

Impact Summary: Additional policy changes to the Education and Training Bill to address issues identified in the response to COVID-19

Section 1: General information

Purpose

The Ministry of Education is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:

- Final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis

The policy changes described in this summary are being sought through a Supplementary Order Paper at the Committee of the Whole Stage for the Education and Training Bill. In order to meet the timeframes necessary to insert the proposals via Supplementary Order Paper to the Education and Training Bill, this analysis has been prepared under a truncated timeframe, which has prevented consultation with the education sector and general public on these proposals, and has also constrained the time available to undertake analysis and gather evidence.

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To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry of Education

Quality Assurance Assessment:

Partially meets

Reviewer Comments and Recommendations:

The Ministry of Education's RIA panel assessed the RIA on 18 May 2020, and assessed it as partially meeting the RIA assessment criteria. The panel notes that while the proposals were clearly set out in the RIA, they were developed on a tight timeframe which meant there was no consultation with the sector. However, the RIA notes that there is an opportunity to develop a plan with the sector on how these proposals will work in practice.

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PART I – Powers

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Powers of the Secretary to respond to and support recovery from emergencies

Work undertaken by the Ministry of Education (the Ministry) to respond to the COVID-19 pandemic has highlighted critical gaps in the Education Act 1989 (the Act) and the Education and Training Bill (the Bill) in terms of the powers available to the Secretary for Education (the Secretary) for facilitating a locally, regionally, or nationally coordinated response to and recovery from an emergency.

In summary, there is currently no provision on an ongoing basis for the Secretary to direct governing authorities of education entities to:

- open and close in an emergency, including to be closed for physical attendance, and open for the provision of instruction (e.g. through online learning);
- continue to provide education and instruction through distance and online learning while premises are physically closed;
- place restrictions on the attendance of groups of children, students and/or workers; and
- require a school board to reopen a school that they have closed under S65E of the Act in an emergency, but where the Secretary considers the grounds for the closure are no longer justified.

Status quo

Clause 4 of Schedule 20 to the Bill gives the Minister the power to permit a state school to close, however this power is a permissive power only. This means that the Minister cannot direct or compel a state school to close, making these powers unsuitable for use in an emergency where the health and safety of students and workers at the school could be at risk if a school chooses to remain open.

Under clause 6 of schedule 20 to the Bill, a board of trustees may close a school it administers because of an epidemic, a flood, a fire, or another emergency. However, the Secretary currently has no ability to prevent a school from closing or to require the board to reopen the school where the Secretary is not satisfied that the closure is necessary, or where the reason for the closure has passed. In some cases it could be difficult for a board to reopen a school following an emergency, for example, due to ongoing community concerns and pressure to remain closed. This could have a negative impact on the relationship between the school and its community. It could also result in unnecessary delays in getting a school 'back to normal' when it is safe following an emergency, and negatively impact on the wellbeing and educational outcomes for students and their whānau and families.

The Bill also does not provide for a distinction to be made between closures for physical attendance, and closures for instruction. This means that if a school is physically closed, the Minister and Secretary have no ability to direct them to continue to provide instruction to students remotely, such as through online or distance learning, where this is feasible and appropriate.

In addition, there is currently no ongoing ability under the Bill for the Minister and Secretary to direct early childhood education (ECE) services and tertiary education services to close and open, or to restrict attendance in response to, or during the recovery from, an emergency or epidemic.

The problem

The status quo is a problem because the Minister and Secretary have little legislatively backed authority to provide centrally coordinated direction and leadership to the education sector during a state of emergency, transition period, or epidemic. Responsibility for making critical decisions in an emergency is currently dispersed across numerous education entities in the sector. This makes it difficult to centrally manage the response in a way that avoids and mitigates adverse effects to the education system as a whole, and ensures that resources and capability can be prioritised and delivered appropriately. As such, the status quo creates risks to the continued safety, integrity, and quality of New Zealand's education system during and following an emergency event.

