

In Confidence

Office of the Minister of Education

Chair, Cabinet Business Committee

Education Legislation Bill - proposed content and stakeholder engagement

Proposal

- 1 This paper advises Cabinet about consultation with the education sector, and other relevant stakeholders, on proposed content for an omnibus education bill (Education Legislation Bill).

Executive Summary

s 9(2)(f)(iv) OIA

- 2 I have proposed that an omnibus education bill, [REDACTED] be included in the 2018 Legislative Programme, to be called the Education Legislation Bill (ELB). The ELB is one of five education bills either in the House or currently being prepared. I propose that the ELB be introduced and referred to a select committee by July 2018.
- 3 The ELB would amend four enactments: Education Act 1989; Education (Update) Amendment Act 2017; Industry Training and Apprenticeships Act 1992, and the State Sector Act 1988.
- 4 The issues I am planning to address in the Bill are as follows:
 - 4.1 ensuring that only children five years old and older may start school in a cohort (the previous government's amendments mean some children could start school at four years old). Cabinet has already agreed to this amendment and the method of consulting on options (CBC-18-MIN-0009 refers);
 - 4.2 providing legislative settings to ensure the Education Council of Aotearoa New Zealand's decisions on matters relating to the teaching profession are made within the context of government policy;
 - 4.3 including a criterion for private schools registration by the Secretary for Education that they must provide a safe physical and emotional environment for their students, as is required for State and State integrated schools;
 - 4.4 ensuring that people employed or engaged in a school or early learning service (other than registered teachers) are appropriately safety checked to enhance the safety of children and young people, and that unnecessary compliance and administrative costs are minimised;
 - 4.5 repealing provisions in the Education (Update) Amendment Act 2017 relating to communities of online learning which are due to commence on 31 December 2019
 - 4.6 restoring a skills leadership role for industry training organisations (ITOs); and
 - 4.7 ensuring that the State Sector Act 1988 is applied consistently for mergers and closures of State schools and State Integrated schools. This is a technical amendment.
- 5 The above issues proposed for inclusion in the proposed ELB need to be dealt with quickly.
- 6 I intend to use a targeted approach to consulting with stakeholders. The Ministry of Education will write to relevant organisations with a description of the issue and identify

relevant options for change. Where appropriate, consultation material will be included on the Ministry website, and in the Education Bulletin which is published fortnightly. I do not propose widespread community consultation, although members of the public will have the opportunity to comment on information published on the Ministry of Education website. The exception is for the issue of cohort entry of new students where broad consultation has already started, as agreed by the Cabinet Business Committee (CBC-18-MIN-0009 refers).

- 7 After consultation is completed, I will seek Cabinet's agreement to the final content of the ELB and seek approval for Parliamentary counsel to draft the ELB.

Background

- 8 The Government has a comprehensive policy programme for education legislation. This year the First Reading has been given to the Education (Teaching Council of Aotearoa) Amendment Bill (changing the name and composition of the Education Council), and the Education Amendment Bill (EAB). The Education (Tertiary Education and Other Matters) Amendment Bill is currently before the House. Later this year I intend to seek authorisation for the issue of drafting instructions to Parliamentary Counsel for the drafting of an Education Legislation Rewrite Bill. This will provide a comprehensive approach to rewriting the Education Act 1989, incorporating relevant provisions from the Education Act 1964.
- 9 Prior to a full rewrite of the Act, I am proposing an Education Legislation Bill to deal with a number of education sector concerns raised during consultation on the Education (Update) Amendment Act 2017, and/or pre-election commitments made by coalition partners. The ELB also provides the opportunity to make other legislative improvements, such as requiring private schools to provide a safe physical and emotional environment and resolving a technical issue relating to integrated school mergers and closures.

Proposed ELB content

Cohort entry

- 10 Cabinet has agreed to consultation on a new approach to cohort entry (CBC-18-MIN-0009). While most students start school soon after their fifth birthday, a 2017 amendment meant that schools could develop a policy allowing students to start on the first day of term closest to their fifth birthday. This meant that some children are able to start school while still four years old. I am consulting on a minimum age of five years old for children starting school in cohorts and providing more flexible options for schools adopting a cohort entry policy. A six week-consultation process has started and I intend to report back to Cabinet on the results in April 2018.

