niue. The Rules would allow NZQA to restrict or prohibit particular standards necessary for a student to be awarded an NCEA qualification. The Rules could relate to all institutions, or to certain types of institutions, and would allow for exemptions.
26. The Rules could be effectively used to manage approval processes and conditions and to seek assurance that schools and providers could demonstrate their viability, capability, governance, experience and competence in administering NCEA within New Zealand.
27. Using the NZQA Rule making mechanism would also allow for future flexibility including managing any specific risks which might emerge during implementation. NZQA regularly consults with the sector on possible changes to Rules, and Rules can be updated in response to new opportunities and issues (without the need for legislative change).

Consequences and risks of Option 2

28. There is a risk that providers who have already been offering NCEA offshore, or who, like Westmount School, intend to start doing so under the current settings, may view rule changes as an unnecessary and unjustified restriction on their private business. However, all NZQA Rules require consultation, and we believe that any potential issues could be managed through these processes.
29. Allowing NZQA to create a Rule to restrict the offering of NCEA offshore would not prevent providers from enrolling students offshore, or from offering other types of qualifications offshore (either on the NZQF or international qualifications). While enrolment and offering other qualifications do not have the same sorts of risks to qualification quality, integrity and reputation as the offering of NCEA would (as this provision is more readily transferrable to other jurisdictions), some risks still remain. These risks are currently effectively managed through NZQA's NZQA Offshore Programme Delivery Rules². It would be unreasonable to restrict all offshore delivery based on risks specific to one qualification.

Possible vehicles for implementation of Option 2

30. There are several possible amendment bills available to address this issue: the Education Amendment Bill in 2018, the proposed Education Rewrite Bill, and an Education Amendment Bill being considered for 2019.
31. The Education Amendment Bill 2018 was introduced on 8 February 2018 and is currently before the Education and Workforce Committee. The Education Amendment Bill 2018 (No. 2) has been drafted, vetted under the Bill of Rights Act 1990, and consulted on (both policy and the Bill itself), and is about to be introduced. To include changes to either of these Bills would require a Supplementary Order, and there would be very limited time for consultation. We do not recommend this.
32. It would be possible to include this issue in the proposed Education Rewrite Bill. This Bill is currently being prepared, and its scope will include a wide range of changes designed to update the Act and ensure that provisions are fit for the future of education. However,

² As programmes cannot be approved for NCEA, these Rules are not applicable to NCEA.

because of the coverage of the Bill, it is on a longer timeframe, meaning the amendments may not be made for a significant period of time.

33. We therefore recommend that this issue is included in the next available Education Amendment Bill being considered for 2019. Including the proposed changes in a 2019 Bill would allow time for appropriate consultation with the education sector. We will provide further advice when the timing of any possible Amendment Bills is confirmed.

Proactive Release Recommendation

34. It is intended that this Education Report is proactively released as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Proactively Released