



## Education Report: Education and Training Amendment Bill (No 2) - draft Approval for Introduction Cabinet paper

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	8 November 2021	<b>Priority:</b>	High
<b>Security Level:</b>	In confidence	<b>METIS No:</b>	1264141
<b>Drafter:</b>	Georgie Handley	<b>DDI:</b>	439 5456
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<b>Messaging seen by Communications team:</b>	No		

### Purpose of report

This paper seeks your agreement to begin Ministerial consultation on the attached draft Cabinet paper, which seeks approval to introduce the Education and Training Amendment Bill (No 2) (the Bill).

### Summary

1. The Bill contains a number of amendments aimed at improving the operation of the Education and Training Act 2020 (the Act).
2. In summary, the amendments will:
  - a. allow the Police vetting provisions in the Education and Training Act to work more effectively with the Children's Act 2014;
  - b. strengthen Teaching Council processes;
  - c. improve the ability of Government to regulate compulsory student services fees (CSSFs) charged by tertiary education providers;
  - d. enable National Student Numbers (NSNs) to be used by agencies when there is funding to support work-based training that is not administered through a provider;
  - e. allow NZQA to exercise discretion about whether to cancel the registration of a Private Training Establishment (PTE) in relation to immigration breaches;
  - f. simplify qualifications and other credentials;
  - g. enable ERO to review professional learning and development (PLD);
  - h. ensure the learner wellbeing and safety arrangements and the disputes resolution scheme are fit for purpose; and
  - i. resolve a number of minor and technical drafting matters.
3. We are seeking two new policy decisions in the attached draft Cabinet paper:
  - a. amending Schedule 23 so that a school board is required to replace a board member who is removed for breaching the board member code of conduct; and

- b. amending the regulation-making power in section 636(2)(h) of the Act so that regulations can provide for the making of *Gazette* notices to regulate early learning qualifications.
4. We are also seeking your agreement to the inclusion of a number of additional minor and technical amendments in the Bill.
5. The draft Cabinet paper and Bill has been the subject of agency consultation. As the result of feedback, we have amended the draft Cabinet paper to make it clearer that the Bill gives the administrator of the learner wellbeing code the ability to gather information and enter and inspect premises. Additional minor amendments have also been made to the Cabinet paper.
6. We also received comments back from the Teaching Council and the Ministry of Social Development (MSD) that will result in minor drafting changes to the Bill. In the time available, we have not been able to incorporate these changes. We recommend proceeding with Ministerial consultation and will provide a revised version of the Bill incorporating these changes when it is lodged for LEG committee.
7. We recommend commencing Ministerial consultation as soon as possible. We will provide your office with a final Cabinet paper by Tuesday 16 November, for submission to Cabinet Office by 10am on Thursday 18 November for the LEG meeting on Thursday 25 November.

## Recommended Actions

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The Ministry of Education recommends that you:

- a. **note** that the Education and Training Amendment Bill (No 2) 9(2)(f)(iv) **Noted**
- b. **agree** to seeking two new policy decisions:
    - (i) clause 12(1) of Schedule 23 is amended so that a board member removed under section 169(2) of the Act creates a casual vacancy; **Agree / Disagree**
    - (ii) amending section 636 of the Act, so that regulations “provide for the recognition of qualifications”. This will allow the qualifications to be set in the *Gazette* rather than regulations **Agree / Disagree**
  - c. **agree**, in accordance with your authority from Cabinet to make decisions relating to matters of detail without further reference to Cabinet, to make the following amendments to:
    - (i) section 9(2)(b) of the Act so that it correctly describes section 17(2)(a) of the Act (as a provision that is related to Te Tiriti o Waitangi in the context of the regulation of the education system); **Agree / Disagree**
    - (ii) reflect that Ko Tāku Reo has changed its name to Ko Taku Reo – Deaf Education New Zealand; **Agree / Disagree**

- (iii) explicitly authorise NSNs to be assigned to students studying for NCEA in overseas jurisdictions with which New Zealand has entered into an arrangement for the teaching and assessment of NCEA, and to authorise schools in those jurisdictions to be specified users of NSNs;

