

Submission on

**An Education with a Special Character: A Public Discussion Paper
on the Private Schools Conditional Integration Act 1975**

**The Education Forum
www.educationforum.org.nz**

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Introduction

1. The Ministry of Education has released a discussion paper to generate debate on the role and future of the *Private Schools Conditional Integration Act 1975* (the Act). This submission outlines the views of the Education Forum on a number of the issues raised in the discussion paper. It also comments on the range of policy changes canvassed in the discussion paper and outlines a broad direction for reform of the Act.

2. Our comments do not follow the format set out in the discussion paper's attached questionnaire. It is important that our comments be read in a broader context. We would be pleased to discuss this submission further with you, if you would find that useful.

Background

Issues Canvassed in Discussion Paper

3. The Ministry of Education discussion paper canvasses six issues, as follows:

- Issue 1: Has the Act served its purpose? Is there now a need to rethink how future schools grounded on religious and philosophical beliefs are treated in the New Zealand state education system?
- Issue 2: Are there conflicts between the Integration Act and the Education Act?
- Issue 3: Are there ways of clarifying the confused accountabilities that can exist between boards of trustees and proprietors, particularly since the advent of the *Tomorrow's Schools* reforms?
- Issue 4: Is it possible to establish better mechanisms for managing the network of schools, including integrated and non-integrated schools, in an era of considerable demographic change?
- Issue 5: Is there a need to clarify the basis on which attendance dues are charged by integrated schools?
- Issue 6: Are there operational issues arising from the Act and integration agreements that need to be reconsidered?

Stated rationale for reform

4. According to the discussion paper, the context for reviewing the Act's provisions arises from a decision to look at consolidating and modernising the five existing pieces of education legislation. The discussion paper outlines several reasons why the Act needs to be examined, including:

- changes to the policy environment for schools since the passage of the Act mean that separate legislation is no longer necessary (eg provision is now made for special character schools in mainstream legislation, safeguards against a 'possibly unsympathetic central bureaucracy' are unnecessary given that schools are governed by local communities);

- the legislation is now being used to achieve goals that were never intended when the Act was passed (eg the Act was intended to preserve existing schools, but is now being used to establish new ones);
- integrated schools make it difficult for a minister of education to coherently manage the network of schools given that they cannot be easily reorganised;
- many provisions within the Act have become outdated and are not consistent with more recent legislation (eg cash versus accrual accounting practices); and
- the Act contains inconsistencies between integrated and non-integrated schools (ie closures and reorganisations, ability of integrated schools to charge attendance dues, ability to challenge a number of requirements of the Education Act 1989).

Comment

Overall view on reform of the Act

5. The review of the Act provides a vehicle for addressing some important policy issues relating to integrated schools. As the discussion paper notes, there are a number of regulatory and funding issues that could be addressed through the review, including the complex and non-transparent nature of the relationship between the Crown and integrated schools, the basis upon which different types of schools are subsidised and restrictions governing schools' ability to organise themselves differently (eg inability of integrated schools to merge and be set up as a 'school within a school').

6. The review also offers an opportunity to extend the integrated schools model to new and innovative partnership arrangements in the education sector. Recent years have seen the establishment of a small number of special character schools such as Discovery School under s 156 of the Education Act 1989. In addition, the Ministry of Education/iwi partnerships offer significant potential for new forms of partnership arrangements aimed at improving educational outcomes for Maori.

7. However, any reforms need to be carefully considered and must recognise the important role played by integrated schools in New Zealand. While the discussion paper does not outline a firm direction for reform (it instead canvasses a range of possible changes), there are worrying indications that the government is contemplating increasing government regulation of, and control over, integrated schools.

8. The last thing that integrated schools need is either more regulation or a government 'take-over' that would lead to less competition in the school sector. Instead, the review of the Act should seek to build on the strengths of the integrated schools model (the fact that these schools are private and are funded at near state school levels), while addressing its weaknesses (the fact that they are already over-regulated). The government should use the review to introduce a neutral funding regime under which all schools are funded at the same level, irrespective of who owns them, as set out in the Education Forum vision piece *A New Deal: Making Education Work for all New Zealanders*.

