

## Cabinet Paper material

### Proactive release

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|----------------------|---|
| Minister & portfolio | Hon Chris Hipkins, Minister of Education                            |
| Name of package      | The Education and Training Amendment Bill (No 2) – policy approvals |
| Date considered      | 16 August 2021  |
| Date of release      | 6 October 2021  |

#### These documents have been proactively released:

**Cabinet paper: The Education and Training Amendment Bill (No 2) – policy approvals**

Date considered: 16 August 2021  
Minister of Education

**Cabinet Minute: CAB-21-MIN-0314**

Date considered: 16 August 2021  
Cabinet Office

**Cabinet Minute: SWC-21-MIN-0118**

Date considered: 11 August 2021  
Cabinet Office

**1264141 Education Report: Policy approvals for the Education and Training Amendment Bill (No 2)**

13 July 2021  
Ministry of Education

#### Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

**In Confidence**

Office of the Minister of Education

Cabinet Social Wellbeing Committee

**The Education and Training Amendment Bill (No 2) – policy approvals**

**Proposal**

- 1 This paper seeks agreement to policy proposals to be progressed in the Education and Training Amendment Bill (No 2) (the Bill) and approval to issue drafting instructions.

**Relation to government priorities**

- 2 These proposals support the Government's focus on accelerating the recovery from COVID-19 and laying the foundation for a better future. The proposals in this Cabinet paper will support students and our workforce, and assist in the reform of the vocational education system, ensuring it is more responsive to the needs of industry and learners. Our schooling system will be better placed to ensure the wellbeing of learners.

**Executive Summary**

- 3 **9(2)(f)(iv)** [REDACTED] am proposing to amend the Education and Training Act 2020 (the Act) so that:
  - 1 the Police vetting provisions in the Education and Training Act work more effectively with the Children's Act 2014;
  - 2 Teaching Council (Council) processes are strengthened;
  - 3 there is greater flexibility to set requirements on compulsory student services fees (CSSFs);
  - 4 National Student Numbers (NSNs) can be used by agencies when there is funding to support work-based training that is not administered through a provider;
  - 5 the New Zealand Qualifications Authority (NZQA) can exercise discretion about whether to cancel the registration of a Private Training Establishment (PTE) in relation to immigration breaches;
  - 6 qualifications and other credentials are simplified;
  - 7 the Education Review Office's (ERO) mandate is amended to enable it to review professional learning and development (PLD);
  - 8 the definition of "free kindergarten association" is clarified; and
  - 9 the requirement for the Secretary for Education to review and confirm all strategic plans is removed.

- 4 I am also proposing that:
  - 1 changes to the priority categories for out of zone students are not progressed, due to overwhelming opposition to the proposal; and
  - 2 the proposals relating to school board elections are deferred to a future legislative vehicle.

### **Background**

- 5 On 14 April 2021 the Cabinet Social Wellbeing Committee agreed to the release of nine discussion papers for public consultation [SWC-21-MIN-0048, SWC-21-MIN-0049 and CAB-21-MIN-0131 refers].
- 6 The proposals relating to the definition of free kindergarten associations and the change to strategic plans have not been consulted on as they are technical amendments.

### **Proposals to be included in the Bill**

#### ***Changes for Police vetting of non-teaching and unregistered employees***

- 7 I propose to amend the Education and Training Act 2020 so that non-teaching and unregistered employees must be vetted before they begin work. This would remove the two-week period that employers have to apply for a vet for these employees.
- 8 Currently the Education and Training Act requires that vets are obtained for non-teaching and unregistered employees at ECE services and schools before they have, or are likely to have, unsupervised access to children, and that a vet must be applied for within two weeks of the person beginning work (the application period). In practice there are few workers in this category, because most education workers have unsupervised access to children and are therefore children's workers under the Children's Act 2014.<sup>1</sup> Children's workers are required to obtain a comprehensive safety check before beginning work, which includes a vet. This application period is therefore confusing, inconsistent between the two Acts, and difficult to administer.
- 9 183 submissions were received on this proposal. 128 submitters either agreed with the proposal, or would agree if the waiting times for obtaining vets could be reduced. The main reason given for supporting the proposal was to ensure the safety of tamariki.
- 10 The biggest issue raised by submitters was the length of time taken to obtain a vet. A number of submitters cited problems this causes, including delays in appointments, candidates finding alternative employment, contributing to the teacher shortage, being unable to support students with learning support needs, and being unable to get relievers.
- 11 I remain of the view that it is preferable to have greater consistency between the two Acts in terms of when the vet must be obtained, as the application period can cause confusion. It only applies to a limited number of workers, but some employers and workers think that it applies to them when it doesn't. Confusion is also caused because there is no equivalent application period for a safety check under the Children's Act.

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<sup>1</sup> Volunteers are not covered by either the Children's Act or the Education and Training Act, and therefore require no checks.

- 12 I recognise the concerns of submitters. However, many of the problems identified relate to teachers and teacher aides, who are children's workers and not subject to the application period. This shows the extent of the confusion about the application period.
- 13 The Ministry of Education and Police are working closely together to identify opportunities to trial new processes and technology to enhance the timeliness of Police vets.

***Strengthening Teaching Council processes***

- 14 I am proposing a number of changes relating to the Council, all of which are supported by the Council apart from the right of appeal for initiators. Submissions were generally supportive of these changes, although a number of refinements were proposed.
- 15 I propose a package of changes to streamline the disciplinary regime by reducing the number of matters that must be referred to the Disciplinary Tribunal (DT) and allowing the Complaints Assessment Committee (CAC) to resolve matters faster by being able to impose a sanction. I am proposing that:
  - 1 the threshold for the mandatory referral of cases from the CAC to the DT should be raised by linking the threshold to whether the DT may need to consider suspension or cancellation of registration or practising certificates or authorities to teach as a starting point;
  - 2 the CAC should be enabled to resolve cases that meet the definition of serious misconduct in the Act and should have the power to conduct hearings on such cases on the papers, unless it otherwise directs;
  - 3 the requirement for the CAC to reach agreement between the teacher and the initiator of a matter should be removed and an appeals process should be established so the teacher and the initiator can appeal to the DT; and
  - 4 the CAC will no longer have the power to suspend practising certificates or authorities to teach. All cases that may require suspension should be referred to the DT.
- 16 I am also proposing a number of other minor changes:
  - 1 making it explicit that the Council has a function of prosecuting breaches of registration, certification and limited authority to teach requirements under the Act;
  - 2 clarifying that the Council must exercise its discretion when considering whether employment as a professional leader outside of a registered school or licenced early learning centre contributes towards satisfactory recent teaching experience;
  - 3 clarifying that the Council's purpose is to regulate teaching in early learning services and schools in all languages of instruction and not English- and Māori-medium settings only;
  - 4 a minor technical amendment to the Council's purpose statement to remove the reference to "senior-secondary" schools. Senior secondary is not a type of school recognised in the Act. This change was not consulted on as it is minor and technical.

***Increasing flexibility for the Government to set requirements on compulsory student services fees***

- 17 I propose to amend the Act by authorising CSSFs to be regulated as conditions on funding mechanisms issued under section 419 of the Act. This is the same way that other provider-based fees are regulated.
- 18 CSSFs are fees that can be charged by tertiary education providers to students to support a range of services, such as health, sports and recreation services. Since 2012, government has regulated the process that providers must follow in setting CSSFs and how they are spent through a Ministerial direction.
- 19 This proposal would give government greater flexibility to make changes to the requirements on tertiary education providers that charge a CSSF to support broader government objectives, including protecting fair fee charges for students and enhancing student voice. This would also support a more durable regulatory framework that can respond to system changes or feedback from the tertiary sector.
- 20 Eleven submissions were received on this proposal. Submissions from students generally expressed support for the proposal, commenting on the need for greater flexibility.

***Using National Student Numbers for work-based learning***

- 21 I propose to amend schedule 24 of the Act to extend the scope of NSNs so agencies can decide to use NSNs when there is funding to support work-based training that is not administered through a provider.
- 22 Currently, NSNs cannot be used by government agencies for work-based training initiatives when funding is not administered through a provider. The proposal will support agencies to efficiently administer and monitor resourcing, as well as be better able to seek recovery of the funding if necessary.
- 23 Employers and learners in work-based education and training could also experience improved efficiency in resource allocation and communications with agencies.
- 24 Two submissions on this proposal, both in favour, were received during the public consultation period. The Office of the Privacy Commissioner was consulted and did not identify any adverse impacts on privacy.

***Changes to Private Training Establishment registration cancellation***

- 25 I propose to provide NZQA with discretion about whether to cancel the registration of a PTE when it has been convicted of an offence of allowing a person to undertake a course of study if they are not entitled to do so under the Immigration Act 2009, rather than automatic deregistration as currently required by the Education and Training Act.
- 26 In many cases, deregistration may be disproportionate to the level and circumstances of the offence; it may also have unreasonable impact on other learners and have additional impact on the international education sector. As a result, Immigration New Zealand has declined to take prosecutions against PTEs where there is a likelihood that these would result in a discharge without conviction.

- 27 Separating these offences and penalties is also consistent with best regulatory practice, meaning that the offending parties would not be automatically penalised twice for the same conviction. The Immigration Act already provides for a fine of up to \$50,000 if the provider has knowingly allowed a student to study unlawfully.
- 28 All seven submissions supported this proposal, including NZEI Te Riu Roa, and the Tertiary Education Union.

***Simplifying qualifications and other credentials and ensuring greater transparency***

- 29 Following consultation about simplifying qualifications and other credentials, I have identified opportunities to refine the legislative settings, including rules, for qualifications, to streamline the way qualifications are designed and used, and to ensure that industry, through Workforce Development Councils (WDCs), has appropriate authority to set vocational standards and qualifications.
- 30 The most substantial change proposed is to give WDCs the choice of establishing a 'national curriculum' (working title) as part of establishing a qualification (instead of endorsing multiple provider programmes). This change would impact on providers who offer industry qualifications, including universities, wānanga, Te Pūkenga, private training establishments, government training establishments, and schools. This supports stakeholders' strong preference for simplifying the range of instruments used in the qualifications system. Training packages would be removed from legislation.
- 31 Some more specific changes are also proposed to support this:
  - 1 broadening the definition of skills standards to include learning outcomes, so that WDCs have more flexibility about how they use them to reflect industry skills needs;
  - 2 replacing the term training schemes with micro-credentials in legislation (reflecting current practice), and enabling WDCs and others to develop micro-credentials; and
  - 3 adding micro-credentials to the New Zealand Qualifications Framework.
- 32 I also propose to allow NZQA to publish information about conditions, or a summary of the conditions, for any statutory intervention notices issued which inform the public (and particularly students) of quality assurance issues with providers.

***Expanding the Education Review Office's mandate to review professional learning and development***

- 33 I am proposing to amend section 462 of the Act to enable ERO to review PLD accessed by schools, kura, and early learning services. This is intended to improve our understanding about the quality and impact of PLD in individual places of learning and at a national level.
- 34 Eighty-five submissions were received. Feedback suggests there is conditional support for the proposal overall, subject to issues raised being addressed. ERO will work closely with the sector to address these issues.
- 35 I acknowledge the concerns raised in submissions about ERO reviewing PLD, but I remain of the view that ERO is best-placed to undertake this function.

- 36 I therefore propose to amend the Act to enable ERO to review professional learning and development, with the understanding that ERO will work with the sector in implementation to address issues raised in consultation.

***Defining “free kindergarten association” for employment purposes***

- 37 I propose to define “free kindergarten association” in the Act by listing all the free kindergarten associations currently recognised by the Ministry for collective bargaining purposes in a schedule to the Act. The existing definitions are inadequate and circular, as the definitions of “free kindergarten”, “education service” and “employer” all reference ‘free kindergarten association’, which is not a defined term.
- 38 I also propose to enable the schedule listing the kindergarten associations to be updated by Order in Council where an association ceases to exist or where a new association arises from the renaming, restructuring or merging of existing organisations.
- 39 The change is necessary because it is important to determine which organisations are covered by the collective employment agreements that the Secretary for Education negotiates as the employer party representing kindergarten associations. Related changes will be necessary in relation to the Public Service Commissioner’s functions under the Public Service Act 2020 because that Act references the Education and Training Act definitions.

***Removing the requirement for the Secretary to review and confirm all strategic plans***

- 40 From 1 January 2023 the Secretary for Education will be required to review all strategic plans from Boards to determine whether they meet the requirements of the Act and relevant regulations. I am proposing to remove this requirement, but to retain the ability for the Secretary to require changes where there are concerns about a plan’s quality.