There are provisions in other Acts and Regulations that are relevant to aspects of the education sector during and after an emergency and epidemic. However, none of these Acts include provisions specifically designed for the whole education system or address matters relevant to ensuring the continued safety, integrity, and quality of education services. For example:

- Health Act 1956 – for the purpose of preventing the outbreak or spread of an infectious disease, if authorised by the Minister of Health, or if a state of emergency has been declared under the Civil Defence and Emergency Management Act 2002, or while an epidemic notice is in force, a Medical Officer of Health may, under s70(1)(m), by order, require all premises within a district of any stated kind or description to be closed until a further order or for a fixed period; and, under section s70(1B), may exempt people engaged in necessary work in the premises to which the order relates;
- Epidemic Preparedness Act 2006 – ensures there is adequate statutory power for government agencies to prevent and respond to outbreak of epidemics in New Zealand (and overseas), and enables the Prime Minister, with the agreement of the Minister of Health, to issue an epidemic notice and an epidemic management notice;
- Civil Defence and Emergency Management Act 2002 - if a state of emergency is in force, section 86 allows for a Controller or constable, or a person authorised by him or her, to direct the evacuation of any premises or place, or the exclusion of any persons from a premises or place, where this is necessary for the preservation of human life;

- Health and Safety at Work Act 2015 – under section 36, a person conducting a business or undertaking (PCBU), must ensure, so far as reasonably practicable, the health and safety of their workers, and that of other people are not put at risk by their work;
- Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 – under section 14, the PCBU must ensure that an emergency plan is prepared for the workplace, and must implement the emergency plan in the event of an emergency; and
- COVID-19 Public Health Response Act 2020 – establishes the legal framework required to allow the Government to respond to COVID-19 over the next two years, even if a national state of emergency, transition period, or epidemic notice is no longer in place, including the ability under s11(1)(b) to require education entities to be closed, or only open if specified measures are in place.

For the purposes of responding to COVID-19, the gaps in the Act and Bill have been temporarily addressed by the COVID-19 Response (Urgent Management Measures) Legislation Act, which will remain in place while an epidemic notice is in force for COVID-19 under section 5(1) of the Epidemic Preparedness Act 2006.

However, without permanent legislative change, these gaps in Education Act 1989 will return once the epidemic notice is lifted for COVID-19, and will be carried over to the Education and Training Act if the Bill is passed through the House as currently drafted.

To ensure that our education legislation is fit for purpose in the event of a future local or national state of emergency, transition period, or when an epidemic notice is in place, it is proposed that the key features of the COVID-19 Response (Urgent Management Measures) Legislation Act amendments are incorporated into the Education and Training Bill on a permanent basis through a Supplementary Order Paper. This will ensure that the system takes advantage of the lessons learned from the COVID-19 pandemic, and avoids the need for urgent legislative amendments when faced with a future local or national state of emergency or epidemic.

Embedding these powers (for the Secretary) into the Act provides greater certainty and assurance to the sector that there will be powers in place to support the guidance and leadership of the sector in the event of emergency situations. Having the powers established ahead of time, rather than reliance on urgent legislative amendments at the time of an emergency event, may also allow the Secretary to act sooner (as the power to Act would be triggered immediately after a state of emergency, transition period, or epidemic notice was in place).

The main benefits of these provisions stem from the greater powers that the Secretary will have to maintain and support education in the event of an emergency, particularly where the emergency circumstances (or the response to them) may disrupt the normal operations of educational institutions. Disruptions to education, even for relatively brief periods of time, can have detrimental impacts to the educational and social outcomes of learners, and heighten the risk of disengagement and leaving school prematurely. The emergency powers vested in the Secretary may be used to support the continuity of learning for students while school sites are closed and reduce some of the risks associated

with educational disruption. The Secretary's emergency powers may also be used to support the sector in other ways, such as procedures to preserve the integrity of qualifications (where usual protocols may have been disrupted by the circumstances of the emergency).

2.2 Who is affected and how?

New powers for the Secretary to act in a state of emergency, transition period, or when an epidemic notice is in place

The proposals will affect the behaviour of governing authorities of education entities, including ECE service providers, state, state-integrated and private schools, through to tertiary education service providers, and hostels. These education entities are a mix of crown entities, private businesses, and not-for-profit organisations, and range in size from very small (e.g. home-based childcare ECE providers) through to very large (e.g. universities and wānanga).