9. We strongly urge the government to take to heart the statement in the discussion paper that it is "willing to consider fresh ideas and challenge existing ways of thinking so as to better

serve New Zealand students in the future”. In our view, the proposal that we have put forward does this and should be considered seriously. Any attempt to increase regulation on integrated schools should be resisted. If this is the intention of the exercise, then the Act is better left alone.

Assumptions underlying the discussion paper

10. While we agree with the need for a review of the Act, we do not agree with a number of the assumptions that appear to underlie the discussion paper. In particular, many of the reasons advanced as justification for the review are weak.

11. For example, the discussion paper argues that the original rationale for the Act (moving existing schools into the state sector) has passed and it is now being used to establish new ones. While this may be true, the argument is, in our view, irrelevant. The Act ought to be assessed on the basis of whether or not it is contributing to good policy outcomes now, rather than on its origins. The fact that parents are choosing these schools over existing alternatives suggests they are playing an important role in the New Zealand education system.

12. We also do not agree with the discussion paper’s underlying assumption that post-1975 policy changes such as the *Tomorrow’s Schools* reforms have rendered the Act unnecessary. While many of the post-1975 reforms have been in the right direction, much more remains to be done. Indeed, recent policy changes such as the abolition of bulk funding and the recent reported increase in ‘red-tapeism’ would suggest that the need to protect schools from the bureaucratic encroachment is as relevant today as it was almost 30 years ago. In recent years, well established policies such as bulk-funding and the Targeted Individual Entitlement scheme have been swept aside with little regard to whether they were successful – largely because of pressure from vested interests such as the teacher union leadership.

13. In addition, the government has openly shown its aversion – through both its words and actions – to private providers at all education levels. Given the significant degree to which powers are concentrated in the hands of the minister of education and the wider bureaucracy, it is unclear how the current policy environment could ever be considered ‘sympathetic’ to schools generally or to integrated schools in particular. It should also be recognised that the very origins of public education in some countries (eg the common school movement in the United States) was, in part, a reaction to rising Catholic immigration and attempts by Catholics to gain tax support for their parochial schools. As Brouillette (1999) has noted:

Indeed, the common school movement and anti-Catholic sentiment were inextricably bound up with one another as citizens desired to prevent Catholic schools from being assisted through tax money.¹

14. Hence, the need for a secure, transparent and non-discretionary policy environment is just as, if not more, important in this sector than elsewhere.

15. We also believe the discussion paper’s focus on the degree of sympathy exhibited by the bureaucracy is naïve. While outright hostility, if it existed, would represent a threat to integrated schools, a lack of sympathy for the sector is not a necessary condition for the

¹ Brouillette, Matthew J (1999) *School Choice in Michigan: A Primer for Freedom in Education*, Mackinac Center for Public Policy, Midland, Michigan, USA, p 10.

introduction of policies that would have an adverse impact on integrated schools. Indeed, the greatest threat may come from the encroachment on freedom arising from policies that are well-meaning, but ultimately misguided. As US Justice Louis Brandeis argued:

Experience teaches us to be most on our guard to protect liberty when the government's purpose is beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.²

16. We do not agree that post-1975 changes to the school policy environment make the Act unnecessary. For example, while it is true that school governance has been decentralised, state and integrated schools remain highly regulated across a range of areas that can have a bearing on a school's character (eg staffing, funding arrangements, curriculum, and enrolment policies).

Reforming the policy framework for integrated schools

17. We agree there could be gains from reforming the Act. While the discussion paper does not make specific recommendations for change to the Act, it does identify a range of possible policy changes to address existing concerns with the Act. As can be seen from Table 1, these range from measures aimed at further regulating integrated schools to measures aimed at freeing them up from current regulations.