***Proposals not included in the Bill***

***Changes to the priority categories for out of zone enrolment in school enrolment schemes***

- 41 As part of the review of Tomorrow’s Schools, Cabinet asked for advice on whether the current ballot criteria used for the selection of out-of-zone students for enrolment are fit for purpose [SWC-019-MIN-0153 refers]. The initial analysis found that while there is no strong evidence of a problem, it may be possible to amend the priority categories so that they are more equitable.
- 42 We consulted on two options that would re-order the priority groups for out of zone enrolments. Both options would increase the priority of children of teachers and school board members and decrease the priority of children of former students.
- 43 Public consultation garnered significant interest with over 2,800 submissions received on this proposal. 82% of submitters supported retaining the status quo because former students and their whanau were considered to be an important part of their school’s community. No significant evidence of problems was provided by submitters.



- 44 There was some support for increasing the priority of children of board members and board employees (24% of submitters). However, increasing the priority of children of board employees would necessitate moving other key members of the school's community down in priority, which many submitters object to. This indicates that support for children of board members and board employees being increased in priority did not come at the expense of moving down other priorities.
- 45 The Post Primary Teacher's Association opposes increasing the priority of children of board members and board employees saying:  
"it is difficult to justify a greater right to attendance at the school for the child of a parent who works at the school but lives out of zone than for a child of a parent who lives out of zone but works in a business next door to the school."
- 46 Given the limited evidence of problems and the opposition to the options for change, I am not progressing the proposed options for changing the priority categories used for the selection of out of zone students.

**Updating and improving school board elections**

- 47 I propose that changes to school board elections, including regulation changes, are not progressed through the Bill, but are deferred to the Education and Training Amendment Bill (No 3). This Bill is expected to be progressed in 2022.
- 48 Submissions were generally in favour of proposed changes to modernise school board elections by allowing hui based and online voting. However, some of the comments from submitters raised issues that require further consideration before any changes are progressed.
- 49 9(2)(f)(iv) [REDACTED]  
[REDACTED] In the meantime, the current settings will apply to school board elections, including the 2022 board elections.

**Financial Implications**

- 50 There are no financial implications.

**Legislative Implications**

- 51 9(2)(f)(iv) [REDACTED]  
[REDACTED]

- 52 The Bill will bind the Crown.

**Impact Analysis**

**Regulatory Impact Statement**

- 53 Treasury's Regulatory Impact Analysis team has determined that the following proposals are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities:
- 1 enforcing certification and limited authority to teach requirements;
  - 2 satisfactory recent teaching experience of teachers working outside of a registered school or licenced early learning centre;



- 3 clarification of the Council's purpose statement;
- 4 the definition of "free kindergarten association";
- 54 A Regulatory Impact Statement has been completed for all other proposals, and are attached as Appendices 1 – 7.

#### **Climate Implications of Policy Assessment**

- 55 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to any of the proposals in this paper as the threshold for significance is not met.

#### **Population Implications**

- 56 There are no population implications.

#### **Human Rights**

- 57 All of the proposals appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination as to the consistency of these proposals with the New Zealand Bill of Rights will only be possible when the Bill has been drafted.

#### **Consultation**

- 58 Discussion papers relating to the majority of proposals in this paper were subject to public consultation from 21 April to 16 June 2021.
- 59 The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Arawhiti, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Social Development, Office of Disability Issues, Office of Ethnic Communities, Ministry of Youth Development, Police, Oranga Tamariki, Ministry of Justice, Office of Māori-Crown Relations - Te Arawhiti, Immigration New Zealand, Office of the Privacy Commissioner, Parliamentary Counsel Office, New Zealand Qualifications Authority, Education Review Office, Tertiary Education Commission, Teaching Council and Education New Zealand have been consulted.
- 60 Te Puni Kokiri has noted the contents of the Cabinet paper.

#### **Communications**

- 61 The Ministry of Education will publicise the Bill through its regular channels of education bulletins, social media and information posted on websites.

#### **Proactive Release**

- 62 I intend to proactively release this Cabinet paper subject to redaction as appropriate under the Official Information Act 1982.

#### **Recommendations**

- 63 The Minister of Education recommends that the Committee:
  - 1 **note** that Cabinet authorised the release of the discussion papers on proposals to be included in the Education and Training Amendment Bill (No 2) on 14 April [SWC-21-MIN-0048, SWC-21-MIN-0049 and CAB-21-MIN-0131 refers];

*Changes for Police vetting of non-teaching and unregistered employees*

- 2 **note** that the majority of workers in the education sector are children's workers under the Children's Act and are therefore subject to a comprehensive safety check before they can begin work, which includes a Police vet;
- 3 **note** that non-teaching and unregistered employees in ECE services and schools, who are not also children's workers, require a vet under the Education and Training Act, but can begin work provided their employer applies for a vet within two weeks and they do not have unsupervised access to children until the vet is obtained;
- 4 **note** that the two-week application period causes confusion because it is not clear who it applies to, and creates different points in time when vets must be obtained under the two Acts;
- 5 **agree** that all non-teaching and unregistered employees of ECE services and schools must be the subject of a vet before they begin work, to ensure the Children's Act and the Education and Training Act work more effectively together;
- 6 **agree** to remove the two-week period in the Education and Training Act to apply for a Police vet for non-teaching and unregistered employees after they begin work;

*Changes to Teaching Council processes*

- 7 **note** that the package of reforms relating to the disciplinary regime for teachers is intended to streamline the process;
- 8 **agree** that:
  - 8.1 the threshold for the mandatory referral of cases from the Complaints Assessment Committee (CAC) to the Disciplinary Tribunal (DT) should be raised by linking the threshold to whether the DT may need to consider suspension or cancellation of registration or practising certificates or authorities to teach as a starting point;
  - 8.2 the CAC should be enabled to resolve cases that meet the definition of serious misconduct in the Act and should have the power to conduct hearings on such cases on the papers, unless it otherwise directs;
  - 8.3 the requirement for the CAC to reach agreement between the teacher and the initiator of a matter should be removed and an appeals process to the DT should be established so the teacher and the initiator can appeal to the DT;
  - 8.4 the CAC will no longer have the power to suspend practising certificates or authorities to teach. All cases that may require suspension should be referred to the DT; and
  - 8.5 changes to the disciplinary regime will only come into effect twelve months after commencement of the Bill;
- 9 **agree** to a number of other minor and technical changes to:

- 9.1 make it explicit that the Teaching Council has a function of prosecuting breaches of registration, certification and limited authority to teach requirements under the Act;
- 9.2 clarify that the Teaching Council must exercise its discretion when considering whether employment as a professional leader outside of a registered school or licenced early learning centre contributes towards satisfactory recent teaching experience;
- 9.3 clarify that the Teaching Council's purpose is to regulate teaching in early learning services and schools in all languages of instruction and not English- and Māori-medium settings only;
- 9.4 remove the reference to "senior-secondary" school from the Teaching Council's purpose statement;

*Increasing flexibility for the Government to set requirements on compulsory student services fees (CSSFs)*

- 10 **note** that CSSFs can be charged by tertiary education providers to support a range of services;
- 11 **agree** to amend the Act to authorise CSSFs charged by tertiary education providers to be regulated as conditions of funding mechanisms issued under the Act;

*Using National Student Numbers (NSNs) for work-based learning*

- 12 **note** that NSNs cannot currently be used by agencies when there is funding to support work-based training that is not administered through a provider;
- 13 **agree** to amend the Act so that NSNs can be used when there is funding to support work-based training that is not administered through a provider;

*Changes to Private Training Establishment registration cancellation*

- 14 **note** that NZQA must cancel the registration of a PTE if that establishment is convicted under section 352(1) of the Immigration Act 2009 (enrolling an international student without the appropriate immigration authority);
- 15 **note** that this is often considered to be a disproportionate consequence, which has made it difficult for Immigration New Zealand to successfully prosecute under these provisions;
- 16 **agree** to give NZQA discretion as to whether or not to cancel a PTEs registration if that establishment is convicted under section 352(1) of the Immigration Act 2009;

*Simplifying qualifications and other credentials and ensuring greater transparency*National curriculum

- 17 **agree** that Workforce Development Councils (WDCs) and other standard-setting bodies (SSBs) may develop a 'national curriculum' (working title) linked to a specific qualification to be used by all providers, including universities, wānanga, Te Pūkenga, private training establishments, and government training establishments, offering that qualification;
- 18 **agree** to the following changes, in support of recommendation 18:
- 18.1 require WDCs and other standard setting bodies, before issuing a national curriculum, to work closely with providers;
  - 18.2 clarify that a provider can be accredited to deliver a national curriculum as an alternative to an approved programme;
  - 18.3 provide for the national curriculum to be treated as an approved programme for funding, fees, immigration, and other relevant purposes;
  - 18.4 remove provision for training packages, which are unnecessary in light of the creation of a national curriculum, and to simplify the qualifications system;

Skill standards

- 19 **agree** to expand the definition of skill standards, so that it includes learning outcomes, which will allow more flexibility to WDCs about how they use these standards to express industry skills' needs;
- 20 **agree** to the following changes in support of recommendation 20:
- 20.1 clarify that, where a skills standard is specified relating to a qualification or micro-credential all providers, including universities, Te Pūkenga, and private training establishments, must use it unless the relevant WDC/SSB agrees otherwise (with the exception of wānanga, as already provided for in current legislation);
  - 20.2 rename the Directory of Assessment Standards to the Directory of Assessment and Skill Standards and provide for the range of assessment and skills standards;

Micro-credentials

- 21 **agree** to replace the term 'training scheme' with 'micro-credential' as there is confusion about the terms;
- 22 **agree** that the New Zealand Qualifications Framework includes micro-credentials;
- 23 **agree** to provide for:
- 23.1 WDC and others (including providers) to seek approval for micro-credentials;

- 23.2 providers to seek accreditation to deliver an approved micro-credential;

Publishing conditions

- 24 **agree** that NZQA may publish information about conditions, or a summary of the conditions for any statutory intervention notices which inform the public (and particularly students) of quality assurance issues with providers;

*Expanding the Education Review Office's mandate to review professional learning and development (PLD)*

- 25 **note** that a number of submissions raised points regarding how the proposal is implemented, and that ERO will consider these points and work with the sector to address them in developing its plans to implement the proposal.
- 26 **agree** to amend section 462 and enable ERO to review professional PLD accessed by schools, kura and early learning centres;

*Defining "free kindergarten association" for employment function purposes*

- 27 **agree** to list all the free kindergarten associations currently recognised by the Ministry for collective bargaining purposes in a schedule to the Act;
- 28 **agree** to insert in the Act an empowering provision to enable the schedule to be amended via an Order in Council to recognise changes as the result of mergers, restructuring or renaming of kindergarten associations, or where associations cease to exist;

*Removing the requirement for the Secretary to review and confirm all strategic plans*

- 29 **agree** to removing the Secretary for Education's requirement to review all strategic plans for legal compliance;

*Changes to the priority categories for out of zone enrolment in school enrolment schemes*

- 30 **note** that public consultation on this proposal garnered significant interest;
- 31 **note** that there is limited evidence of problems with the current system and overwhelming support for the status quo;
- 32 **agree** to not progress any of the proposals to change the priority categories;

*Amending school board elections*

- 33 **note** that consultation raised significant issues that require further work;
- 34 **9(2)(f)(iv)**

*Legislative drafting*

- 35 9(2)(f)(iv) [REDACTED]
- 36 **authorise** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in this paper;
- 37 **invite** the Minister of Education to issue drafting instructions to give effect to the decisions in these recommendations; and
- 38 **note** that the recommendations are subject to Parliamentary Counsel's discretion as to how best to express these in legislation.