For the purpose of the new powers, a 'governing authority' in relation to an education entity means the body that is primarily responsible for the governance of the education entity. An education entity means:

- a registered school (as defined in clause 10 of the Bill)
- a service provider (as defined in clause 10 of the Bill)
- a hostel (as defined in clause 10 of the Bill)
- a private training establishment (as defined in clause 10 of the Bill)
- an institution (as defined in clause 10 of the Bill)
- an educational body (as defined in clause 524(8) of the Bill).

The proposals will also affect the behaviour of those that work at education entities (e.g. teaching professionals and support staff) and those that provide services to education entities, including contracted services (e.g. property maintenance and cleaning services, and educators in home-based ECE services). For example, teaching professionals may need to deliver education services from their home using digital technology. Some businesses that provide services to education entities may not be able to provide those services when education entities are physically closed in an emergency.

The behaviour of those that attend, board, or are enrolled at education entities (e.g. children and students), and their parents, whānau and families, will also be affected. For example, learning may take place at home when ECE services, schools, and tertiary services are closed for physical attendance. The proposals are likely to affect different groups of children and students differently. For example, it may not be possible to deliver education services to very young children online.

The new powers will only be available to the Secretary when a state of local or national emergency is declared under section 66 or section 68 of the Civil Defence and Emergency

Management Act 2002 (the CDEM Act), a transition period¹ is in place under Part 5A of the CDEM Act, or when an epidemic notice is in place under section 5(1) of the Epidemic Preparedness Act 2006. A national state of emergency under the CDEM Act has only been declared twice². The number of local states of emergency that are declared each year varies, from 0 in 2012, to 15 in 2017. Key reasons for declaring a local state of emergency include flood, severe weather, fire, and earthquake³.

The number of education entities affected by directions, and the ways in which they will be affected, will vary depending on the particular circumstances of the state of emergency, transition period, or epidemic. For example, in some cases, such as a significant, national-scale event, it is possible that all education entities in New Zealand, and all those enrolled, or who attend, board, or work at them, could be affected. However, in a local state of emergency (e.g. flood or fire), only education entities (and associated parties) in the local area are likely to be affected. In a number of local states of emergency, where the effect of the emergency is particularly localised and contained, there may be no impacts on any education entities at all.

ENABLING THE SECRETARY TO REOPEN A SCHOOL THAT HAS BEEN CLOSED FOR REASON OF AN EMERGENCY

The proposals will directly affect the board of trustees of a school that has been closed under current clause 6 of Schedule 20 to the Bill in an emergency, as the Secretary will have the ability to direct the board to reopen the school if the Secretary considers the closure is no longer justified.

A direction given by the Secretary to a board will also affect the principal of the school and those employed at the school, as well as the students enrolled at the school, and their parents, whānau and families. The wider schooling community may also be affected.

The Secretary will be required to consult the board of trustees and any relevant others prior to giving a direction to reopen a school. This is to ensure that their views and concerns regarding the school being closed and open can be taken into account, and that it is safe to reopen the school.

2.3 What are the objectives sought in relation to the identified problem?

New powers for the Secretary to act in a state of emergency, transition period, or epidemic

The policy objective is to ensure that the response to an emergency or epidemic, and the recovery from it, by the education sector can be provided in a way that:

¹ Following a state of emergency, a transition period supports the transition from response to the initial recovery phase. It provides recovery managers and other with powers designed to assist with recovery for a specified period of time

² National States of Emergency have previously been declared under S66 of the CDEM Act 2002 for the COVID-19 pandemic for the whole of New Zealand, and the 22 February Christchurch earthquake for Christchurch City.

³ A list of local states of emergency declared under the CDEM Act 2002 since June 2002 can be found here: <https://www.civildefence.govt.nz/resources/previous-emergencies/declared-states-of-emergency/>

- Avoids, remedies, or mitigates any actual or potential adverse effects; and
- Facilitates coordinated processes and planning across the education sector and government agencies.