Table 1: Issues and Possible Responses Identified in Discussion Paper

<i>Issue Number</i>	<i>Issue</i>	<i>Possible Responses</i>
1	Has the Act served its purpose?	<ul style="list-style-type: none"> • Introduce a sunset clause into the Act • Require all special character schools to apply for establishment using the process set out in the Education Act 1989 • Establish new types of partnership arrangements
2	Are there conflicts between the Integration Act and the Education Act?	<ul style="list-style-type: none"> • Remove Section 80 of the Act from the legislation and make explicit provision for the provisions applying to special character schools and other schools • Include a much more specific definition of special character in the legislation
3	Are there ways of clarifying accountabilities between BoTs and proprietors?	<ul style="list-style-type: none"> • Review roles and responsibilities of BoTs and proprietors to ensure alignment with current legislation • Review accountability arrangements with proprietors and risks around proprietor's right to withdraw from an integration agreement • Put a maximum time limit on integration agreements • Institute a single agreement with special character schools that incorporates the integration agreement and the school charter
4	Is it possible to establish better mechanisms for managing the network of schools?	<ul style="list-style-type: none"> • Give minister more power to close and reorganise special character schools • Allow integrated schools to have multiple characters • Allow for special character 'schools within a mainstream school' • Allow integrated and non-integrated schools to combine BoTs
5	Is there a need to clarify the basis on which attendance dues are charged?	<ul style="list-style-type: none"> • Set date by which all attendance dues must be reduced to nil • Review basis upon which attendance dues are set (ie. bring the Act into line with accrual accounting conventions, set attendance dues using capital cost recovery approach, introduce national ceiling on attendance dues)
6	Are there operational issues that need to be reconsidered?	<ul style="list-style-type: none"> • Require more explicit and transparent definitions of special character • Review enrolment rules for special character schools (ie. set national level for allowable percentage of non-preference students, do not allow non-preference students, remove enrolment restrictions at integrated schools) • Allow school's maximum roll to be determined by its capacity • Change legislation concerning staff transfers when an integration agreement is cancelled

² *Olmstead v US*, 277 US 348 (1928).

18. We would argue against reforms that aim to further regulate integrated schools (eg subjecting them to enrolment scheme legislation or limiting fees), provide greater Ministerial discretion and decision-making power over integrated schools (eg managing the network of schools) or reduce choice for parents and families (eg tightening enrolment limits on non-preference students).

19. In our view, the strength of the integrated schools model is that these schools are private and are funded at around the same level as students at state schools. Integrated schools therefore offer real choice in education to New Zealand families. The model is superior to the current system for funding independent schools (which are also privately owned), which receive a subsidy equal to only 30 to 40 percent of that paid to state schools.

20. The weakness in the current model is that, like state schools, integrated schools are subject to tight regulation across a range of areas. Many of the recommendations in the discussion paper would see integrated schools becoming even more tightly regulated. In our view, this would be the wrong way to go. Any reform of the Act should aim to reduce the degree of regulation of integrated schools, rather than increase it. The discussion paper makes the point that integrated schools can challenge some requirements of the Act. In our view, this is a good thing in cases where current regulations governing state schools do little or nothing to improve education outcomes – a test that most existing regulations would fail.

21. While decision-making authority in New Zealand schools may compare well with that in other countries, the sector is far more regulated than just about any other sector in the New Zealand economy. This is particularly true in the area that is clearly of utmost importance to good education outcomes – staffing, where school boards and managers face numerous constraints caused by teacher registration requirements, immigration rules, centralised contracts and employment legislation that combine to limit who can be hired, how teachers can be paid and how easily poorly performing teachers can be dismissed.

22. The existing degree of regulation limits the ability of schools to organise themselves in the most effective way to meet the needs of students. This is of concern given the importance of school organisation to the academic performance of students in schools. For example, US researchers John Chubb and Terry Moe, when working at the Brookings Institution and Stanford University respectively, found that effective school organisation was second only to student aptitude in determining achievement gains, and it was more important than family influence. They also found that school autonomy had the strongest influence on the overall quality of school organisation. In brief, the more a school is subject to the influence of external administrators and unions the less likely it is to be effectively organised.³ In New Zealand, these external pressures are considerable, and we can expect organisational effectiveness and, thus, student performance, to suffer.

23. Other evidence reinforces Chubb's and Moe's results. For example, in a 2001 report, Ludger Woessmann, a research economist at the Kiel Institute of World Economics in Germany, found that school autonomy in hiring teachers, setting salaries, purchasing supplies and choosing instructional methods all improved performance on the TIMSS.⁴ It seems that

³ Chubb, John E and Terry M Moe (1990) *Politics, Markets and America's Schools*, The Brookings Institution, Washington DC.