Protecting the public interest in the Education Council of Aotearoa New Zealand decision-making

- 11 The purpose of the Education Council (the Council) is to ensure safe and high quality leadership, teaching and learning for children and young people in early childhood, primary and secondary schooling. In order to achieve this purpose, the Council has a broad range of functions, including setting standards for graduation from initial teacher education, running teacher registration, and setting standards for teacher practice and conduct, and monitoring adherence to them.
- 12 These functions give the Council significant influence over the quality of education in New Zealand, the safety of children and young people in educational environments, the standards of the teaching profession and the supply of teachers. This degree of public interest means that there needs to be some ability for the Government to influence the

work of the Council on behalf of all New Zealanders and, in particular, children and young people.

- 13 At present, this influence is achieved through the ability of the Minister of Education to appoint all nine members of the Council's board. This will change through the Education (Teaching Council of Aotearoa) Amendment Bill, which will enable teachers to directly elect the majority of the board of their own professional body.
- 14 While elections are an important step to strengthen the profession's ownership of the Council, they will reduce government's ability to influence the Council's work. In the Cabinet Paper informing Cabinet about the proposals in the Education (Teaching Council of Aotearoa) Amendment Bill, I signalled that alternative mechanisms might be needed to protect the public interest in the work of the Council, and that these would be made through other education bills planned for 2018.
- 15 In order to balance the changes to the Council's governance that will be made through the Education (Teaching Council of Aotearoa) Amendment Bill, I propose that the Education Legislation Bill should include provisions to:
 - 15.1 require the Council to consult with government when considering changes to training or registration requirements; and
 - 15.2 establish a power for the Minister of Education to issue a Government Policy Statement on matters relating to the teaching profession, to which the Council must have regard in discharging its functions. In issuing such a statement, the Minister would need to consult with the Council and other relevant stakeholders, balancing increased government influence with an ability for the Council's voice to be heard.
- 16 The Ministry will consult directly with the Education Council on this proposal. It will also seek the views of principal and teacher bodies across the early childhood, primary and secondary sectors, the School Trustees Association and the views of initial teacher education providers.

Establishment of a College of Educational Leadership

- 17 I have already indicated to Cabinet that I intend to establish a comprehensive education advisory service to oversee all centrally funded PLD, and a College of Educational Leadership that will set minimum qualifications required of those applying for leadership positions and ensure that quality professional development programmes are available for all new and existing educational leaders (CBC-17-MIN-0042).
- 18 The functions envisaged for the College may overlap with the current functions of the Education Council. In particular, s382(f) and (h) of the Education Act 1989 give the Council powers to set expectations for initial teacher education qualifications and practising standards for the teaching profession, which align with the proposed ability of the College to set qualifications for leadership positions. In addition, the Council has explicit functions in relation to disseminating leadership best practice (s382(c)) and enhancing the status of education leaders (s382(b)).
- 19 If I decide to establish the College separately to the Council, it may be necessary to adjust the Council's statutory functions, and the ELB may be an appropriate legislative vehicle to do so. Accordingly, I propose to test the views of the profession on the Council's role in relation to educational leadership, and the functions envisaged for the College of Leadership. I will report separately to the Committee if I consider that legislative change is required in order to establish the College of Educational Leadership.

Ensuring that private schools provide a safe physical and emotional environment

- 20 Hon Salesa, Associate Minister of Education, and I want to ensure that the minimum student welfare standards expected of State, State integrated schools, and Early Childhood Education (ECE) centres also apply to private schools. We would like to do this by allowing the Secretary for Education to consider the ability of a private school to provide a safe physical and emotional environment for students when making decisions about school registration.
- 21 Currently New Zealand has 89 private schools which are subject to a different regulatory system from State schools and State integrated schools. Private schools are privately owned and their owners have considerable freedom in how they operate the school: the facilities they provide, how they develop and teach the curriculum, the days the school is operational, and the qualifications framework and assessment methods they use.
- 22 All State, State integrated schools and ECE centres are required to provide a safe physical and emotional environment for students. Private schools are subject to the Health and Safety at Work Act 2015, and, under the Education Act 1989, are required to have suitable premises and equipment, as approved by the Secretary. Their registration may be suspended by the Secretary, in certain circumstances, if the welfare of the students is at risk.
- 23 However, there is nothing in the registration criteria to require private schools to ensure broader physical and emotional welfare standards equivalent to the requirements of State schools, State integrated schools and ECEs. This means that, while the Secretary may suspend the registration of a private school based on risk to the welfare of students, they are not able to decline registration or cancel registration based on risk to student welfare.
- 24 The proposed approach will provide more certainty for private school students, and their families/whanau, that they can expect the same standards of physical and emotional safety at private schools as for students in other educational institutions.
- 25 We intend for the Ministry to carry out a targeted consultation about this issue with members of the private school sector and relevant sector organisations, including: Independent Schools New Zealand, Independent Schools Educational Association, New Zealand Association for Christian Schools and the Education Council. This will include the Ministry writing to each private school with an outline of the issues and asking for their views.