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Section 3: Options identification

3.1 What options have been considered?

The proposed options are set out in 3.2 and, for succinctness, have not been duplicated in this section (3.1). This section of the paper (3.1) relates exclusively to alternative options that were considered in the course of the policy development process but that are not, for the reasons explained below, the preferred option.

I. Ability to direct governing authorities of education entities to open and close in response to an emergency, and during the recovery from an emergency.

An alternative option to the proposals below relating to the opening and closing of educational entities, was to amend Clause 4 of Schedule 20 of the Bill to replace the Minister's ability to **authorise** a school closure with the power for the Minister to **direct** the school closure. This was not identified as the preferred approach because:

- a. These powers only apply to opening and closing state schools, and would not be available for other education entities;
- b. Closures under Clause 4, even if directed by the Minister, are likely to be considered to be holidays, and therefore the same issues relating to the Holidays Act 2003, industrial relations, and the continuation of instruction would arise; and
- c. This option would remove the current ability of individual school boards to be able to request changes to school terms and holidays, which is not the intention of this proposal.

II. Restrictions on attendance

An alternative option, considered alongside the proposal above relating to restricting attendance, was creating a power in the Act, similar to the one that is provided in the Health Act 1956, allowing for the making of regulations for the closing of education entities or the regulation or restriction of attendance at education entities. This option is not preferred because:

- a. Regulations take time to develop and approve, and a state of emergency, transition period or epidemic usually requires an immediate response
- b. As an emergency response and recovery process unfolds, the types of restrictions on attendance and instruction that are required may change. Regulations (as opposed to a direction through written notice) are unlikely to be sufficiently responsive under these circumstances.

III. Reliance on existing legislative provisions and incentives to support compliance with a direction issued by the Secretary for Education

The following alternative options were considered (but not preferred):

- i. Creating a new offence and penalty upon conviction of a fine of up to \$50,000 for non-compliance with a direction without reasonable excuse. This option was not

preferred because, for an education entity, a financial penalty is more likely to reduce the resources available to support educational and learning outcomes for children and students than impose a direct sanction on the governing authority. This is particularly problematic for state schools, if a board of trustees commits an offence, and for other not-for-profit service providers. Furthermore, in the context of an emergency, financial resources are likely to be critical to supporting the recovery process. In addition, for some governing authorities, being convicted of an offence under the Bill will result in a loss of registration, which may be an unduly harsh consequence in some cases.

- ii. An alternative amount of \$4,000 for the maximum penalty was also considered to partially address some of the issues identified under option I. This is equivalent to the penalty of not complying with an order under the Health Act. However, this rate was considered to be too low to act as a meaningful deterrent to large service providers (e.g. universities).
- iii. Relying solely on non-regulatory methods to encourage compliance with a directive (e.g. education and moral suasion). This option has merit and will be used to support the issuing of a directive by the Secretary. However, by itself, this option is unlikely to ensure there are adequate mechanism and incentives in place to support compliance.

I. Enabling the Secretary for Education to direct a school board to reopen a school that has been closed under Clause 6 of Schedule 20 in an emergency

The following alternative option was considered:

- II. Remove this power from the Bill altogether (i.e. so that boards can no longer close schools in an emergency). This is not the preferred option because:
 - a. Boards have a responsibility under clause 122 of the Bill to ensure that a school is a physically and emotionally safe place for all students and staff. Therefore it is important that boards feel confident that they have access to the full range of tools necessary to act in the best interests of students at all times, but particularly during an emergency; and
 - b. A board may, in some circumstances, be able to act more quickly than the Secretary or other authorities (e.g. Medical Officer of Health) to close a school in response to an emerging emergency situation, and this power allows for an immediate and effective response.

3.2 Which of these options is the proposed approach?

Establishment of new powers for the Secretary of Education

POWERS FOR THE SECRETARY TO GIVE DIRECTION IN A STATE OF EMERGENCY, TRANSITION PERIOD, OR EPIDEMIC NOTICE

It is proposed that a new set of powers will be established in the Education and Training Act that the Secretary can use when a state of emergency is declared under S66 or S68 of the Civil Defence Emergency Management Act 2002 (CDEM Act), a transition period is in place under Part 5A of the CDEM Act, or when an epidemic notice is in place under section 5(1) of the Epidemic Preparedness Act 2006.

