


Impact Summary: Repeal of COOL Legislation

Section 1: General information

Purpose
<p>The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none">• final decisions to proceed with a policy change to be taken by Cabinet.
Key Limitations or Constraints on Analysis
<ul style="list-style-type: none">• <i>Describe any limitations or constraints — both those listed below and any others you have identified:</i>• <i>Scoping of the problem.</i>• <i>Evidence of the problem</i>• <i>Range of options considered</i>• <i>Criteria used to assess options</i>• <i>Assumptions underpinning impact analysis</i>• <i>Quality of data used for impact analysis</i>• <i>Consultation and testing</i>
<p>There are no limitations or constraints on the analysis.</p>
Responsible Manager (signature and date):
<p>Dr Andrea Schöllmann Deputy Secretary Education System Policy Ministry of Education</p> <p> 8/5/18</p>

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

- Describe the current situation and how it is expected to develop if no action is taken, over and above what is already intended. This is the “counterfactual” against which other options should be assessed, and your preferred option described, in section 4.
- Why does the current situation constitute “a problem”, or why is it expected to do so if it continues?
- What is the underlying cause of the problem? Why does government need to act – why can’t individuals or firms be expected to sort it out themselves, under existing arrangements?
- Why does it need to be addressed now?
- How much confidence is there in the evidence and assumptions for the problem definition?

Digital education is increasingly a feature of the New Zealand schooling system. While many teachers in face-to-face schools use digital resources and devices to assist their students in their learning, a growing number of schools are grouping together to provide one another’s students with tuition through distance education using online teaching.

Distance education is where students are mainly taught using a mode of teaching where student and teacher are not physically present together. Traditionally this was by correspondence education, but is now mostly by online teaching. There may also be limited face-to-face engagement. Distance education has grown considerably in recent times but in an ad hoc manner.

There are two main types of providers of distance education. The first is Te Aho o Te Kura Pounamu (Te Kura – “The Correspondence School”), which delivers education predominantly online. The Te Kura Enrolment Policy, set by the Minister of Education, enables it to enrol students who meet *Gazetted* criteria. Where a Te Kura enrolment is for the provision of supplementary tuition, schools are generally not required to give up any of their own resourcing to access the supplementary tuition for their students.

There are also clusters of schools, referred to as Virtual Learning Networks (VLNs). These provide online tuition to students in other schools, supported by a system of sharing and trading resources, such as staffing entitlements and reciprocal teaching, in return for the tuition provided. As demand for distance education grows, these arrangements are becoming more difficult to manage.

In 2017, the Education Act 1989 was amended to introduce a legislative regime to regularise and expand the provision of distance education through Communities of Online Learning (COOL). The new legislative provisions open up distance education provision for both part-time and full-time tuition in order to provide students with greater choice. The Act now enables accreditation of distance education provision by any private provider through a statutory accreditation system to ensure that providers meet minimum safety and quality standards. An accreditation regime set out in the legislative provisions and in regulations yet to be developed is set to come into force on 31 December 2019. At this time, Te Kura would automatically become a COOL.

At the Select Committee stages there was concern that the accreditation regime would not be robust enough to prevent students receiving poor education. There was also concern that private sector providers were exempt from certain requirements required by state schools (and therefore state COOL), such as employing registered teachers and/or using the New Zealand curricula.

If no action is taken, the legislative provisions for COOL come into effect on 31 December 2019. They can only be fully effective if accompanied by a number of regulations (covering matters such as accreditation, enrolment, attendance, and reporting), and the development of a funding model.

The Government acknowledges the importance of digital and online education. The Minister is currently engaging in a series of high-level consultations through Summits, a national conversation on education surveys and specific reviews, including the review of Tomorrow's Schools. What the public and the sector want for digital and online education is likely to be a theme in these discussions, and the future of distance education will be part of that. Future policy will be developed in the light of these discussions, and therefore, the Government proposes the repeal of the COOL provisions.

2.2 Who is affected and how?

- *Whose behaviour do we seek to change, how is it to change and to what purpose?*
- *Who wants this to happen? Who does not?*

Existing providers such as the VLNs and Te Kura will need to continue with the current arrangements for longer than they anticipated. While they want enhancements to the status quo, they do not endorse particular aspects of the COOL regime.