Authorised for lodgement  
Hon Chris Hipkins  
Minister of Education



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Report of the Cabinet Social Wellbeing Committee: Period Ended 13 August 2021

On 16 August 2021, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 13 August 2021:

Out of scope

SWC-21-MIN-0118

**The Education and Training Amendment  
Bill (No 2): Policy Approvals**  
Portfolio: Education

CONFIRMED

Out of scope



# Out of scope

Michael Webster  
Secretary of the Cabinet

Proactively Released



# Cabinet Social Wellbeing Committee

## Minute of Decision

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### The Education and Training Amendment Bill (No 2): Policy Approvals

**Portfolio**                      **Education**

On 11 August 2021, the Cabinet Social Wellbeing Committee:

#### Background

- 1        **noted** that in April 2021, SWC agreed to the release of nine discussion papers on proposals for inclusion in the Education and Training Amendment Bill (No. 2) (the Bill) for public consultation [SWC-21-MIN-0048 and SWC-21-MIN-0049];
- 2        **noted** that public consultation took place from 21 April to 16 June 2021;

#### Police Vetting of non-teaching and unregistered employees

- 3        **noted** that the majority of workers in the education sector are children's workers under the Children's Act 2014 and are therefore subject to a comprehensive safety check before they can begin work, which includes a Police vet (vet);
- 4        **noted** that non-teaching and unregistered employees in Early Childhood Education (ECE) services and schools, who are not also children's workers, require a vet under the Education and Training Act 2020 (the Act), but can begin work provided their employer applies for a vet within two weeks and they do not have unsupervised access to children until the vet is obtained;
- 5        **noted** that the two-week application period causes confusion because it is not clear who it applies to, and creates different points in time when vets must be obtained under the two Acts;
- 6        **agreed** that all non-teaching and unregistered employees of ECE services and schools must be the subject of a vet before they begin work, to ensure the Children's Act 2014 and the Act work more effectively together;
- 7        **agreed** to remove the two-week period in the Act to apply for a vet for non-teaching and unregistered employees after they begin work;

#### Teaching Council processes

- 8        **noted** that the package of reforms relating to the disciplinary regime for teachers is intended to streamline the process;

9 **agreed** that:

- 9.1 the threshold for the mandatory referral of cases from the Complaints Assessment Committee (CAC) to the Disciplinary Tribunal (DT) should be raised by linking the threshold to whether the DT may need to consider suspension or cancellation of registration or practising certificates or authorities to teach as a starting point;
- 9.2 the CAC should be enabled to resolve cases that meet the definition of serious misconduct in the Act and should have the power to conduct hearings on such cases on the papers, unless it otherwise directs;
- 9.3 the requirement for the CAC to reach agreement between the teacher and the initiator of a matter should be removed and an appeals process to the DT should be established so the teacher and the initiator can appeal to the DT;
- 9.4 the CAC will no longer have the power to suspend practising certificates or authorities to teach, and all cases that may require suspension should be referred to the DT; and
- 9.5 changes to the disciplinary regime will only come into effect twelve months after commencement of the Bill;

10 **agreed** to other minor and technical changes to:

- 10.1.1 make it explicit that the Teaching Council has a function of prosecuting breaches of registration, certification and limited authority to teach requirements under the Act;
- 10.1.2 clarify that the Teaching Council must exercise its discretion when considering whether employment as a professional leader outside of a registered school or licenced early learning centre contributes towards satisfactory recent teaching experience;
- 10.1.3 clarify that the Teaching Council's purpose is to regulate teaching in early learning services and schools in all languages of instruction and not English- and Māori-medium settings only;
- 10.1.4 remove the reference to "senior-secondary" school from the Teaching Council's purpose statement;

### **Increasing flexibility for the Government to set requirements on compulsory student services fees (CSSFs)**

11 **noted** that CSSFs can be charged by tertiary education providers to support a range of services;

12 **agreed** to amend the Act to authorise CSSFs charged by tertiary education providers to be regulated as conditions of funding mechanisms issued under the Act;

### **Using National Student Numbers (NSNs) for work-based learning**

13 **noted** that NSNs cannot currently be used by agencies when there is funding to support work-based training that is not administered through a provider;

14 **agreed** to amend the Act so that NSNs can be used when there is funding to support work-based training that is not administered through a provider;

**Private Training Establishment (PTE) registration cancellation**

15 **noted** that:

- 15.1 the New Zealand Qualifications Authority (NZQA) must cancel the registration of a PTE if that establishment is convicted under section 352(1) of the Immigration Act 2009 (enrolling an international student without the appropriate immigration authority);
- 15.2 this is often considered to be a disproportionate consequence, which has made it difficult for Immigration New Zealand to successfully prosecute under these provisions;

16 **agreed** to give NZQA discretion as to whether or not to cancel a PTEs registration if that establishment is convicted under section 352(1) of the Immigration Act 2009;

**Simplifying qualifications and other credentials and ensuring greater transparency****National curriculum**

17 **agreed** that Workforce Development Councils (WDCs) and other standard-setting bodies (SSBs) may develop a 'national curriculum' (working title) linked to a specific qualification to be used by all providers, including universities, wānanga, Te Pūkenga, private training establishments, and government training establishments, offering that qualification;

18 **agreed** to the following changes, in support of paragraph 17 above:

- 18.1.1 require WDCs and other SSBs, before issuing a national curriculum, to work closely with providers;
- 18.1.2 clarify that a provider can be accredited to deliver a national curriculum as an alternative to an approved programme;
- 18.1.3 provide for the national curriculum to be treated as an approved programme for funding, fees, immigration, and other relevant purposes;
- 18.1.4 remove provision for training packages, which are unnecessary in light of the creation of a national curriculum, and to simplify the qualifications system;

**Skill standards**

19 **agreed** to expand the definition of skill standards so that it includes learning outcomes, which will allow more flexibility to WDCs about how they use these standards to express industry skills' needs;

20 **agreed** to the following changes in support of paragraph 19 above:

- 20.1 clarify that, where a skills standard is specified relating to a qualification or micro-credential all providers, including universities, Te Pūkenga, and private training establishments, must use it unless the relevant WDC/SSB agrees otherwise (with the exception of wānanga, as already provided for in current legislation);
- 20.2 rename the Directory of Assessment Standards to the Directory of Assessment and Skill Standards and provide for the range of assessment and skills standards;

**Micro-credentials**

- 21 **agreed** to replace the term ‘training scheme’ with ‘micro-credential’ as there is confusion about the terms;
- 22 **agreed** that the New Zealand Qualifications Framework includes micro-credentials;
- 23 **agreed** to provide for:
- 23.1 WDC and others (including providers) to seek approval for micro-credentials;
- 23.2 providers to seek accreditation to deliver an approved micro-credential;

**Publishing conditions**

- 24 **agreed** that NZQA may publish information about conditions, or a summary of the conditions for any statutory intervention notices which inform the public (and particularly students) of quality assurance issues with providers;

**Expanding the Education Review Office’s (ERO) mandate to review professional learning and development (PLD)**

- 25 **noted** that a number of submissions raised points regarding how the proposal is implemented, and that ERO will consider these points and work with the sector to address them in developing its plans to implement the proposal;
- 26 **agreed** to amend section 462 of the Act and enable ERO to review PLD accessed by schools, kura and early learning centres;

**Defining “free kindergarten association” for employment function purposes**

- 27 **agreed** to list all the free kindergarten associations currently recognised by the Ministry of Education for collective bargaining purposes in a schedule to the Act;
- 28 **agreed** to insert in the Act an empowering provision to enable the schedule to be amended via an Order in Council to recognise changes as the result of mergers, restructuring or renaming of kindergarten associations, or where associations cease to exist;

**Removing the requirement for the Secretary for Education to review and confirm all strategic plans**

- 29 **agreed** to removing the Secretary for Education’s requirement to review all strategic plans for legal compliance;

**Priority categories for out of zone enrolment in school enrolment schemes**

- 30 **noted** that public consultation on the priority categories for out of zone enrolments proposal garnered significant interest;
- 31 **noted** that there is limited evidence of problems with the current system and overwhelming support for the status quo;
- 32 **agreed** to not progress any of the proposals to change the priority categories;

**Amending school board elections**

33 **noted** that consultation raised significant issues with the proposals relating to school board elections that require further work;

34 9(2)(f)(iv)

**Legislative drafting**

35 9(2)(f)(iv)

36 **authorised** the Minister of Education to make decisions on any matters that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the above decisions;

37 **invited** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;

38 **noted** that the above proposals are subject to Parliamentary Counsel's discretion as to how best to express these in legislation.

Rachel Clarke  
Committee Secretary

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**Present:**

Rt Hon Jacinda Ardern  
Hon Grant Robertson  
Hon Kelvin Davis  
Hon Chris Hipkins  
Hon Carmel Sepuloni (Chair)  
Hon Andrew Little  
Hon Poto Williams  
Hon Kris Faafoi  
Hon Peeni Henare  
Hon Jan Tinetti  
Hon Dr Ayesha Verrall  
Hon Aupito William Sio  
Hon Meka Waitiri  
Hon Priyanca Radhakrishnan

**Officials present from:**

Office of the Prime Minister  
Office of the SWC Chair  
Officials Committee for SWC



## Education Report: Policy approvals for the Education and Training Amendment Bill (No 2)

|   |  |                  |          |
|---|--|------------------|----------|
| <b>To:</b>                                    | Hon Chris Hipkins, Minister of Education |                  |          |
| <b>Date:</b>                                  | 13 July 2021                             | <b>Priority:</b> | Medium   |
| <b>Security Level:</b>                        | In confidence                            | <b>METIS No:</b> | 1264141  |
| <b>Drafter:</b>                               | Georgie Handley                          | <b>DDI:</b>      | 439 5456 |
| <b>Key contact and number:</b>                | Ben O'Meara                              | <b>DDI</b>       | 463 8704 |
| <b>Messaging seen by Communications team:</b> | No                                       |                  |          |

### Purpose of report

This report summarises consultation on proposals for inclusion in the Education and Training Amendment Bill (No. 2) (ETAB 2), and recommends matters for inclusion in the ETAB 2. A draft Cabinet paper that reflects the recommended content is attached for your feedback.

### Summary

1. The following proposals for possible inclusion in ETAB 2 were publicly consulted on:
  - a. changes for Police vetting of non-teaching and unregistered employees;
  - b. changes to the priority categories for out of zone enrolment in school;
  - c. strengthening Teaching Council (the Council) processes;
  - d. increasing flexibility for the Government to set requirements on compulsory student services fees (CSSFs);
  - e. using National Student Numbers (NSNs) for work-based learning;
  - f. changes to Private Training Establishment (PTE) registration cancellation;
  - g. simplifying qualifications and credentials;
  - h. expanding the Education Review Office's (ERO) mandate to enable it to review professional learning and development (PLD); and
  - i. changes to school board elections.
2. Following consultation, we recommend that you:
  - a. proceed with the following proposals as consulted upon:
    - changes for Police vetting of non-teaching and unregistered employees; ✓
    - strengthening the Council's processes, but adding a transitional provision so the changes come into effect twelve months after the commencement of ✓



ETAB 2;

- increasing flexibility for the Government to set requirements on CSSFs; ✓
  - using NSNs for work-based learning; ✓
  - changes to PTE registration cancellation; ✓
  - simplifying qualifications and credentials; ✓
  - expanding ERO's mandate to enable it to review PLD. ✓
- b. proceed with new proposals not consulted upon because they are technical amendments:
- 9(2)(f)(iv) [REDACTED] ?
  - clarifying that the Council's purpose is to regulate teaching in early learning services and schools in all languages of instruction, and not English- and Māori-medium settings only; ✓
  - an amendment to the Council's purpose statement to remove the reference to "senior-secondary" schools, as it is not a type of school recognised in the Act; and ✓
  - removing the Secretary for Education's requirement to review all strategic plans for legal compliance ?
- c. define "free kindergarten association" for employment purposes. This proposal was not publicly consulted upon, but all of the kindergarten associations were consulted when the ECE funding handbook was amended recently to include the list of named kindergarten associations; ✓
- d. not proceed with proposals to change the current priority categories for out of zone students; ?
- e. defer consideration of school board election changes to the Education and Training Amendment Bill (No 3) (ETAB 3), 9(2)(f)(iv) [REDACTED] ✓
- f. note that the draft Cabinet paper reflects your recent decisions on simplifying the qualifications system and the design of vocational qualifications [*Education Report - Next steps on simplifying the qualifications system and the design of vocational qualifications* CR22514/Metis No 1264446 refers] ✓

## Recommended Actions

The Ministry of Education recommends that you:

### **Changes for Police vetting of non-teaching and unregistered employees**

- a. **agree** that all non-teaching and unregistered employees of ECE services and schools must be the subject of a vet before they begin working in the service or school, to ensure the Children's Act and the Education and Training Act work more effectively together
- Agree / Disagree**
- b. **agree** to remove the two-week period in the Education and Training Act to apply for a vet for non-teaching and unregistered employees after they begin work

**Agree / Disagree**

***Changes to the priority categories for out of zone enrolment in school***

- c. **agree** not to progress any of the proposals to change the current priority categories for selecting out of zone students