⁴ Woessmann, Ludger (2001) 'Why Students in Some Countries do Better', *Education Next*, pp 67–74, www.edmatters.org.

autonomy in these factors takes advantage of greater knowledge at the school level, compared with central administrators, about student needs and the performance of different teachers, so allows schools to respond better to the demands of parents and retain effective staff.

24. We should be striving for smarter regulation, rather than drawing more schools into the existing poorly designed regulatory net. This suggests that the regulatory environment for integrated schools should move closer to that of independent schools, rather than that of state schools. We should free schools from arbitrary restrictions on staffing and other areas, while using output-focused regulation, in the form of standardised tests, to require them to produce improved education outcomes for students.

25. One of the possible changes identified in the discussion paper is an increase in the minister's powers to manage the school network. The discussion paper justifies this on the grounds that some rationalisation will be required in the network of schools to accommodate declining enrolments in some areas. While the decline in enrolments may be a reality, it is not clear that centralised decision-making is necessarily the best way of addressing this issue. For example, it is unclear why the centre would have better information than parents on which to base decisions about what schools ought to be established, close or remain open. Allowing choice in schooling would offer a better means of determining the appropriate 'network of schools' since it would ensure that schools were subject to a market test. The excess demand for places at existing integrated schools and the establishment of new ones is evidence that these schools are meeting the needs of parents and communities and they should be allowed to prosper. For example, recent statistics show that:

- enrolments at Catholic schools rose by 2.3 percent in the year to July 2003 and by 15 percent over the most recent ten year period;
- enrolments in the Auckland Archdiocese grew by 34 percent over the most recent ten year period;
- secondary school enrolments have grown by 19.5 percent since 1993; and
- nine new Catholic schools have been opened in the 9 years to 2003, with two more being planned for opening over the next two years.⁵

26. In our view, parental demand – supported by appropriate funding and school performance information – would provide a better mechanism for determining the appropriate network of schools than would a central planner. This is particularly true given that network reviews do not appear to take into account measures of educational quality. The minister of education recently indicated that network review decisions were being made largely on financial grounds.

27. It is important to recognise the role that integrated schools play in providing effective competition for state and independent schools. Integrated schools provide a real educational option for many families because they are funded at similar levels to state schools. Such school choice policies – which feature competition between both public and private schools – are found in a range of countries, including Sweden, Ireland, Denmark, Australia, the

⁵ Catholic Education Office (2003) *Catholic schools in New Zealand continue their upward roll trend*, Media Release, 8 July.

Netherlands and several Canadian provinces.⁶ According to the PISA 2000 report, an average of 10 percent of 15-year-old students were in 'government-dependent' (that is, publicly funded) private schools across the 24 OECD countries that participated in the study, with 58 percent and 75 percent in Ireland and the Netherlands.⁷

28. Competition promises to drive improvements throughout the system. As Harvard economist Caroline Hoxby has noted, public schools can and do react to competition by improving schooling and reducing costs.⁸ Hoxby examined choice reforms in three US jurisdictions and found that, in each case, regular public schools increased educational achievement per dollar spent (that is, productivity) when exposed to competition. She also noted that schools facing the most competition had the biggest increases in educational achievement per dollar spent.⁹

29. Hoxby also examined the impact of Catholic schools on public schools and found that public schools located in areas with more Catholic schools performed better – in terms of educational attainment, graduation rates, test scores and students' future wages – than those facing less private competition. According to her estimates, an increase in private school enrolments of 10 percent (or an increase in tuition subsidies to private schools of US\$1,000) would lift the achievement of public school students, whether measured by test scores, ultimate educational achievement or future earnings. The estimated effect of such an increase in competition would be to lift mathematics and reading test scores by 8 percentile points, wages by 12 percent and the probability of getting a baccalaureate degree by 12 percent.¹⁰

30. Lori L Taylor, a Senior Economist at the Federal Reserve Bank of Dallas in the United States, has summarised the literature on the effects of competition in education as follows:

Most of the work on government responses to competition has focused on the market for education, and here the literature is strikingly consistent – competition improves public schools. Almost across the board, researchers have found that school spending is lower, academic outcomes are better, and school-district efficiency is higher where parents have more choice in their children's educational provider.¹¹

31. There is also evidence that private schools can be successful in lifting the performance of students across all income groups. For example, data from the National Educational

⁶ See Nesdale, Pauline (2003) *International Perspectives on Government Funding of Non-government Schools*, Education Forum Briefing Paper No 7 and *Subtext: The Newsletter of the Education Forum*, March 2003, www.educationforum.org.nz.