Preliminary consultation supports changing the regime. Of 20 submitters 15 supported repeal, with another five not taking an explicit position but expressing concerns with the COOL regime. The VLNs that submitted were concerned that online education could get "lost" as a result of the repeal and that current structures and resourcing arrangements could break down in the interim. Te Kura's main interest was the extent to which the education system is able to offer a range of options for learners, rather than on the specific legislative mechanism to achieve this.

2.3 Are there any constraints on the scope for decision making?

- *What constraints are there on the scope, or what is out of scope? For example, ministers may already have ruled out certain approaches.*
- *What interdependencies or connections are there to other existing issues or ongoing work?*

The Government is currently engaging in a series of high-level consultations through Summits, a national conversation on education surveys and specific reviews, including a review of Tomorrow's Schools. These will include discussions around online education and how it will play a part in the education of students now and into the future. The Ministry of Education is also undertaking policy work on at-risk students, many of whom end up in distance education.

Section 3: Options identification

3.1 What options have been considered?

- List the options and the criteria you used to assess them. Briefly describe their pros and cons.

We considered three options:

- *Option One*: No change to the COOL legislation at this time
- *Option Two*: Extend the date for the COOL legislation to come into force
- *Option Three*: Repeal the COOL legislation

The criteria used to assess them are:

- The need for the strategic conversations and reviews to inform the future provision of digital education, policy to be developed and any new legislation passed
- Avoiding the need for unnecessary legislation and operational processes
- The need for certainty for the sector about what is happening

Option One would leave the existing COOL legislation in place since it does not come into force until 31 December 2019. To better align the current COOL provisions with the outcomes of the strategic conversations and reviews, amendments could be made to the legislation. However, under this approach there would be considerable timing constraints in terms of drawing conclusions from the discussions and reviews, developing policy and passing legislation, before 31 December 2019. This would create uncertainty for the sector, especially for Te Kura, who do not have any option about becoming a COOL, and would not have sufficient time to prepare for transition to a COOL.

Option Two would involve extending the date for the COOL legislation to come into force to a date two or three years in the future. The substantive legislation is likely to require change. Leaving it on the statute books as it is, for a number of years, will not provide certainty for the sector that the COOL regime was no longer Government policy.

Option Three would involve repealing the COOL legislation and reinstating the provisions (mostly relating to Te Kura) that would have gone out of force on 31 December 2019. This will keep the status quo while the strategic discussions and reviews are being undertaken. It will enable policy development and legislation to follow the outcomes of current substantive reviews, such as the review of Tomorrow's Schools. It avoids the need for any unnecessary legislation and creates certainty for the sector, especially since there will be greater understanding and buy-in as a result of the strategic conversations and reviews.

Summary of options and criteria

	<i>Option One</i> : No change	<i>Option Two</i> : Extend the date	<i>Option Three</i> : Repeal the COOL legislation
Time for new legislation to be prepared?	No	Yes	Yes
Avoids unnecessary legislation?	No	Possibly no	Yes
Certainty for the sector?	No	No	Yes

3.2 Which of these options is the proposed approach?

- *Which is the best option? Why is it the best option?*
- *How will the proposed approach address the problem or opportunity identified?*
- *Identify and explain any areas of incompatibility with the Government's 'Expectations for the design of regulatory systems'.*
See <http://www.treasury.govt.nz/regulation/expectations>

Option Three is the best option. It creates time for consultation, policy development and any new legislation to follow on from the strategic conversations and reviews being undertaken, such as the review of Tomorrow's Schools. It avoids the need for any further or interim legislation until the new regime is in place. It provides certainty for the sector and makes it clear that the COOL regime is no longer proceeding as it currently is, and that its replacement will be informed by input from them.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Summarise the expected costs and the benefits in the form below. Add more rows if necessary.

Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie costs or benefits additional to what would happen if no actions were taken. Note that "wider government" may include local government as well as other agencies and non-departmental Crown entities.