**Agree / Disagree**

***Strengthening Teaching Council processes***

***Changes relating to disciplinary regime for teachers***

- d. **agree** to:

- amend the threshold that specifies when the Complaints Assessment Committee (CAC) is required to refer cases to the Disciplinary Tribunal (DT) so that it is linked to whether the DT may need to consider suspension or cancellation of registration or a practising certificate;
- remove the CAC's power to suspend practicing certificates or authorities to teach;
- remove the restriction on the CAC that it can only make a finding of misconduct that is not serious misconduct before imposing a sanction;
- allow the CAC to use alternative methods for resolving cases such as mediation and reaching agreement with the teacher and the initiator;
- add a right to appeal CAC decisions to the DT; and
- a transition period so that the changes to the disciplinary regime come into effect 12 months after commencement of ETAB 2

**Agree / Disagree**

***Other minor changes***

- e. **agree** to:

- add prosecuting non-compliance with certification and Limited Authority to Teach requirements to the Council's functions

**Agree / Disagree**

- clarify that the Council must exercise its discretion when considering whether employment as a professional leader outside of a registered school or licenced early learning centre contributes towards satisfactory recent teaching experience

**Agree / Disagree**

- amend the relevant part of the Council's purpose statement to clarify that its purpose is to regulate teaching in early learning services and schools in all languages of instruction

**Agree / Disagree**

- remove from the purpose of the Council the reference to senior-secondary schools

**Agree / Disagree**

***Increasing flexibility for the Government to set requirements on compulsory student services fees***

- f. **agree** to repeal sections 257 and 360 of the Act, and instead authorise CSSFs charged by tertiary education providers to be regulated as conditions of funding under section 419 of the Act

**Agree / Disagree**

- g. **agree** that existing processes for adding conditions on funding that relate to fees apply to CSSFs, including the requirement for the Minister to consult via Gazette notice for a minimum of 21 days

**Agree / Disagree**

h. **9(2)(f)(iv)**

***Using National Student Numbers for work-based learning***

- i. **agree** to amend schedule 24 of the Act to extend the scope of NSNs so they can be used when there is funding to support work-based training that is not administered through a provider

**Agree / Disagree**

***Changes to Private Training Establishment registration cancellation***

- j. **agree** to amend the Act to give NZQA discretion about whether to cancel a PTE's registration if it is convicted of an offence of allowing a person to undertake a course of study if they are not entitled to do so under the Immigration Act 2009, rather than requiring automatic cancellation

**Agree / Disagree**

***Simplifying qualifications and credentials***

- k. **note** that the draft Cabinet paper reflects your recent decisions on simplifying the qualifications system and the design of vocational qualifications

**Noted**

***Expanding the Education Review Office's mandate to enable it to review professional learning and development***

- l. **agree** to amend section 462 to enable ERO to review PLD accessed by schools, kura and early learning centres

**Agree / Disagree**

***Changes to school board elections***

- m. **agree** that school board elections changes are delayed and progressed through ETAB 3, **9(2)(f)(iv)**

**Agree / Disagree**

**9(2)(f)(iv)**

***Changes relating to planning and reporting***

- p. **agree** to removing the Secretary for Education's requirement to review all strategic plans for legal compliance

**Agree / Disagree**

**9(2)(f)(iv)**

**Defining “free kindergarten association” for employment function purposes**

- q. **agree** to define “free kindergarten association” in the Act by listing all the free kindergarten associations currently recognised by the Ministry for collective bargaining purposes in a schedule to the Act

**Agree / Disagree**

- r. **agree** to insert in the Act an empowering provision to enable the schedule to be amended via an Order in Council to recognise changes as the result of mergers, restructuring or renaming of kindergarten associations, or where associations cease to exist

**Agree / Disagree**

**Next steps**

- s. **agree** to departmental consultation beginning on 20 July 2021, to be followed by Ministerial consultation beginning on 27 July

**Agree / Disagree**

- t. **note** that we are planning on seeking Cabinet approval at SWC on Wednesday 11 August

**Proactive Release Recommendation**

- u. **agree** that this Education Report is proactively released after Cabinet has made policy decisions on the content of ETAB 2.

**Agree / Disagree**



Dr Andrea Schöllmann  
**Deputy Secretary  
Education System Policy**

13/07/2021



Hon Chris Hipkins  
**Minister of Education**

18/7/21

## Background

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1. On 19 April 2021 Cabinet agreed to public consultation on the following nine proposals as part of ETAB 2 [SWC-21-MIN-0048 and CAB-21-MIN-0131 refers]:
  - a. changes for Police vetting of non-teaching and unregistered employees;
  - b. changes to the priority categories for out of zone enrolment in school;
  - c. strengthening Council processes;
  - d. increasing flexibility for the Government to set requirements on CFFS;
  - e. using NSNs for work-based learning;
  - f. changes to PTE registration cancellation;
  - g. simplifying qualifications and other credentials;
  - h. expanding ERO's mandate to review professional learning and development; and
  - i. changes to school board elections.
2. Public consultation took place from 21 April to 16 June 2021. We received 3282 submissions. We met with the Disabled People's Organisations Coalition (DPO), Te Runanga Nui o Ngā Kura Kaupapa Māori o Aotearoa and Ngā Kura a Iwi o Aotearoa to discuss the proposals. The Minister's Youth Advisory Group (YAG) was also consulted on the proposed changes to school board elections.

## Proposals for inclusion in ETAB 2

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### **Removing the application period for Police vets for specified employees under the Act**

#### ***The proposal***

3. It is proposed to amend the Education and Training Act to clarify that non-teaching and unregistered employees at ECE services and schools must be vetted before they begin work. This would remove the two-week period to apply for a vet for these employees after they begin work.
4. The proposal will have no impact on the required children's worker safety checks for teachers and teacher aides, the requirement to vet non-teaching and unregistered employees, or on the processing times for vets. The only change is to clarify the point at which a vet for non-teaching and unregistered employees is required.

#### ***What submitters said***

5. Of the 183 submissions received, 128 submitters agreed with the proposal, or would agree if processing vets was more timely. The main reason for supporting the proposal was to ensure the safety of tamariki as they engage in education.
6. 33 submitters disagreed with the proposal, mostly due to the problems associated with processing delays, including the lack of flexibility contributing to the teacher shortage, being unable to support students with learning support needs, ECE services being unable to keep within the required ratios, and the cost of relievers. Further details of the submissions received can be found in Annex Two.

#### ***Ministry comment***

7. The two-week application period does not apply to teachers or teacher aides as they are children's workers who must be safety checked under the Children's Act 2014 before beginning work. Therefore, the concerns raised by these submitters are not specifically related to the proposal to remove the application period, and indicate a significant amount of confusion about the vetting provisions in the Education and Training Act. To address this confusion, we will provide the sector with additional information about the vetting provisions, through communication channels such as the early learning and school bulletins.

8. We have discussed the length of time it takes to process a vet application with the Police Vetting Service (the PVS). While current processing times are outside the 20-working days timeframe specified in the Service Level Agreement, primarily due to the high demand that is typical for this time of year, there is a downward trend. In 2015 it took 20.8 working days on average to process vets for education organisations. This has decreased to 11.5 working days in 2020, and is tracking at 10.7 working days on average in 2021 so far.
9. In July 2020 Cabinet agreed to policy decisions relating to the Policing (Vetting Service) Amendment Bill (the Amendment Bill), including a proposal allowing individuals to share vets with prospective employers where the purpose of the vetting request is the same. This proposal could significantly improve processing times. However, the Amendment Bill is still being drafted, and the proposal to allow sharing of vets is included in Stage Two of implementation and is subject to funding decisions. In the meantime, Police and the Ministry of Education will continue to work together to identify opportunities to trial new processes and technology to enhance the service offered.

### ***Recommendation***

10. We recommend proceeding with the proposal to ensure all employees must have obtained a vet before beginning work in a school or ECE service, and to remove the two-week application period in the Education and Training Act.

### **Changes to the priority categories for out of zone enrolment in school**

#### ***The proposal***

11. The following three options relating to the priority categories used for the selection of out of zone students were presented for public consultation:
  - a. Option 1 status quo – retain the current priority categories;
  - b. Option 2 - increase the priority of children of board employees (teachers and other staff) and board members to priority three; lower the priority of siblings of former students, and remove the children of former students as a priority group; and
  - c. Option 3 - retain current priority groups one and two, increase the priority of children of board members and employees to priority three, and have an all other applicants category as priority four.
12. Our initial analysis did not show evidence of widespread problems with the current priority system. However, we asked submitters if it could be amended to be fairer and more equitable.

#### ***What submitters said***

13. These proposals received 2869 submissions. 82% percent of submissions support retaining the status quo. The main reason given in support of maintaining the status quo is the desire to retain consideration for children of former students as a priority category group. Many submitters noted the importance of intergenerational connections to a school to maintain traditions, school community, and family legacies. Many submitters also stated there is no evidence of significant issues, and therefore no compelling reason to change the system.
14. Submitters have indicated strong opposition to lowering the priority of siblings and children of former students. When asked “Do you agree that siblings and children of former students should be given a lower priority?” 79% opposed and 12% supported this statement. Further detail of submissions can be found in Annex 2.

#### ***Increasing the priority of children of board employees and children of board members***

15. There was some support for increasing the priority of children of board employees and children of board members generally, with 25% of submissions in support of this proposition.

16. These submitters noted the benefits for teachers if their children attended the school where they worked, and that teachers may not be able to afford to live in-zone to their schools of employment.
17. Increasing the priority of children of board employees would necessitate moving other key members of the school's community down in priority. Some submitters, such as Macleans College, supported increasing children of board members to priority three while shifting siblings and children of former students to priorities four and five respectively.
18. However, there was still significant opposition to this proposal with 61% of submitters opposing it. This indicates that, while there was some support for children of board members and board employees being increased in priority, this support did not come at the expense of moving down other priorities.
19. Some submitters stated that teachers may change school's during their career and that the strength of their attachment to a school may not be as strong as a family connection.
20. The Post Primary Teacher's Association opposes increasing the priority of children of board members and board employees saying:  
*"it is difficult to justify a greater right to attendance at the school for the child of a parent who works at the school but lives out of zone than for a child of a parent who lives out of zone but works in a business next door to the school."*
21. We only received 25 submissions suggesting that gaining an offer of enrolment through the ballot for children of teachers is a problem. Without further evidence of this being a problem for teachers, we are not recommending any change to the priority of this group.

### **Recommendation**

22. Given limited evidence of problems with the current system and the significant support for the status quo, we do not recommend progressing any of the options for change.

### **Strengthening Teaching Council processes**

23. We consulted on three proposals relating to the Council. We recommend progressing all three proposals. We also recommend including a fourth Council proposal, a technical change to the Council's purpose statement, that we have not consulted on.

### **Disciplinary regime for teachers**

#### *The proposal*

24. It is proposed to streamline the disciplinary regime for teachers by:
  - a. reducing the number of matters the Complaints Assessment Committee (CAC) is required to refer to the Disciplinary Tribunal (DT);
  - b. removing the requirement for the CAC to reach agreement with the teacher and the initiator before imposing a sanction; and
  - c. allowing CAC decisions to be appealed to the DT.

#### *What submitters said*

25. The vast majority of submitters supported the objectives of the proposals, particularly around having matters resolved in a timelier manner. Support for the detail of the proposal was more varied. Further detail can be found in Annex 2.

### **Requiring the CAC to refer a matter to DT if it may need to consider of suspension or cancelation**

26. One group of submitters thought that the current definition of serious misconduct is a good guide to what should be referred to the DT. Another group of submitters thought that the proposal did not promote transparency because teachers and the CAC will not



have an adequate grasp of the case law necessary to determine which matters warrant consideration of suspension or cancellation. The main alternative that was proposed was basing the threshold on the CAC considering it likely or having reason to believe that a matter amounts to serious misconduct.

27. We think the proposed threshold strikes the right balance between these two groups. We think the CAC is capable of making this determination and note that the Council can issue guidance to the CAC to promote consistency, if it considers this necessary.

#### Removing the requirement for the CAC to reach agreement with the teacher and the initiator

28. Six organisations supported removing the requirement for the CAC to reach agreement with the teacher and initiator to an outcome and allowing for mediation. PPTA, NZEI and Montessori Aotearoa New Zealand supported alternative proposals. Those that did not support the proposal thought that it was important that the CAC continues to primarily function as a triage or peer-review body and that the introduction of an appeal is unnecessary. However, this would not achieve the objective to get more timely results for matters that are not referred to the DT.
29. A minority of submitters did not support an appeals pathway. We note that not including an appeals pathway would make CAC decisions final (except where judicial review is sought) and reduce the risk of matters being held up further by an appeal. However, natural justice and public interest considerations mean that both teachers and initiators of a conduct matter should be able to appeal CAC decisions.