**Agree / Disagree**

- (iv) clarify that any limits or requirements on any type of fee (e.g. tuition fee or fee for the provision of student services) charged to domestic tertiary students or employers are subject to the consultation process specified under section 420 of the Act;

**Agree / Disagree**

- (v) clarify that section 256(2) of the Act on tertiary education institution fees also relates to fees charged to employers, consistent with the Minister's condition setting powers under section 419 of the Act;

**Agree / Disagree**

- (vi) clarify that a DRS operator is required to apply principles of fairness and reasonableness in resolving disputes and to have regard to the law, and in the case of an adjudication, to determine a dispute on its merits without being constrained by strict legal requirements or precedents;

**Agree / Disagree**

- (vii) better provide for the code administrator to issue performance improvement notices, including, when they apply, the amount of notice that must be given, the need for providers and signatory providers to comply with the notices, and any sanctions for non-compliance with the notices;

**Agree / Disagree**

- (viii) use the terminology of 'modifying an adjudication outcome' rather than 'appeals' as set out in the Cabinet decision. This ensures consistency with other sections in the Act; and

**Agree / Disagree**

- d. **note** that we consider that the decisions outlined above all fall within the authority provided to you by Cabinet

**Noted**

- e. **note** that agencies have been consulted on the draft Cabinet paper, with minor changes made as a result;

**Noted**

- f. **note** that we have received comments from the Teaching Council and the Ministry of Social Development that require minor changes to the Bill that have not yet been made, but we consider this should not defer Ministerial consultation;

**Noted**

- g. **agree** to commence Ministerial consultation on the attached draft Cabinet paper and Bill as soon as possible


**Agree / Disagree**

## Proactive Release Recommendation

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h. **agree** that this Education Report is released after the Bill has been introduced.

**Agree /** Disagree

  
Ben O'Meara  
**Group Manager**  
**Te Puna Kaupapahere - Policy**  
8/11/2021

  
Hon Chris Hipkins  
**Minister of Education**

17/11/2021

## Annexes

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Annex 1: (Draft) Cabinet paper: "The Education and Training Amendment Bill (2): Approval for Introduction (*attached separately*)

Annex 2: The Education and Training Amendment Bill (No 2) (*attached separately*)

## Background

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1. On 11 August 2021 Cabinet agreed to the following proposals being included in ETAB 2 [SWC-21-MIN-0118 and CAB-21-MIN-0134 refers]:
  - a. enabling the Police vetting provisions in the Education and Training Act to work more effectively with the Children's Act 2014;
  - b. strengthening Council processes;
  - c. providing greater flexibility for government to regulate CSSFs charged by tertiary education providers;
  - d. enabling NSNs to be used by agencies when there is funding to support work-based training that is not administered through a provider;
  - e. allowing NZQA to exercise discretion about whether to cancel the registration of a PTE in relation to immigration breaches;
  - f. simplifying qualifications and other credentials;
  - g. enabling ERO to review PLD;
  - h. clarifying and modernising learner wellbeing and safety; and
  - i. resolving a number of minor and technical drafting matters.
2. We are planning for an SOP to the Bill to amend the early learning network management provisions, and which is the subject of a separate Cabinet process [METIS 1273665].
3. Proposals to restrict enrolment of international students under Year 9 may also be included in the Bill via SOP, depending upon the outcome of public consultation. You were briefed on timeframes on 31 August [METIS 126776 refers], and you received an Education Report on 29 October [METIS 1269359] relating to the public consultation process.

## New proposals

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### **We are seeking your agreement to new proposals to be included in ETAB 2**

4. We are seeking your agreement to two new policy decisions being included in the draft Cabinet paper.

#### ***Casual vacancies***

5. Under section 169(2) of the Act the Minister of Education may remove a board member for significant or persistent breaches of a code of conduct issued to school board members under section 166 of the Act.
6. Removing a board member under section 169(2) of the Act was inadvertently omitted from the list of reasons specified in Schedule 23 of the Act for creating a casual vacancy on a board. Therefore, boards would be unable to replace a board member if they were removed in this way.
7. The draft Cabinet paper seeks agreement to amend the Act so that, if a code of conduct is issued, removing a board member for breaching this code will create a casual vacancy. This will ensure boards can maintain a full complement of board members if they lose a member in this way.