⁷ OECD (2001) *Knowledge and Skills for Life: First Results from PISA 2000*, Programme for International Student Assessment, Paris, p 179.

⁸ Hoxby, Caroline M (2001) 'Analyzing School Choice Reforms that use America's Traditional Forms of Parental Choice', in Claudia R Hepburn (ed), *Can the Market Save Our Schools?*, The Fraser Institute, Vancouver, p 93.

⁹ Hoxby, Caroline (2001) *School Choice and School Productivity (or, could school choice be a tide that lifts all boats?)*, paper prepared for the Economics of School Choice Conference, National Bureau of Economic Research, Cambridge.

¹⁰ Hoxby Caroline (1994) *Do Private Schools Provide Competition for Public Schools?*, NBER Working Paper No W4978, Cambridge.

¹¹ Taylor, Lori L (2000) 'The Evidence on Government Competition', *Economic and Financial Review*, Second Quarter 2000, Federal Reserve Bank of Dallas, Dallas, p 7.

Longitudinal Study of 1988 (Fourth Follow-up) show that students who had attended private school in 8th grade were twice as likely as those who had attended public school to have completed a bachelor's or higher degree by their mid-20s. The difference was even larger among students from low-socioeconomic groups, with the proportion of students achieving a bachelor's degree or higher being over three times higher among those who had attended a private school rather than a public school in 1988 (24 percent vs 7 percent).¹²

32. Furthermore, the PISA results show that public financing of private schools, as exists with integrated schools (and to a lesser degree in independent schools), can be successful in reducing the impact of low incomes as a barrier to accessing private schooling. As shown in Table 2, the socio-economic profile of public schools in participating countries for which data were available differs little from that in government-dependent private schools, although the differences are larger between public schools and independent private schools. PISA results also show that government-dependent private schools perform well relative to public schools.

33. A recent review of Catholic schools by the Education Review Office found that Catholic schools offer an education equivalent to that offered by other New Zealand state schools. It also found that students in Catholic secondary schools had higher levels of school-leaving qualifications relative to state schools of a similar decile.¹³

Table 2: Socio-economic status of students in public, government-dependent and independent private schools, selected countries, 2000

Country	International socio-economic index of occupational status (%)		
	Public Schools	Private Schools	
		Government-Dependent	Independent
Austria	48.9	54.1	58.0
Canada	52.2	59.2	64.3
Czech Republic	48.4	47.3	N/A
Denmark	49.6	50.8	N/A
Finland	49.9	55.1	N/A
Germany	48.7	56.9	N/A
Hungary	49.4	52.6	38.0
Ireland	44.6	50.1	62.5
Korea	42.8	40.2	44.1
Luxembourg	45.5	41.5	N/A
Norway	53.8	54.0	N/A
Portugal	43.8	41.7	56.1
Spain	41.3	46.5	62.8
Sweden	50.4	54.8	N/A
Switzerland	48.2	51.7	63.3
USA	51.7	47.9	55.3
Average (unweighted)	48.1	50.3	56.0

Source: Adapted from OECD (2001) *Knowledge and Skills for Life: First Results from PISA 2000*, Programme for International Student Assessment, Paris, p 307.

Education Forum Proposed Reform Direction for the Act

34. Rather than increasing the degree of regulation over integrated schools, the government should use the opportunity and lessons from the experience with integrated

¹² National Center for Education Statistics (2002) *The Condition of Education 2002*, US Department of Education, Washington DC, p 19.

¹³ Education Review Office (2003) *Catholic Schools in New Zealand*, Wellington, June, www.ero.govt.nz.

schools to introduce a 'choice-based' funding model for the school sector, as set out in the recently released Education Forum Vision Piece entitled *A New Deal: Making Education Work for All New Zealanders* (copy enclosed).

35. Under this model, families would be given real choice because school zoning, the Berlin Wall of education opportunity, would be torn down and funding would follow students. Under the model, the primary source of accountability would be parents, not bureaucracies.