#### *Recommendation*

30. We recommend progressing the proposal, but adding a transitional provision. The Council has asked that the changes only come into effect twelve months after commencement of ETAB 2 in order to allow time for it to amend its rules and provide training to CAC members.

#### **Other minor changes**

31. We recommend progressing other minor changes:
- a. making it explicit that the Council has a function of prosecuting breaches of teacher registration requirements if a teacher who does not hold a practicing certificate or limited authority to teach breaches the 20 half-day maximum limit they can be employed;
  - b. clarifying that the Council's purpose is to regulate teaching in ECE services and schools in all languages of instruction and not just English- and Māori-medium settings. You agreed to us developing advice for inclusion in ETAB 2 as part of our work programme to strengthen initial teacher education [METIS 1259674 refers]. While this change has not been consulted on, we are of the view that its minor and technical nature makes its inclusion in ETAB 2 appropriate; and
  - c. an amendment to the Council's purpose statement to remove the reference to "senior-secondary" schools. Senior secondary is not a type of school recognised in the Act. This change was not consulted on as it is minor and technical.

#### **Increasing flexibility for government to set requirements on compulsory student services fees**

##### ***The proposal***

32. It is proposed to remove the provisions relating to CSSFs from sections 257 and 360 of the Act, and instead authorise these fees to be regulated as conditions on funding mechanisms under section 419 of the Act.
33. This proposal would give government greater flexibility to make changes to the requirements on tertiary education providers that charge a CSSF, to support system changes and to respond to feedback from the tertiary sector.

### ***What submitters said***

34. Submissions from students generally expressed support for the change, commenting on the need for greater flexibility.
35. Some submitters from providers were opposed to the proposal. Providers were concerned that future changes to the CSSF requirements could result in additional compliance costs, be overly prescriptive and reduce flexibility, and the government could cap CSSF amounts or apply a one-size-fits-all approach. Further details on submissions can be found in Annex 2.

### ***Ministry comment***

36. While this proposal makes no changes to the CSSF requirements, the outcome of the proposal could facilitate further changes. Some of the potential future changes raised in submissions would be subject to separate policy decisions and consultation processes as part of future work.

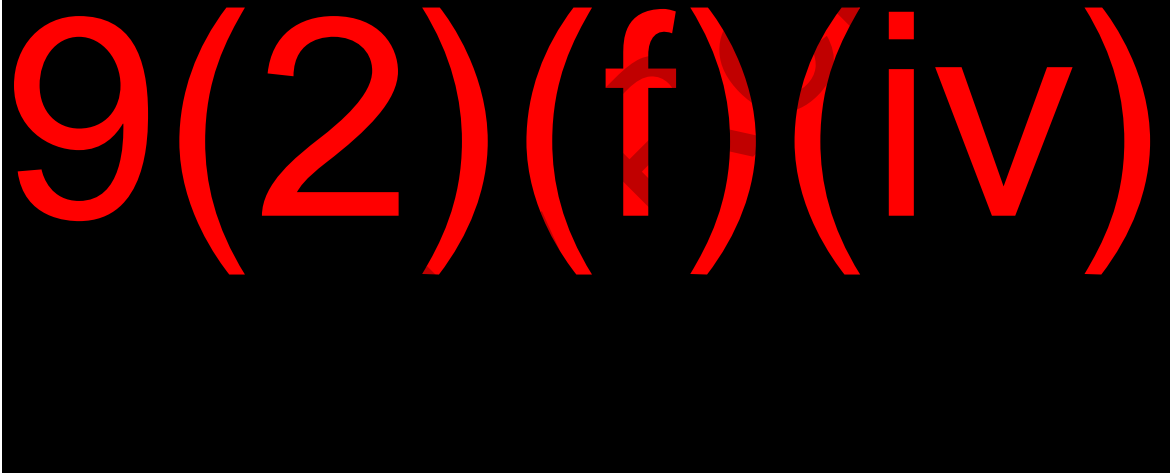
### ***Recommendation***

37. We recommend proceeding with the proposal as consulted on.

### ***Engagement on future arrangements about CSSFs for trainees and apprentices***

38.

39.



### ***Using national student numbers for work-based learning***

#### ***The proposal***

40. It is proposed to amend schedule 24 of the Act so that NSNs can be used when there is funding to support work-based training that is not administered through a provider.
41. NSNs are used to ensure that funding is allocated effectively, efficiently, and equitably. NSNs cannot be used for learners in work-based training initiatives when funding is not administered through a provider, including tertiary education organisations. This means that agencies are required to use a more manual process to identify if funding for these initiatives is being used as intended, and to determine whether any recovery of the funding is required.

#### ***What submitters said***

42. Two submissions were received, both in support of the proposed change.

#### ***Recommendation***

43. We recommend that schedule 24 of the Act is amended so that NSNs can be used when there is funding to support work-based training that is not administered through a provider.

## **Changes to Private Training Establishment registration cancellation**

### ***The proposal***

44. We propose that the Act is amended to provide NZQA with discretion about whether to cancel the registration of a PTE if it has been convicted of allowing a person to undertake a course of study when they are not entitled to under the Immigration Act. This discretion would be in line with other reasons NZQA may cancel a PTE's registration under the Act.

### ***What submitters said***

45. We received four submissions from peak bodies (Montessori Aotearoa New Zealand, NZEI Te Riu Roa, Te Rito Maioha, and the Tertiary Education Union) and three from individuals. Further detail on the submissions can be found in Annex 2.
46. All submitters supported the proposal, with five noting that Immigration New Zealand is best placed to investigate and manage breaches of the Immigration Act 2009.

### ***Recommendation***

47. We recommend amending the Act to enable NZQA discretion about whether to cancel the registration of a PTE if it has been convicted of allowing a person to undertake a course of study when they are not entitled to under the Immigration Act.

## **Simplifying qualifications and other credentials**

48. On 7 July 2021, officials provided advice about the key feedback from the consultation on simplifying the qualifications system and the design of vocational qualifications. The paper sought your decisions on recommendations for the design of vocational qualifications and micro-credentials, which will inform any changes to legislation [CRR22514/Metis No 1264446 refers]

## **Expanding the Education Review Office's mandate**

### ***The proposal***

49. We propose to expand ERO's mandate to review PLD accessed by schools, kura, and early learning services, through an amendment to the Chief Review Officer's powers in the Act.

### ***What submitters said***

50. We received 85 submissions on the proposal. The majority were from individuals through the online survey. Twenty-one submissions were from organisations or peak bodies. Further detail of submissions can be found in Annex 2.
51. Support for a centrally organised way of reviewing PLD:
  - a. More than 60 percent of submitters indicated support for the proposal to have a centrally organised way of reviewing PLD, some with qualifiers.
  - b. 10 percent indicated they were unsure about a central review of PLD.
  - c. 20 percent opposed a central review of PLD and the proposal overall.
  - d. A small number of submitters did not comment on this question.
52. The majority of those submitters who supported having a centrally organised way of reviewing PLD also indicated support or conditional support for ERO having this function.
53. Support for ERO to review PLD:
  - a. 40 percent of submitters indicated support for the proposal for ERO to review PLD, many with qualifiers.
  - b. 18 percent were unsure about ERO reviewing PLD.

- c. 38 percent opposed ERO reviewing PLD.
  - d. A small number of submitters did not comment on this question.
54. There were three main areas where submitters expressed some concerns with the proposal:
- a. whether ERO's experience in reviewing schools and early learning centres would translate into expertise in reviewing PLD.
  - b. questions about the scope of PLD, and if it would include PLD that is not government-funded.
  - c. concerns about the possible costs, time and additional workload that may be associated with a review of PLD.
55. Submitters also offered a range of alternatives to ERO, but there was no consistently mentioned alternative. Several submitters suggested that places of learning and PLD providers undertake self-review instead.

### ***Ministry comment***

56. Some of these concerns may arise from a lack of understanding of ERO's newly adopted evaluation approach and methodologies, which suggests the need to communicate more with PLD providers on how ERO will implement the legislative change as we go through the legislation process.
57. ERO is well placed to work with the sector to address issues raised. For example:
- a. ERO has flexibility to employ and designate someone as a review officer as long as they are suitably qualified. This means ERO can build a review team that includes those experienced in PLD.
  - b. ERO has in-house expertise in developing review and evaluation methodologies within the education sector in a range of settings. ERO will use that expertise to develop framework(s) for reviewing PLD.
58. The proposal is limited to government-funded PLD, which includes that directly purchased by the school and funded through the school's operational grant. ERO reviews of PLD will give schools more information to base their PLD purchasing decisions on.
59. Officials have considered the alternatives to ERO that were suggested in submissions, and remain of the view that ERO is best-placed to undertake this function.
60. ERO will work with the sector to design the practice framework(s). As always, ERO will look for opportunities to minimise compliance burden and ensure that the process provides value to those involved with information to improve their practice.

### ***Recommendation***

61. Officials recommend progressing with the proposal to amend the Act to enable ERO to review PLD, with a commitment that ERO will work with the sector on implementation.

### **Changes to school board elections**

#### ***The proposal***

62. We have completed consultation on the proposals to enable two new school board election processes – hui elections and electronic elections – and to make a range of other changes to the school board election framework.

#### ***What submitters said***

63. We received 120 written submissions on this proposal and held discussions with the Youth Advisory Group, the Disabled People's Organisation, Te Rūnanga Nui and Ngā Kura A Iwi. On the whole, submitters supported the proposals, including many who

affirmed the need to adapt from the postal service.

### **Ministry comment**

64. We consider that further work is required to ensure that the changes to school board elections are fit-for-purpose and work for diverse communities. This includes further policy work and discussions with stakeholders around the specific settings to engage and empower schools to have election processes that best meet the needs of their students, staff and school communities.
65. An example of the further work that needs to be done is to enable concurrent election timetabling. Submitters commented that the framework needs to be set up in a way that enables schools to run all three elections processes – paper, electronic and hui – concurrently. This idea has implications for many areas of the framework, including timetables, vote invalidation criteria and issuing of voting forms and it will take time to consider how we could amend the elections framework to allow for these processes to be run at the same time.
66. Our original intention was to have different timelines for paper-based elections and electronic elections, to enable more responsive electronic elections. Submitters commented that they supported electronic elections. However, under the suggestion, a school's community might want a mixed paper and electronic election, so we need to consider how we can develop timetabling requirements that balance all three election processes so they can be used individually, in pairs or all together.

### **Recommendation**

67. We recommend that the legislative changes to school board elections be deferred from ETAB 2 and included in ETAB 3 instead. We will also defer the related changes to regulations. 9(2)(f)(iv)
68. 9(2)(f)(iv)  
In the meantime, the current settings will apply to school board elections, including the 2022 student elections.

### **Defining “free kindergarten association” for employment function purposes**

69. We are seeking your agreement to define “free kindergarten association” in the Act by listing all the free kindergarten associations currently recognised by the Ministry for collective bargaining purposes in a schedule to the Act, and to providing for the amendment of this schedule by an Order in Council process. The existing definitions are inadequate and circular, e.g. the definitions of “free kindergarten”, “education service” and “employer” all reference 'free kindergarten association', which is not a defined term. The schedule will generally match the list set out in the ECE Funding Handbook.
70. The change is necessary to obtain certainty about which teachers are part of the education service and who is the employer in relation to a free kindergarten. It is important to determine which organisations are covered by the collective employment agreements that the Secretary for Education negotiates as the employer party representing kindergarten associations. Consequential changes will be required to the Public Service Act 2020 because that Act references the Education and Training Act definitions.
71. This proposal was not publicly consulted on, but all the kindergarten associations were consulted when the ECE Funding Handbook was amended recently to include the list of named kindergarten associations in one of its appendices.

9(2)(f)(iv)

# 9(2)(f)(iv)

## ***Removing the requirement for the Secretary to review and confirm all strategic plans.***

76. From 1 January 2023 the Secretary for Education will be required to review all strategic plans to determine whether they meet the requirements of the Act and relevant regulations. We propose to remove the requirement for the Secretary to assess the legal compliance of these plans, but to retain the ability for the Secretary to require changes where there are concerns about a plan's quality. Boards will continue to be accountable for financial management and school performance through the reporting requirements.