Police vetting arrangements under the Education Act 1989 and the Vulnerable Children Act 2014

- 26 The Education Act 1989 and Vulnerable Children Act 2014 (VCA) have different requirements for checking the suitability of people with access to children in educational settings. All children's workers are required to be safety checked under the VCA. The safety checking requirements of the VCA are more extensive than the police vetting requirements under the Education Act.
- 27 The scope of the VCA extends only to people employed or engaged as children's workers. This means, for example, that people who live in a residence where home-based early learning is provided are subject to a lower standard of checking than other people working alone with children, despite a similar level of risk.
- 28 On another matter, short-term contractors engaged by schools and early learning centres, such as tradespeople, are required to be police vetted under the Education Act. The Act currently requires these workers to be police vetted each time they enter a new

education setting. This can be time consuming for schools and early learning services, and creates extra work for police, completing the same vet multiple times. Sector reference groups have regularly expressed concern about the administrative burden of the current arrangements.

- 29 I propose that the Ministry undertake consultation to ascertain from stakeholders:
- 29.1 whether we should have the same standards of vetting for children's workers and people who reside in home-based early learning centres (such as family members of the children's worker);
 - 29.2 what level of checking or vetting (if any) should be required for tradespeople and other contractors who are not children's workers under the VCA, but who may be required to work in close proximity to children and young people without compromising children's safety; and
 - 29.3 where it is considered that some form of checking or police vetting should be retained for tradespeople, how the process could be streamlined to ensure that unnecessary compliance and administrative costs can be minimised or avoided.
- 30 I propose that consultation be targeted to the education sector and with trade/contracting organisations. In particular, the Ministry will directly consult education unions, principals associations, New Zealand School Trustees Association, and the Education Council of Aotearoa New Zealand. Information will be prepared for publication on the Ministry website and the Education Bulletins to enable any school or service that has a view to participate in the consultation.

Skills leadership for industry training organisations

- 31 Industry training organisations (ITOs) are industry bodies approved by the Minister responsible for the industry training legislation, to undertake certain activities in relation to an industry. From 2004 to 2014, the functions included a skills leadership role – identifying current and future needs, developing training plans to help the industry meet those needs, and promoting training that will meet those needs to employers and employees. Performance in this function for a given industry was assessed every five years when ITOs reapplied for recognition with respect to that industry. Poor performance could result in recognition being granted only provisionally, or being denied.
- 32 In 2014, the skills leadership role was removed from legislation. The rationale was that this would remove duplication between ITOs and other industry bodies, focus ITOs on the roles industry valued most (standard setting and arranging training), and encourage other industry bodies to communicate more directly with government about their training and skill needs.
- 33 The legislation does not exclude ITOs from a leadership role. ITOs have continued some skills leadership activities. Removing skills leadership from the ITO legislation downplayed this role and the need for ITOs to have skills leadership capability. Skills leadership by other industry bodies has not grown significantly, as had been hoped. The Future of Work Commission recommended restoring the statutory skills leadership role to ITOs as a sign of confidence in their work and delivery.
- 34 I propose that consultation focus on the detail of how the skills leadership role would be restored – simply reinstating the previous wording, or making other changes.
- 35 The Ministry will consult with industry and employer representatives, including ITOs, occupational licensing organisations (such as the Registered Master Builders Association of NZ), tertiary providers, relevant trades and education unions, and tertiary student representatives.

Technical change to State Sector Act 1988 on school closures and mergers

- 36 When the Private Schools Conditional Integration Act 1975 was repealed and replaced with amendments to the Education Act 1989, the need to apply key provisions in the State Sector Act to mergers and closures was overlooked. The provisions were:
- 36.1 s77HA, which restricts compensation for technical redundancy arising from closure or merger of schools; and
 - 36.2 s77HB which removed the application of the ‘advertise and appoint on merit’ provisions where an appointment is in connection with the closure or merger of a school.
- 37 The State Services Commission, which administers the State Sector Act 1988, supports making these technical legislative changes. Hon Salesa and I do not propose consultation on this issue.