#### ***Amending section 636 of the Act***

8. We are proposing to amend the regulation-making power in section 636(2)(h) of the Act so that regulations can provide for the making of Gazette notices to regulate the early learning qualifications that must be held by a number or proportion of persons controlling, or working as educators within, an early learning service.
9. This would reflect the original position in the now-repealed Education Act 1989 before it

was inadvertently changed by the Education Amendment Act 2006, and would align with the Education (Early Childhood Services) Regulations 2008, which envisage the recognition of qualifications by way of a Gazette notice issued by the Secretary.

**Minor and technical decisions made without further reference to Cabinet**

10. Cabinet has provided you with authority to make decisions on issues of detail without further reference to Cabinet, subject to the decisions being consistent with the policy decisions already made on the Bill.
11. In accordance with that authority from Cabinet, we are seeking your agreement to the following additional minor and technical amendments that were not included in the previous Cabinet approvals:
  - a. amending section 9(2)(b) of the Act so that it correctly describes section 17(2)(a) of the Act (as a provision that is related to Te Tiriti o Waitangi in the context of the regulation of the education system);
  - b. an amendment to reflect that Ko Tāku Reo has changed its name to Ko Taku Reo – Deaf Education New Zealand; and
  - c. explicitly authorising NSNs to be assigned to students studying for NCEA in overseas jurisdictions with which New Zealand has entered into an arrangement for the teaching and assessment of NCEA (e.g. the Cook Islands and Niue), and authorise schools in those jurisdictions to be specified users of NSNs.
12. We are also seeking your agreement to the minor and technical amendments below that are related to proposals already agreed by Cabinet and included in the Bill:
  - a. clarifying that any limits or requirements on any type of fee (e.g. tuition fee or fee for the provision of student services) charged to domestic tertiary students or employers are subject to the same consultation process specified under section 420 of the Act. Currently it is unclear if these consultation requirements only apply to limits on dollar amounts;
  - b. clarifying that section 256(2) of the Act also relates to fees charged to employers. This clarifies that the Council of a tertiary education institution must ensure fees charged to domestic students or employers comply with any limit or requirement specified in a condition of funding. This is consistent with the condition-setting powers in section 419 of the Act, which allow conditions on funding for fees that can be charged to students and employers. It is also consistent with section 353 of the Act, which relates to conditions on funding for fees charged to students and employers at PTEs;
  - c. clarifying that a disputes resolution scheme (DRS) operator is required to apply principles of fairness and reasonableness in resolving disputes and to have regard to the law, and in the case of an adjudication, to determine a dispute on its merits without being constrained by strict legal requirements or precedents. This clarification is consistent with the intention that the DRS should be administered in a pragmatic and cost-effective manner aligned with the principles of alternative dispute resolution;
  - d. better providing for the code administrator to issue performance improvement notices, including, when they apply, the amount of notice that must be given, the need for providers and signatory providers to comply with the notices, and any sanctions for non-compliance with the notices; and
  - e. using the terminology of ‘modifying an adjudication outcome’ rather than ‘appeals’ in relation to the DRS, as set out in the Cabinet decision. This ensures consistency with other sections in the Act.
13. We consider that the amendments set out above are matters of detail and are consistent with policy decisions already made on the Bill.

## Next Steps

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14. Agencies have been consulted on the draft Cabinet paper and the Bill. As the result of feedback agencies, we have amended the draft Cabinet paper to make it clearer that the Bill gives the administrator of the learner wellbeing code the ability to gather information and enter and inspect premises, along with other minor amendments.
15. We are seeking your agreement to begin Ministerial consultation on the attached draft Cabinet paper and Bill as soon as possible.
16. MSD and the Teaching Council have provided comments that will result in minor changes to the Bill. We will work with Parliamentary Counsel to incorporate these amendments into the introduction copy of the Bill.
17. We will then provide your office with a finalised Cabinet paper on Tuesday 16 November, for lodging with Cabinet Office by 10am on Thursday 18 November for the LEG meeting on Thursday 25 November.