## **Changes relating to ECE network management also to be included in ETAB 2**

77. On 13 July 2021 you received an Education Report titled Early Learning Regulatory Review: Network Management – Te Tiriti o Waitangi, appeals and other matters [Metis 1265914 refers]. If you agree with the proposals contained in that paper, they will also be included in ETAB 2.

## **Next steps**

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78. We are planning to seek Cabinet approval at SWC on Wednesday 11 August 2021. We are seeking your agreement to begin departmental consultation on Tuesday 20 July, and Ministerial consultation to begin on Tuesday 27 July. We will provide you with a final Cabinet paper for lodging with Cabinet Office by 10am on Thursday 5 August.

## **Annexes**

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Annex 1: (Draft) Cabinet Paper

Annex 2: Summary of submissions

## Summary of submissions received on proposals to be included in the Education and Training Amendment Bill (No 2)

1. Nine proposals for legislative change were consulted on for inclusion in the Education and Training Amendment Bill (the Bill).
2. These proposals are to:
  - amend the Education and Training Act 2020 (the Act) so that all employees must obtain a Police vet before beginning work in schools and Early Childhood Education (ECE) service providers. Currently non-teaching and unregistered employees have a two-week period before a Police vet must be applied for;
  - amend the priority for out of zone balloting criteria relating to children of board employees, siblings of former students and children of former students;
  - strengthen and clarify Teaching Council processes relating to teacher discipline, registration and recent teaching experience;
  - amend how compulsory student services fees are regulated;
  - allow the use of National Student Numbers to support work-based learning;
  - enable the cancellation of Private Training Establishment's (PTE) registration for immigration breaches;
  - simplify New Zealand qualifications and other credentials;
  - amend the Education Review Office's (ERO) mandate to enable it to review professional learning and development; and
  - add the option for school board elections to take place electronically or via hui, alongside other changes to improve the school election process [Note that as we are recommending this proposal be deferred, we have not provided a summary of the submissions received at this time].
3. The proposals were open for public consultation from 21 April to 16 June 2021. The discussion documents and information on how to make a submission were published on the Kōrero Mātauranga | Education Conversation website. The consultation was promoted across Ministry social media channels. We also communicated the consultation to all schools (including private schools) via the School Bulletin.
4. To convey to interested parties that consultation was happening on these proposals, we directly contacted peak bodies and relevant organisations. We met with the Disabled People's Organisations' Coalition, Professional Learning Association of New Zealand [PLANZ], Te Runanga Nui, Nga Kura a Iwi, the Youth Advisory Group, the Privacy Commissioner, New Zealand Union of Students' Associations, Te Mana Ākonga, several other individual students' associations, and Universities New Zealand.
5. The New Zealand Qualifications Authority ran an extensive consultation process on the proposal relating to qualifications and other credentials, including meeting with Māori, Pacific communities, and disabled community partners and stakeholders.
6. Versions of the discussion documents relating to both zoning and school board election proposals were provided in English, te reo Māori, and nine Pacific languages (Cook Island's Māori, Fijian, Kiribati, Niuean, Rotuman, Samoan, Tongan, Tokelauan, and Tuvaluan). There was also nation-wide radio advertising in English, te Reo Māori and nine Pacific languages relating to these proposals
7. Discussion documents relating to expanding ERO's mandate, school board elections, and Teaching Council processes were also provided in accessible formats.



## Proposed changes for Police vetting of non-teaching and unregistered employees

### Proposal

8. The proposal is to clarify that non-teaching and unregistered employees at ECE services and schools must be vetted before they begin work at the service or school, and to remove the two-week period in the Education and Training Act to apply for a vet for these employees after they start work.

### Background

9. The Education and Training Act and the Children's Act 2014 set out the framework for ensuring children are safe while engaging in education. In general, most workers in the education sector are children's workers and are required to undergo a comprehensive safety check (including a vet) under the Children's Act before beginning work.<sup>1</sup>
10. Under the Education and Training Act, non-teaching and unregistered employees of ECE services and schools who are not children's workers must be vetted. Employers have two weeks to apply for, not obtain, the vet, after the employee has begun work, as long as the employee does not have unsupervised access to children during that time.

### What did submitters tell us?

11. 183 submitters commented on the proposal to remove the application period for non-teaching and unregistered employees in the Act.
12. 128 submitters either specifically agreed with the proposal or would agree if the waiting times for vets could be reduced, including the PPTA, NZSTA, the Tertiary Education Union, the New Zealand Educational Institute, Montessori Aotearoa New Zealand, and Te Rito Maioha Early Childhood New Zealand. Many submitters commented that safety of all tamariki is paramount (see below for further details).
13. 33 submitters specifically disagreed with the proposal, mostly due to the problems associated with processing delays (see below for further details).

#### *The majority of submitters agreed that the application period is confusing*

14. 109 submitters specifically agreed that the application period is confusing, with a number of submitters commenting that they vet all employees before they start work regardless of the application period. 42 submitters specifically disagreed that the application period is confusing.

#### *The timeframe to obtain vets is the major problem identified by submitters*

15. The common theme coming from submitters was that it takes too long to obtain a vet. 77 submitters specifically mentioned timeliness as causing problems, or potential problems, including the PPTA and the New Zealand Educational Institute. Submitters provided examples of the problems this delay causes, including:
  - delays in appointments, leading to no-handover periods and adding to the workload of other staff;
  - being unable to employ good staff;
  - candidates finding alternative employment;
  - contributing to the teaching shortage;

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<sup>1</sup> Children's workers are defined in the Children's Act as a person whose work may or does involve regular or overnight contact with children, without parents being present.

- being unable to support students with learning support needs due to a lack of teacher aides (especially when schools are given short notice of enrolments), which could lead to more serious discipline consequences and safety issues for other students;
  - ECE service providers being unable to keep within the required ratios; and
  - being unable to get relievers, and the cost of those relievers.
16. A number of submitters suggested improvements to the vetting system to speed up processing times, for example allowing for a 'fast-track' option at a higher fee, allowing transferable vets between different worksites, and implementing a system similar to the Blue Card system in Queensland.<sup>2</sup>

*Many submitters consider that the safety of tamariki is paramount*

17. 36 submitters specifically mentioned ensuring tamariki are safe while engaging in education as a reason for supporting the proposal, with some commenting that safety outweighs any costs and disadvantages of the proposal. Some submitters also commented that ensuring safety for other staff members and the community is important.
18. Some submitters commented that they thought it was already compulsory for vets to be obtained before all employees start work, and were concerned to hear that it wasn't.

## Changes to the priority categories for out of zone enrolment in school

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### **Proposal**

19. Three proposals relating to the priority categories for out of zone enrolment were presented to the public:
- Option 1 status quo – retain the current priority categories;
  - Option 2 - increase the priority of children of board employees (teachers and other staff) and board members to priority three; lower the priority of siblings of former students, and remove the children of former students as a priority group; and
  - Option 3 - retain current priority groups one and two, increase the priority of children of board members and employees to priority three, and establish an "all other applicants" category as priority four.
20. The case for change is uncertain and there were no preferred options as part of this consultation. The information gained from public consultation was intended to be used to inform further development of these options and decisions on the need for legislative change.

### **Background**

21. As part of the review of Tomorrow's Schools, Cabinet asked for advice on whether the current ballot criteria used for the selection of out-of-zone students for enrolment are fit for purpose [SWC-019-MIN-0153 refers]. The initial analysis found that while there is no strong evidence of a problem with the current priority categories, and they are transparent, it may be possible to amend the priority categories so that they are more equitable.
22. The current priority categories determine the order in which out-of-zone applicants for enrolment must be offered places at a school. In order, the categories are:
- students accepted into a special programme run by the school;
  - siblings of current students;

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<sup>2</sup> In Queensland anyone working or volunteering with children must have a blue card, which involves a Working with Children Check. This check assesses a person's eligibility based on their known past police and disciplinary information. The Police information of all blue card holders is monitored.

- siblings of former students;
- children of former students;
- children of board employees and board members;
- all other students.

#### **What did the submitters tell us?**

23. These proposals generated the most interest of all of the proposals with 2,869 submissions including 2,824 online submissions and 45 emailed submissions received.
24. The majority of submitters are from the Auckland region (2,362) with submitters from Canterbury/Chatham Islands being the second largest group with 209 submissions.
25. Self-identified New Zealand European/Pākehā submitters are the largest ethnic group with 2,112 submitters followed by Māori with 260 submitters.

#### **Support for the status quo – Option 1**

26. There was overwhelming support for retaining the status quo with 2363 (82%) of submitters on this option supporting it. Conversely only 312 (11%) disagreed with retaining the status quo.
27. Support for the status quo was seen in the responses to the discussion question “do you think the priority groups are fair?” with 1982 (69%) of submissions agreeing and 390 (14%) disagreeing.
28. Additionally, few submitters 226 (8%) stated that they had seen evidence of inequitable outcomes caused by balloting or the current priority groups or said that they were aware of issues with balloting in practice 400 (14%).
29. One of the commonly mentioned reasons for retaining the status quo was the belief that the system currently works well and that it shouldn't be changed without evidence of substantial issues.
30. Supporters of the status quo also frequently expressed opposition to the removal of priority for children of former students. They noted that intergenerational links were important for schools to maintain traditions and community, and that these links gave students a sense of pride in their schools. They also noted that parents are more likely to donate to a school if they believe their children are likely to be enrolled.

#### **Support for options for change (options two and three)**

31. The submissions indicated limited support for either of the options for change. Option 2 received 270 (9%) supporting submissions versus 2273 (79%) submissions in opposition. Option three received 325 (11%) submissions in support while receiving 2101 (73%) opposing submissions.
32. Opposition to the options for change was reflected in the responses to the question “Do you agree with our findings that the priority groups could be made more equitable?” 1731 (60%) of submitters said they disagreed with this statement while 458 (16%) said they agreed with this statement.
33. For supporters of options 2 and 3 a frequently mentioned reason was support for increasing the priority of the children of teachers. Submitters noted the contribution of teachers to a school's community as well as the logistical issues for teachers if their children attend a separate school.
34. InsideOUT supported option 3 as they believed it would progress the best interests of transgender and gender diverse students. Current enrolment schemes unintentionally force some trans students to enrol at a single sex school or a school that is not aware or supportive of gender diverse learners' needs. Accordingly, they believe that reducing priorities based

on family legacy, and increasing the number of applicants through an open ballot, would increase trans and gender diverse learners' access to affirming and co-educational schools.

35. Another reason for supporting options 2 and 3 was opposition to the current priority category for children of former students with some submitters believing that this category perpetuates privilege and does not enhance a local community's connection with a school.

#### **Support for decreasing priority of children/siblings of former students**

36. Submitters indicated strong opposition to lowering the priority of siblings and children of former students. When asked "Do you agree that siblings and children of former students should be given a lower priority?" 2273 (79%) opposed and 270 (9%) supported this statement.
37. As with support for the status quo a frequently given reason for this position was the importance of children and siblings of former students to the community and intergenerational legacies of schools.

#### **Support for increasing priority of children of board employees and members**

38. Support for increasing the priority of children of board employees and children of board members generally was higher than the support for options 2 and 3 with 688 (24%) submissions in support of this proposition.
39. However, there was still significant opposition to this proposal with 1724 (60%) submissions disagreeing with increasing the priority of children of board members and children of board employees. Some submitters who opposed increasing the priority of children of board employees and board members stated that teachers may change schools during their career and that the strength of their attachment to a school may not be as strong as a family connection.
40. Support for increasing the priority of children of board members and board employees was mixed among key stakeholders. Riccarton High School and Taradale College supported increasing this group to priority three, as did Macleans College. However, Macleans College wished to retain priority for children and siblings of former students.
41. The PPTA opposed increasing the priority of children of board members and board employees saying:
- "it is difficult to justify a greater right to attendance at the school for the child of a parent who works at the school but lives out-of-zone than for a child of a parent who lives out-of-zone but works in a business next door to the school."
42. This indicates that there is some support for increasing the priority of children of board members and board employees, but not at the expense of lowering or removing the priority of other groups.
43. Submissions that support increasing the priority of children of board employees often noted the benefits for teachers if their children attended the school where they worked and that teachers may not be able to afford to live in-zone to their schools of employment.
44. However, there are very few submissions (31) that state that teachers have difficulty accessing offers of enrolment for their children at the school where they work.

#### **Additional considerations**

45. Several submitters stated that there were other interests that should be recognised in the priority categories. Murray Bays Intermediate submitted that students from within a Kahui Ako should be recognised as a priority category and could be prioritised over children of former students.