Communities of online learning

- 38 The former Government introduced the Communities of Online Learning (COOL) framework through the Education (Update) Amendment Act 2017. The framework gave schools, Tertiary Education Providers (TEPs) and any body corporate the ability to seek accreditation from the Minister of Education to become a COOL and to teach school-aged students online.
- 39 The COOL framework opened up online learning to all students, as opposed to providing distance education to only those students unable to attend a face-to-face school. The provisions are due to come into effect on 31 December 2019. It was intended that Te Aho o Te Kura Pounamu (Te Kura) would become a COOL.
- 40 The former government considered COOL would increase education options for students, and give students broader access to teaching and subject matter expertise. It also introduced competition to Te Kura and allowed non-school entities (including private providers) to enter the education system.
- 41 When the Update Bill was before Select Committee, most submitters were opposed to COOL. Even some of those who supported COOL were opposed to what was described as the “privatisation” of the state schooling system. The main concerns raised by submitters included:
- 41.1 the ability of private sector bodies to become COOL;
 - 41.2 that tertiary and other private sector bodies would not be required to teach the national curricula, or to employ registered teachers;
 - 41.3 that online learning would be an option for any student who chooses it (open enrolment), when the student might not have the right disposition to learn online; and
 - 41.4 schools would use COOL to ‘off-ramp’ at-risk students.
- 42 Online learning presents significant opportunities within education now and into the future. However, I believe that online learning should be an integral part of the way we deliver education. Online learning occurs now in the system, and continues to grow, without the 2017 COOL amendments. Virtual Learning Networks (VLNs) deliver learning opportunities to between 250 and 400 primary school students (through approximately 60 schools), and between 3000 and 5000 secondary school students. In addition, non-school entities are already able to support schools to provide parts of the curriculum in some areas where there is a shortage of teaching expertise. Auckland University, for

example, has developed an online learning programme to support students and teachers in nine Northland and Far North secondary schools in NCEA Levels 1-3 STEM subjects.

- 43 I do not see significant benefit in having a standalone regulatory framework for online learning which was not developed in the context of the wider education system. The COOL provisions were designed to increase competition in the education system by enabling private providers to become COOL, allowing open enrolment settings for all students, and enabling the use of non-registered teachers to provide tuition. Without these objectives, expanding online learning could occur without the COOL regulatory framework.
- 44 Moreover, having a separate education delivery model, such as COOL, will require the establishment of a new funding model. There is a risk that the COOL regime will drive up funding in the system for the purchase of learning that can, and does, occur now.
- 45 For these reasons I propose that:
- 45.1 the COOL legislation be repealed in its entirety;
 - 45.2 the approach to online learning be considered within the broader strategic discussion with the sector on a 30 year vision for the education system; and
 - 45.3 the Government redevelop the legislative framework for distance education with a view to modernising it, and returning Te Kura to its previous role in the system – a school that enrolls students who cannot access face-to-face schooling, and provides supplementary tuition to students enrolled in a school.
- 46 I have asked the Ministry to undertake further work on how to enable students who would otherwise only be able to access Te Kura to be able to access their online learning with any state school (or network, such as the VLNs). This would give students who are distance education students choice within the state system.
- 47 I propose that the Ministry undertake targeted consultation with the main organisations that submitted on the COOL provisions in the Bill including, the Post Primary Teachers Association, NZEI-Te Rui Roa, New Zealand Principals' Federation, New Zealand School Trustees Association, Education Council of Aotearoa New Zealand, Te Aho o Te Kura Pounamu, Independent Schools of NZ, the Office of the Children's Commissioner, and all the Virtual Learning Networks (e.g. NetNZ).
- 48 I also intend to release research into the current state of online learning while we consult on the Education Legislation Bill.

Consultation

- 49 The Treasury, State Services Commission, Oranga Tamariki - the Ministry for Children, Te Puni Kokiri (TPK) were consulted and the Department of the Prime Minister and Cabinet was informed in the preparation of this paper. Agencies supported the recommendations.
- 50 TPK noted that, to address the issues discussed in this paper, there is also an opportunity to consult on barriers to raising education outcomes for Māori. Stakeholder engagement must include Māori and communities, and this needs to be built into the consultation.
- 51 The Ministry of Education intends to work collaboratively with TPK to identify Māori stakeholders with a particular interest in matters raised in this briefing, and to consult those organisations, within the timeframe available. More comprehensive consultation will be undertaken with Māori on how we can raise education outcomes for Māori in the context of stakeholder discussions on the 30 year vision for education, the Education Summits to be held in May this year and the reviews of Tomorrow's Schools, the National

Education Learning Priorities and Ka Hikitia. This paper proposes targeted consultation given the urgent and technical nature of the matters raised in this paper.