36. The programme's key components would be:

- Abolish current zoning rules. In particular, the right to attend the 'nearest school' would be removed and school and enrolment criteria would be set by the school, rather than centrally.
- School funding would be tied to each student, so all schools – whether public, private, not-for-profit, for-profit, community or church – would receive the same funding for similar students.
- Per-student funding amounts would be made up of a base level of funding, with top-ups that provide additional funding aimed at overcoming students' barriers to learning, broadly defined. For example, additional funding could be incorporated in the per-student funding levels to help schools meet the needs of children from low-income families. Funding would not favour any particular type of school over another (for example, state, for-profit, religious and so on).
- School funding would be comprehensive, incorporating the costs of delivering the curriculum, meeting school operating and property costs and the cost of capital.
- All schools that received funding would need to be 'registered' and subject to appropriate accountability requirements, including the requirement to participate in national assessment examinations, report on student outcomes (using a variety of measures), and be subject to ERO, or equivalent, school reviews.
- All schools would be funded in cash and would determine how best to spend that money.
- All privately-owned schools would have the power to charge fees.

37. All schools – irrespective of type – would apply for registration through a common application process, thus minimising transaction costs and providing potential schools with certainty as to the rules of the game.

38. Such a system would obviate the need for schools to sell their soul to regulators in order to qualify for higher levels of funding and would significantly lift the degree of competition in the education sector.

Conclusion

39. Integrated schools play a valuable role in the school sector in New Zealand. This is especially true given the large size of the state school sector. As a recent ERO report showed, Catholic schools, which make up the bulk of integrated schools, are delivering a quality of education equal to that of state schools in New Zealand. Because they are private

and are funded at similar levels to state schools, they provide real competition for the state sector. They are also able to serve a broader community and a wider range of income groups. This is a strength of the integrated schools model. Its weakness is that integrated schools are overly regulated (as are state schools), which reduces their ability to 'be different' and to meet the needs of diverse communities.

40. The review offers a good mechanism for addressing fundamental questions relating to the funding and regulation of integrated schools. The discussion paper identifies a range of possible changes to the Act, some involving more regulation and some involving less. We would argue against any attempt to further regulate integrated schools and would argue against taking any steps that would give the minister of education greater powers to 'manage the network of schools'. This is simply code for reducing competition in schooling. Parents are better placed to determine the appropriate network of schools through informed choice.

41. Instead, we propose that the government introduce a 'choice-based' model for education funding, as outlined in the Education Forum Vision Piece entitled *A New Deal: Making Education Work for All New Zealanders*. Under such a model, students at all schools – including integrated schools – would be funded at the same level (a base amount plus equity top-ups). There would no longer be false and arbitrary distinctions between different types of school (eg s156 schools, Kura Kaupapa Maori, state schools, independent schools, special character schools). These distinctions make no sense. The nature of regulation of all schools – including integrated schools – would shift from an input basis to an output basis – with a greater emphasis on educational outcomes, rather than telling schools what they can and cannot do. Managing the network of schools would become the primary responsibility of parents, communities and service providers, rather than the Minister of Education. All schools would be subject to a common establishment process, thus minimising transaction costs and providing certainty to potential schools.

42. The reform we propose would retain the strengths of the integrated schools model – its level of funding and private ownership – while minimising its weak point – the current degree of over-regulation. It would also provide a framework for considering new and different partnership arrangements between the Crown and community groups that want to establish schools with a special character. There would seem to be no reason why such arrangements ought to be limited to one group. Recent years have seen the establishment of a small number of special character schools such as Discovery School under s156 of the Education Act 1989. In addition, the Ministry of Education/iwi partnerships offer significant potential for new forms of partnership arrangements aimed at improving educational outcomes for Maori.

43. Such new forms of partnership are becoming more common internationally. For example, the charter school sector in the United States has been growing rapidly and has been supported by both Democrats and Republicans. In 2002, there were some 2,700 charter schools – up 14 percent over the previous year. Catholic schools play a key role in many of the US voucher experiments currently underway. In the United Kingdom, a number of Specialist Schools, which offer specialised curriculum offerings such as technology, science, sports and languages, have been set up.

44. The reform of the Act could provide a catalyst for new and innovative developments in New Zealand education. We commend the above reform direction to the government. If the review's intent is to increase the degree of government regulation and control over integrated schools, then we would recommend leaving the Act as is.