46. Other submitters (9) said that gender diverse and non-binary students should be explicitly recognised in enrolment scheme policy, so that they have the option of attending a co-educational school if they are not in-zone for one.

## Strengthening Teaching Council processes

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### Proposal

47. Three proposals relating to Teaching Council processes were consulted on.

- The first is to streamline the disciplinary regime for teachers by (1) reducing the number of matters the Complaints Assessment Committee (CAC) are required to refer to the Disciplinary Tribunal (DT), (2) removing the requirement for the CAC to reach agreement with the teacher and the initiator before imposing a sanction, and (3) allowing CAC decisions to be appealed to the DT.
- The second is to make explicit in the Act that the Council can take prosecutions against employees or employers under section 662, including people working in schools for more than 20 half-days without a practising certificate or LAT.
- The third is to clarify that the Council must use its discretion when considering satisfactory recent teaching experience of professional leaders in settings other than early learning services and schools.

### What did submitters tell us?

48. Eleven organisations and twenty-four individuals submitted on changes relating to Teaching Council processes. Te Aho o Te Kura Pounamu and Montessori Aotearoa New Zealand (MANZ) supported the package of proposals in their entirety. PPTA Te Wehengarua, NZEI Te Riu Roa, Te Rito Maioha Early Childhood New Zealand (ECNZ), Independent Schools Education Association (ISEA), New Zealand School Trustees Association (NZSTA), the Human Rights Commission (HRC), IHC New Zealand, and Inclusive Education Action Group (IEAG) gave more detailed feedback on the proposals. We also met with Te Rūnanga Nui who shared its experience with the Council's disciplinary processes.

### *Disciplinary processes*

49. The majority of submitters supported the objectives of the proposals, particularly around having matters resolved in a timelier manner.
50. Six organisations agreed that too many cases are being referred to the DT. Three disagreed. Of the six organisations who considered this problematic, five organisations supported the proposal to require the CAC to refer matters to the DT where the DT may need to consider suspension or cancellation. Fourteen individual submitters supported the proposal, four individuals did not support it, and eleven individuals did not indicate a clear preference.
- IHC, IEAG and HRC did not support reducing the number of cases being referred to the DT. They felt that the definition of serious misconduct in the Act and expanded in the Council's rules was a good guide to which matters are serious and changing the threshold risks matters, particularly to those concerning vulnerable people not being dealt with appropriately.
  - Of the submissions that supported reducing the number of cases being referred to the DT, the main concern with the preferred option was that it did not promote transparency because teachers and the CAC will not have an adequate grasp of the case law necessary to determine which matters warrant consideration of suspension or

cancellation. NZEI thought that the proposed threshold was just as difficult to apply consistently as the current “may possibly” threshold.<sup>3</sup>

- The main alternative proposed was basing the threshold on the CAC considering it likely or having reason to believe that a matter amounts to serious misconduct. One individual correctly noted that the latter would be in keeping with the mandatory reporting criteria in the Council’s rules. NZEI proposed that in addition to a matter being likely to be serious misconduct, the threshold should also require that the CAC consider a matter is likely to attract suspension or cancellation.
51. Six organisations supported removing the requirement for the CAC to reach agreement with the teacher and initiator to an outcome and allowing for mediation. PPTA, NZEI and MANZ supported an alternative proposal. Twelve individual submitters supported the proposal, four individuals did not, and eight individuals did not indicate a clear preference.
- Those that did not support the proposal thought that it was important that the CAC continues to primarily function as a triage or peer-review body.
  - PPTA and ECNZ thought that the CAC should still take reasonable steps to reach agreement before imposing a sanction.
  - NZEI supported keeping the current arrangement but thought that the CAC should only be required to get the teacher’s agreement. It noted that agreement with the initiator was not necessary as the CAC is not a dispute resolution body.
  - Three individual submitters commented that mediation could be useful to the CAC. The PPTA thought that this will result in an unnecessary additional cost to the Council.
  - Most submitters agreed that an appeals process needs to be introduced if the requirement for the CAC to reach agreement on an outcome were removed. However, some worried that this may undermine the policy intention to streamline the disciplinary process. The PPTA did not think an appeal right is necessary and referenced Professional Conduct Committees of nurses, social workers, and doctors where no appeal is provided for.<sup>4</sup> ECNZ, NZSTA, IHC, HRC, and IEAG thought both parties should be able to appeal, while ISEA would limit it to the teacher.
52. The majority of submitters supported removing the power for the CAC to suspend a teacher’s practising certificate.
53. We asked whether people thought the CAC should be required to publish an anonymous summary of cases if it takes on a greater number of more serious cases. Support was split for both organisations and individuals that engaged with this particular question.
- Those that disagreed were concerned about the extra workload on CAC. The PPTA was also concerned with the ability of the summary to preserve anonymity. NZEI thought this could be useful, but there are risks associated with it not being done appropriately.
54. A number of submitters thought that internal Council processes rather than legislation were contributing to the delays. IHC, HRC, and IEAG challenged us to investigate ways to achieve timely resolution by increasing resources at the DT. These groups also thought it was important to find ways to make the processes more inclusive and felt that members of both disciplinary bodies should be familiar with the rights of disabled people. The PPTA wondered whether cases where there was agreement to the facts, such as where there has been a conviction, could be escalated to the DT faster.
55. The PPTA made two additional proposals in its submission. The first is to strip back the functions of the Council, and the second is to simplify the impairment process run by the Council.

<sup>3</sup> I.e. it is problematic inasmuch as suspension or cancellation need not be determined likely.

<sup>4</sup> Note that in healthcare’s case, there is a commissioner and for social workers only the PCC recommend to the Board.

56. Te Rūnanga Nui told us that the disciplinary process was not compatible with kaupapa Māori and that it wanted to deal with kaiako conduct matters itself.

#### *Enforcing certification/LAT requirements*

57. All of the five organisations that submitted on this particular change supported it. Ten individual submitters agreed, six disagreed, eight had no preference. It is not clear that all those who disagreed fully understood the proposal, although two submitters pointed out the additional cost to the Council.

#### *Recent teaching experience of professional leaders*

58. None of the organisations that submitted on changes to Teaching Council processes raised any concerns with this change. On the face of it, the majority of individual submitters supported the change, although it is not clear that a majority of submitters understood the proposal from the nature of their comments.

### **Proposal to change how compulsory student services fees charged by tertiary education providers are regulated**

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#### **Proposal**

59. The Bill proposes to remove the current provisions on compulsory student services fees (CSSF) from the Act and instead regulate CSSFs through conditions on funding under section 419 of the Act. This is the same way that all other provider-based fees are regulated.

#### **Background**

60. Government cannot currently place any additional requirements on providers charging a CSSF beyond those requirements specified by legislation. This constrains the ability of government to adapt the framework following broader changes to the tertiary education system, including the Reform of Vocational Education (RoVE), and the introduction of a new code of practice for pastoral care of domestic tertiary and international learners (the Code).
61. This proposal would give the government greater flexibility to make changes to the requirements on tertiary education providers that charge a CSSF, to support system changes or to respond to feedback from the tertiary sector. For example, it would enable the government to consider specific CSSF requirements for different types of learners, such as learners in work-based settings.

#### **What did submitters tell us?**

62. The Ministry received a total of 11 submissions on this proposal. Three of the submissions were from student organisations: New Zealand Union of Students' Association (NZUSA), University of Canterbury Students' Association (UCSA) and Victoria University of Wellington Students' Association (VUWSA). We also received submissions from Universities New Zealand (UNZ), Massey University and University of Auckland, as well as a survey response from Auckland University of Technology (AUT). The Tertiary Education Union (TEU) and the private training establishment (PTE) Te Rito Maioha provided submissions on several aspects of the Bill, including the CSSF proposal. We also received a submission and a survey response from two individual students.

#### **On the proposed change of mechanism for regulating CSSFs**

63. Submissions from all student organisations, individual students and the TEU generally expressed support for the proposed legislative change. However, some expressed concern that the legislation itself should have embedded greater student involvement in decision-making on CSSFs, rather than giving discretion to government. All submissions from student associations and the submission from TEU indicated the need for distinct rules for different

groups of learners and expressed need for greater flexibility to set requirements on CSSFs considering broader ongoing reforms.

64. Students also made a range of suggested changes to CSSF requirements, particularly on student involvement in decision-making on CSSFs. While this proposal makes no changes to the CSSF requirements, the outcome of the proposal could facilitate further changes.
65. Submissions from the three universities, UNZ, and Te Rito Maioha all opposed the proposed legislative change, with the universities and UNZ indicating that the rationale for the proposed change was unclear. These submitters all considered the existing framework was fit-for-purpose and were concerned that the proposed change was an overreach of government influence. There were concerns that future changes to the CSSF requirements enabled by the proposed legislative change would result in additional compliance costs, be overly prescriptive and reduce the ability of providers to meet the diverse needs of their learners. Providers were also concerned by the possibility of government imposing caps on how much CSSFs are.

#### *CSSF arrangements for different groups of learners*

66. Students and TEU differed from providers on the extent to which they considered existing CSSF requirements resulted in fair fee charges for different learner groups (for example, part-time or distance learners). NZUSA and TEU both expressed concerns that under the existing framework apprentices and trainees may start getting charged CSSFs that are unfair, given that their training is primarily work-based, and these learners are less likely to spend time on campus. All student associations and individual student submissions considered that existing arrangements for part-time or distance students were unfair. VUWSA and UCSA also said that settings for international students are unfair, particularly for those students studying overseas via distance due to travel restrictions.
67. Submissions from providers indicated that the existing framework was working well and ensured that fee charges to different groups of learners were fair. Providers said that the requirement to consult or decide jointly with students on CSSF settings means that there are already sufficient checks in place to support fair CSSF charges for different groups of learners. Providers were concerned that future changes enabled by the proposal could result in a one-size-fits-all approach which would prevent providers from responding to the diverse needs of their learners. Te Rito Maihoa also indicated that enabling requirements that limited what services apprentices or trainees could receive could have negative implications for compliance with the new Code.

#### *Involvement of students in CSSF decisions*

68. Most submissions from students said that the existing requirements did not do enough to require providers to involve students in decisions on CSSFs and that consultation by providers is often not genuine and takes place after decisions have already been made. However, both NZUSA and UCSA pointed to examples of good practice, whereby there is genuine partnership arrangements between students and providers (at Lincoln University and University of Canterbury).
69. AUT, Massey University and UNZ all said that there were good existing practices to involve students in CSSF decisions and reach their diverse student groups, and that these are regularly evaluated. For example, Massey University is designing a new community-based consultation cycle to help ensure diverse voices are represented in decisions. There are also governance arrangements to ensure that students and staff can influence decisions on CSSFs.

#### *Ministry comment*

70. Officials still consider that there is need for a more flexible CSSF framework that gives government greater discretion to specify rules for different groups of learners, particularly work-based learners at providers following RoVE. Universities are unlikely to be significantly



impacted by any differing arrangements for trainees, given they are not involved in the funded industry training for trainees or apprentices. However, students have indicated that there are several arrangements at some providers which they consider are unfair related to characteristics of different student groups.

71. Both NZUSA's and TEU's submissions agreed that we needed a more adaptable, durable framework given the significant reforms occurring across the tertiary education system. We note that providers, particularly universities, are concerned by the potential additional requirements on them and the resulting compliance costs. Provider submissions also indicated that they would not support any cap on how much they can charge through CSSFs. These concerns would need to be carefully considered as part of any decision on future changes to requirements on CSSFs. While universities also expressed concerns over potentially more prescriptive arrangements for involving students in decisions, those universities with robust existing processes to involve students are unlikely to be significantly impacted by any future changes intent on enhancing the involvement of students in CSSF arrangements.

#### ***On the proposed process for setting requirements on providers charging a CSSF***

72. Under the existing proposal, to enable government to administer CSSF requirements as conditions on funding, these conditions would be subject to existing consultation requirements that apply to other fee regulation settings. The Minister would be required to consult on the proposed requirements for a minimum of 21 days via Gazette notice, as outlined in section 420 of the Act. As outlined in section 423 of the Act, changes to existing funding mechanisms would need to be 'reasonably necessary' to be implemented during provider investment plan periods, and there would be a minimum stand-down period of three months or the following calendar year, whichever is longer, before changes could take effect after decisions are taken.
73. Feedback on the proposed timeframes and process mostly came from student groups, and indicated a preference for longer consultation timeframes,, a longer stand-down period and a more prescriptive list of who the Minister should consult with (especially priority learner groups, including Māori, Pacific learners and disabled students). The TEU were supportive of existing processes but indicated that staff at tertiary providers should be consulted too. NZUSA indicated that any proposed CSSF requirements should have demonstratable support from both students and providers.