See <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/x/x-guide-oct15.pdf> and <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis> for further guidance

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts
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Additional costs of proposed approach, compared to taking no action

Regulated parties	Providers. Current and potential new providers may have done some planning towards becoming a COOL.	Low
Regulators	Ministry of Education. No additional costs. Status quo continues.	Low
Wider government	Treasury. No additional costs.	Low
Other parties	Education sector/students. May be some costs if the delay means that students' aren't able to access some curriculum options, if for example, the feasibility of a VLN is impacted.	Low
Total Monetised Cost		N/A
Non-monetised costs		Low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	Benefits from certainty that the COOL regime will not proceed.	Medium
Regulators	Time to develop policy aligned to Government policy that follows the current reviews. No need for interim regulations and operational policy.	Medium
Wider government	Benefits from taking a wider system view within the context of current reviews, to policy and legislation development.	Medium
Other parties	Benefits from removing a complex and highly regulated regime.	Low

Total Monetised Benefit		N/A
Non-monetised benefits		Medium

4.2 What other impacts is this approach likely to have?

- *Other likely impacts which cannot be included in the table above, eg because they cannot readily be assigned to a specific stakeholder group, or they cannot clearly be described as costs or benefits, eg equity impacts*
- *Potential risks and uncertainties*

Some stakeholders will be concerned by the delay in developing appropriate recognition of online learning.

There are uncertainties around the effect on VLNs, who are experiencing both pressure to grow but may disband, if arrangements become too difficult to manage (as a result of growing demand). Although there are no significant impacts on Te Kura's current operating model, it is likely to seek some changes to the Te Aho o Te Kura Pounamu (Te Kura) Enrolment and Dual Tuition Policy as a result.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

- *Who has been, or will be, consulted, and at what stage(s)? Has consultation with iwi/hapū occurred, or should it?*
- *What is the nature of their interest?*
- *Do they agree with your analysis of the problem and its causes?*
- *Do they agree with your proposed approach?*
- *Has your proposed approach been modified as a result of stakeholder feedback?*

As part of initial consultation on proposals for the Education Legislation Bill, submitters were asked for their views on the repeal of COOL legislation and the considerations that should inform the future of online learning in the New Zealand education system.

Generally, there was consensus across the submissions for the repeal of COOL in favour of a national conversation about the role of online learning in New Zealand. Fifteen submitters explicitly supported repeal, with another five not explicitly opposed but expressing a range of concerns with the COOL framework.

Te Kura did not endorse two core design elements of the COOL framework, enabling private providers to become COOL, and enabling non-registered teachers to provide tuition. While Te Kura supported aspects of the COOL legislation related to enabling greater choice and flexibility, it is open to other ways of achieving this vision.

Similarly, a range of submitters expressed concern that private providers would not be required to teach the national curricula or employ registered teachers. Further concern was expressed that COOL represented the privatisation of the schooling system and that COOL would lead to the proliferation of low quality providers with little or no capacity to engage with at risk learners.

Other submitters supported repeal generally, but cited some concerns about the removal of the COOL framework. Two VLNs felt that COOL provided important recognition and support for online learning in the 'mainstream' education system and expressed the need to develop policy and regulations to support online learning in the absence of the COOL framework. Generally, there was support for the prospect of building online learning in the New Zealand education system, and that a national conversation would be an appropriate place for this to be realised.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

- *How is the proposed approach to be given effect? Eg,*
 - *legislative vehicle*
 - *communications*
 - *transitional arrangements*
- *Once implemented, who will be responsible for ongoing operation and enforcement of the new arrangements? Have they expressed any concern about their ability to do so?*
- *When will the new arrangements come into effect? Does this allow sufficient preparation time for regulated parties?*
- *How will implementation risks be managed or mitigated?*

The proposed approach continues the status quo so there will be no significant new implementation issues.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

- *How will you know whether the impacts anticipated actually materialise?*
- *System-level monitoring and evaluation*
 - *Are there already monitoring and evaluation provisions in place for the system as a whole (ie, the broader legislation within which this arrangement sits)? If so, what are they?*
 - *Are data on system-level impacts already being collected?*
 - *Are data on implementation and operational issues, including enforcement, already being collected?*
- *New data collection*
 - *Will you need to collect extra data that is not already being collected? Please specify.*

The proposed approach continues the status quo so there will be no significant new monitoring issues.

7.2 When and how will the new arrangements be reviewed?

- *How will the arrangements be reviewed? How often will this happen and by whom will it be done? If there are no plans for review, state so and explain why.*
- *What sort of results (that may become apparent from the monitoring or feedback) might prompt an earlier review of this legislation?*
- *What opportunities will stakeholders have to raise concerns?*

The new arrangements will be reviewed after the strategic consultation and Tomorrow's Schools review are completed.