Financial Implications

- 52 As I noted in my previous Cabinet paper on cohort entry (CBC-18-MIN-0009 refers), there will be costs with cohort entry options in Vote Education and Vote Social Development due largely to the increased time children will spend in early childhood education. These costs will be identified in advice to Cabinet seeking policy decisions.
- 53 Any financial implications related to the College of Educational Leadership will be a matter for consideration in future budgets, once decisions have been made.

Human rights, disability, and gender implications

- 54 No human rights, gender, or disability implications have been identified in the preparation of this paper.

Treaty of Waitangi implications

- 55 Lifting Māori education outcomes is a key area of mutual interest for the Crown and iwi, hapū and whānau Māori. Education contributes to the protection of Māori interests (such as te reo Māori and culture) as well as the links education has to broader interests (such as economic wellbeing). Māori are a relatively youthful population and a significant part of the future workforce, meaning that Government, on behalf of all New Zealanders, needs to pay particular and ongoing attention to engaging with the youthful Māori population on education changes.

Legislative Implications

- 56 The Bill is an omnibus Bill because it seeks to substantially amend more than one enactment. Under Standing Orders, as an omnibus bill, the amendments in the Education Legislation Bill must deal with an inter-related topic that can be regarded as implementing a single broad policy. The Speaker will assess the Bill's compliance with Standing Orders after Introduction. The Speaker may order that the Bill be discharged or amended to comply with Standing Orders. The Ministry will be consulting with the Office of the Clerk at an appropriate time on compliance with Standing Orders.

Regulatory Impact Analysis

- 57 A regulatory impact assessment is not required because policy decisions are not being sought. A regulatory impact statement will be prepared after consultation on the issues raised in this paper.

Publicity

- 58 Once decisions have been made on the proposals in this paper, I will release a media statement advising the education sector and the public of the proposals to consult on the issues discussed in this paper.

Recommendations

- 59 The Minister of Education recommends that the Committee:
- 1 **note** that I intend to develop the Education Legislation Bill as an omnibus bill to amend the Education Act 1989, the Education (Update) Amendment Act 2017, the Industry Training and Apprenticeships Act 1992, and the State Sector Act 1988

- 2 **note** that the Cabinet Business Committee has already agreed that I consult on new provisions on cohort entry for inclusion in the Education Legislation Bill (CBC-18-MIN-0009 refers)

Matters for consultation to be included in the Education Legislation Bill

- 3 **note** that, in addition to the cohort entry issue, I have asked the Ministry to consult on the following issues for possible inclusion in the Education Legislation Bill:
- 3.1 legislative settings to ensure the Education Council of Aotearoa New Zealand's decisions on matters relating to the teaching profession are made within the context of government policy
 - 3.2 including a criterion for private schools registration or deregistration by the Secretary for Education that they must provide a safe physical and emotional environment for their students, as is required for State and State integrated schools
 - 3.3 ensuring that people employed or engaged in a school or early learning centre (other than registered teachers) are safety checked to the standard in the Vulnerable Children Act, and that unnecessary compliance and administrative costs are minimised
 - 3.4 restoring a skills leadership role for industry training organisations
 - 3.5 repealing the COOL legislative provisions in the Education (Update) Amendment Act 2017, which are due to come into force on 31 December 2019
 - 3.6 redeveloping the legislative framework for distance education with a view to modernising it, and returning Te Kura to its previous role in the system
- 4 **note** that consultation on the matters described in paragraph 3 above will be targeted to relevant education stakeholders and that the public will have the opportunity to provide their views through messaging on the Ministry of Education website

Technical amendment to State Sector Act 1988

- 5 **note** that the education legislation bill would provide a vehicle to resolve a technical amendment to ensure that the State Sector Act 1988 is applied consistently for mergers and closures of State schools and State integrated schools
- 6 **note** that no consultation is proposed on the proposal to amend the State Sector Act 1988 because it is a technical legislative change;

Establishment of a College of Educational Leadership

- 7 **note** that the Minister of Education will test the views of the profession on the Council's role in relation to education leaders, and the functions envisaged for the College of Leadership, and will report separately to the Committee if he considers that legislative change is required in order to establish the College of Educational Leadership

Next steps

- 8** **note** that, once consultation has been undertaken, the Minister of Education will report back to the Committee with policy proposals for inclusion in the education legislation bill
- 9** **note** that the scope and theme for the education legislation bill has yet to be determined and some issues may not be suitable for the bill, and
- 10** **note** that I will instruct the Ministry of Education to proactively release this report as soon as is practicable after Cabinet has confirmed the Committee's decisions.

Authorised for Lodgement

Hon Chris Hipkins

Minister of Education