#### **Using National Student Numbers for work-based learning**

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74. The Ministry received two submissions on the proposal to amend the Act to enable NSNs to be used by agencies when there is funding to support work-based training that is not administered through a provider.
75. The Tertiary Education Union (TEU) and one individual submitter supported the proposed change.

#### **Changes to Private Training Establishment registration cancellation**

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##### **Proposal**

76. It is proposed to provide NZQA with discretion to cancel the registration of a PTE in relation to immigration breaches, rather than it being automatic.

##### **Background**

77. Section 350(2) of the Act states that the NZQA must cancel the registration of a PTE under certain circumstances. This includes if a PTE is convicted of an offence under section 352(1)

of the Immigration Act 2009 – allowing a person to undertake a course of study if they are not entitled to do so under the Immigration Act.

78. Immigration New Zealand (INZ) have advised that they find it difficult to take forward prosecutions of providers for enrolling international students without the appropriate immigration authority (visa), because of the likelihood that the requirement to deregister the PTE would be considered by judges to be disproportionate to the seriousness of the offence. This proposal is intended to improve INZ's ability to enforce immigration law, as it is currently difficult to prosecute under 352(1) as deregistration is often considered disproportionate to the level of offending.
79. We therefore consulted on legislative change to enable cancellation of a PTE's registration for these immigration breaches to happen at the discretion of NZQA, rather than automatically. This is in line with NZQA's discretion to cancel a PTE's registration for other reasons under section 350(1) of the Act, for example breaches of registration conditions.

### **What did submitters tell us?**

80. Seven submitters commented on this proposal, including four peak bodies (Montessori Aotearoa New Zealand (MANZ), NZEI Te Riu Roa, Te Rito Maioha, and the Tertiary Education Union (TEU)). The other three submitters commented as individuals.
81. All submitters supported the proposal, with five noting that Immigration New Zealand is best placed to investigate and manage breaches of the Immigration Act 2009.
82. The TEU noted that interests of staff and students should not be compromised due to the actions of a provider which result in a breach of section 352(1) of the Immigration Act 2009.
83. One individual submitter commented that it is important that there be a transparent set of criteria for NZQA to make their decision, and that there should also be a transparent, clear and prompt appeal process. The same submitter noted that the possibility of administrative errors, misinformation, and severe delays from INZ should be taken into consideration when investigating possible enrolment of an international student without the appropriate immigration authority.

### **Comments out of scope**

84. NZEI Te Riu Roa also commented that the rules around establishing a PTE should be strengthened so that both domestic and international students can be assured that the qualification they're investing in will lead to the opportunities that they are expecting – for example, that students understand that not all "teacher training" qualifications will lead to registration and certification with the Teaching Council.

### **Simplifying qualifications and other credentials**

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85. A summary of submissions was provided in the Education Report: Next steps on simplifying the qualifications system and the design of vocational qualifications [CR22514/Metis No 1264446].

### **Expanding the Education Review Office's mandate to review professional learning and development accessed by schools, kura and early learning services**

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#### **Proposal**

86. We consulted on a proposal to expand the Education Review Office's (ERO) mandate to enable it to review professional learning and development (PLD) accessed by schools, kura, and early learning services.

## Background

87. Quality professional learning and development is an important way to help educators strengthen their skills, knowledge and approaches to better meet learners' needs and contribute to wider system goals. There are some processes to ensure the quality of professional learning and development, but there is not a clear understanding of how PLD improves teaching practice and enhances student learning in individual places of learning, nor at a national level.
88. To better understand the impact of PLD on teaching and learning in New Zealand, we proposed that ERO reviews the PLD accessed by schools, kura and early learning services, with the purpose of improving the quality of the professional learning that educators receive. This change could also help PLD providers by giving them more information about the impact of their PLD provision.

## What did submitters tell us?

89. We asked the following questions:

- Do you agree it would be good to have a centrally organized way of looking at how the PLD accessed by schools, kura and early learning services impacts on teaching practice and student learning?
- Do you agree with the proposed solution? Why or why not?
- How would the expansion of ERO's mandate to review professional learning and development impact on you?
- Are there other options for ensuring systematic review of PLD accessed by schools, kura and early learning services?
- Are there any particular considerations this proposal needs to take into account about the provision of PLD for teachers of disabled learners and those with learning support needs? (This question was specifically asked in consultation with the Disabled People's Organisations' Coalition)

90. We received 85 submissions on the proposal in total. Sixty-one were anonymous survey responses. Twenty-two were written submissions, and two were provided verbally in hui.

91. The following organisations made a submission: Parents of Vision Impaired NZ (PVI); Te Aho o Te Kura Pounamu (Te Kura); KAP Consultancy NZ; InterLEAD; Future Learning Solutions at University of Auckland; CORE Education Ltd.; NZ Centre for Education Research (NZCER); Te Rito Maioha Early Childhood NZ; NZ School Trustees Association (NZSTA); the Post Primary Teachers Association Te Wehengarua (PPTA); the New Zealand Educational Institute Te Riu Roa (NZEI); the Professional Learning Association New Zealand Te Māngai Whakangungu Kaiako o Aotearoa Inc. (PLANZ); Evaluation Associates; Montessori Associates of NZ (MANZ); Cognition Education NZ; the Inclusive Education Action Group (IEAG); IHC New Zealand; the Disability Rights Commissioner; and the NZ Centre for Gifted Education (NZCGE).

92. ERO and Ministry of Education officials also met with PLANZ and the Disabled People's Organisations' Coalition (DPO) whose members made written submissions included above. The Ministry also held hui with the chairs of Te Rūnanga Nui o Ngā Kura Kaupapa Māori o Aotearoa (Te Runanganui) and Nga Kura a Iwi to discuss the proposal and receive verbal feedback.

Nearly two-thirds of submitters agreed it would be good to have a centrally organised way of reviewing PLD.

93. The table below summarises submitters views on a centrally organised way of reviewing PLD. Nearly two-thirds of submitters supported the proposal, although some support was conditional.

**Submitters' views on a centrally organised way of reviewing PLD**

| Classification           | Number of submitters |           |
|--------------------------|----------------------|-----------|
| Supported the proposal   |                      | 53        |
| Without conditions       | 38                   |           |
| With conditions          | 15                   |           |
| Unsure                   |                      | 9         |
| Opposed the proposal     |                      | 18        |
| No comment on proposal   |                      | 5         |
| <b>Total submissions</b> |                      | <b>85</b> |

94. The 24 submitters who gave conditional support or were unsure about the proposal were largely dependent on its implementation. These included concerns about the scope of PLD that could be reviewed; compliance burdens such as cost and time; the possible methodology of the review process; and the need to consider local contexts and diversity. The chairs of Te Rūnanganui and Ngā Kura ā Iwi saw the merit of a centrally organised way of reviewing PLD if the purpose was clear and the process upheld Māori agency, mana and tino rangatiratanga.
95. Of the 18 submitters who did not support the proposal to have a centrally organised way of reviewing PLD, nine were concerned about potential intrusion into school autonomy and that ERO would not consider local needs in their evaluations. Others felt it was not needed, would not address core issues including equity for Māori, or that review should be regional not national.

*Overall, there was conditional support for ERO to undertake this function.*

96. The table below summarises submitters' views on ERO as the agency to review PLD. 40 percent of submitters in total supported or conditionally supported the proposal. A further 18 percent were unsure and also offered conditions if the proposal progressed.

**Submitters' views on ERO reviewing PLD**

| Classification           | Number of submitters |           |
|--------------------------|----------------------|-----------|
| Supported the proposal   |                      | 34        |
| Without conditions       | 15                   |           |
| With conditions          | 20                   |           |
| Unsure                   |                      | 15        |
| Opposed the proposal     |                      | 32        |
| No comment on proposal   |                      | 4         |
| <b>Total submissions</b> |                      | <b>85</b> |

97. The majority of the 53 submitters who indicated some support for a centrally organised way of reviewing PLD also indicated some support of ERO having this function. Of those 53:
- 34 also indicated at least some support for ERO to be the agency undertaking that function

- i. 14 of these answered “Yes” to the question.
- ii. 20 indicated partial or conditional support.

- b. 9 were unsure
- c. 7 opposed ERO undertaking that function.
- d. 3 did not comment on the proposal

98. Those who supported the proposal for ERO to review PLD considered ERO is well placed to undertake this function. Te Kura and NZSTA also proposed that ERO’s mandate be extended to also review Initial Teacher Education.

99. The submitters who expressed conditional support for the proposal for ERO to review PLD raised ERO’s expertise in reviewing teachers’ PLD and possible compliance costs. They had questions about the methodology and the scope of PLD to be reviewed. These submitters include CORE, Cognition, Te Rito Maioha, Evaluation Associates, Future Learning Solutions and NZCGE. PVI, IHC, IEAG and the Disability Rights Commissioner emphasised the need for ERO reviewers to have a strong understanding of and concern for disability issues. The chairs of Te Rūnanganui and Ngā Kura ā Iwi noted the expertise of ERO in Māori education and hoped an independent view could provide helpful information, but were concerned about the potential impact on their organisations’ provision of PLD to their kura and communities. Submitters from early learning also noted the different PLD landscape in that sector.

100. The submitters who opposed ERO reviewing PLD had similar concerns as those who expressed conditional support or who were unsure. They also raised possible equity or conflict of interest issues. These submitters include the PPTA, NZCER, NZEI, MANZ, InterLEAD and PLANZ. PLANZ also felt it would be premature to take this decision before the complex PLD landscape was clearly mapped.

*Submitters identified a range of possible impacts of ERO reviewing PLD*

101. Twenty-seven submitters identified potentially positive impacts of the proposal:

- a. Twenty-one submitters believed a central review of PLD could improve the quality of PLD and teaching and learning outcomes. These include Cognition, Future Learning Solutions, IHC, IEAG, InterLEAD, Te Kura, and the chairs of Te Rūnanganui and Ngā Kura ā Iwi.
- b. Six submitters felt the proposal could help places of learning identify quality PLD providers and programmes.

102. Submitters also identified ways that a central review of PLD could have unintended consequences:

- a. Fifteen submitters were concerned about possible compliance costs such as financial cost and time on places of learning and on PLD providers. These include CORE, Future Learning Solutions, NZCER, NZCGE and the PPTA.
- b. Eight submitters, including Evaluation Associates, noted the potential for ranking PLD providers and the potential of decreasing diversity of the PLD market.
- c. Cognition and NZCGE also noted privacy and commercial concerns of providers in the publication of review reports.
- d. The chairs of Te Rūnanganui and Ngā Kura ā Iwi hoped that ERO reviewing PLD would not impact on their ability to provide PLD to their kura and communities.

*While submitters offered a range of alternatives to ERO, there was no consistently mentioned alternative*

103. Fourteen submitters felt that current mechanisms were sufficient:

- a. Nine submitters noted that ERO can already review PLD through its current evaluative function with places of learning and felt this is sufficient, so ERO should not review specific PLD providers. These submitters included Future Learning Solutions, Te Rito Maioha, InterLEAD, PLANZ, Evaluation Associates and Cognition.
  - b. Five considered the current Ministry of Education quality assurance processes for centrally funded PLD is sufficient.
104. Fourteen submitters, including NZCER, the Disability Rights Commissioner and NZCGE, felt it would be more appropriate for places of learning or providers to review PLD themselves, perhaps with supporting resources from ERO or the Ministry of Education.
105. Others felt organisations other than ERO should undertake the function, and suggested the Ministry of Education, PLANZ, NZCER, NZQA, teachers' unions, the Teaching Council, or an independent review panel as alternatives. PLANZ, Cognition, the IHC and IEAG proposed a cooperative model across the system to review PLD.

*Submitters offered suggestions and considerations for the design and implementation of a central review of PLD.*

106. A number of submitters including CORE, Cognition, PLANZ and Evaluation Associates, provided detailed suggestions and considerations for the design and implementation of any central review of PLD, whether undertaken by ERO or another organisation. Submitters advised having a clear and shared problem definition and purpose for reviewing PLD, including the scope of provision that would be reviewed. They also reminded that any review of PLD must be fit-for-purpose across different sectors and contexts, including Māori medium and early learning. Submitters consistently emphasised the need for the Ministry of Education and ERO to consult further and work collaboratively with actors across the sector to co-design any central review of PLD.