Purpose and scope of new powers

The purpose of the new powers is to ensure that the response to the event (i.e. that is the cause of the state of emergency, transition period, or epidemic notice), and recovery from it by the education sector can be provided in a way that:

- avoids, remedies or mitigates any actual or potential adverse effects; and
- facilitates coordinated processes and planning across the education sector.

To support a coordinated and timely response and recovery process, it is proposed that the Secretary be provided with powers to direct the governing authority of an education entity (or the governing authorities of a class of education entities) to:

- close or open an education entity or any part of it (including in relation to all or any specified category, class or year group, of children or students);
- specify whether an education entity (or groups of entities) are to be open and closed for physical attendance, instruction, or both physical attendance and instruction;
- set restrictions on the attendance of children, students and those working at an education entity, after having due regard to any relevant employment and health and safety legislation;
- comply with specified requirements for the operation, management and control of the education entity; and
- provide education or instruction through the education entity in specified ways (e.g. through distance or online learning).

To support these amendments, it is proposed that the legislation provides clarity that instruction may include the provision of education services through online, remote and distance learning, as well as through other methods. Our experience during the response to the COVID-19 pandemic has shown the critical role that online and distance learning can play in helping to ensure that many educational services can continue to be delivered when schools and other education entities are required to be closed for physical attendance for any period of time.

Once issued, a direction by the Secretary under the new emergency powers will override every other provision of the Education and Training Act.

The new powers will not, in anyway, override or influence any provisions in any other emergency management legislation including, but not limited to, the Civil Defence and Emergency Management Act 2002, the Health Act 1956, the Health and Safety at Work Act 2015, and the Epidemic Preparedness Act 2006.

Definition of governing authority and education entity

A governing authority in relation to an education entity means the body that is primarily responsible for the governance of the education entity.

It is proposed that the new powers apply to all education entities across the education system, including early childhood education (ECE) providers, state, state-integrated and private schools, tertiary education providers, and other service providers such as hostels. This is consistent with the powers provided by the COVID-19 Response (Urgent Management Measures) Legislation Act.

By defining an education entity in this way, the Secretary will be able to direct crown entities (e.g. universities and the New Zealand Institute of Skills and Technology), non-profit organisations (e.g. workforce development councils), and private businesses (e.g. ECE providers, private training establishments, and hostels) on matters related to their operation and management during a state of emergency, transition period, or when an epidemic notice is in place in ways that are not possible or appropriate at other times. This is considered to be both necessary and appropriate to ensure a nationally consistent and coordinated response across the whole education system can be taken during the rare occurrence of a state of emergency, transition period, or epidemic outbreak.

Requirements for the issuing of directives.

It is proposed that the Secretary will be able to issue a directive under the new emergency powers through a written notice. The Secretary will be required to publish the direction in the Gazette and on a website owned and operated by the Ministry of Education as soon as possible after it has been issued. It is also proposed that the Secretary be able to renew or amend a direction at any time while the state of emergency, transition period, or epidemic notice is in force.

The direction will expire on a date specified in the direction, or when the state of emergency, transition period, or epidemic notice is no longer in place, whichever occurs first. Due to the scope and significance of the new powers, it is not considered appropriate for them to continue to apply when a state of emergency, transition period, or epidemic notice is not in place.

Compliance

The Ministry of Education considers that existing levers, including legislative provisions, incentives (e.g. public perception and commercial drivers), and sector professionalism and goodwill, are sufficient to support compliance with a directive issued by the Secretary, and that no new enforcement measures are required.

In the first instance, all education entities face incentives, some commercially driven, to demonstrate compliance with central direction in a state of emergency, transition period or epidemic, and to act in a way that is perceived to be in the best interests of those enrolled or attending their education entity, their families and whānau.

During the response to COVID-19, governing authorities of education entities have so far typically demonstrated professionalism, goodwill, and an overall willingness to comply with requests from the Secretary in relation to the delivery of education services. To date, there

have been no instances where formal interventions or enforcement mechanisms have been necessary to elicit the required response from governing authorities.

In the event that a governing authority of an education entity did fail to comply with a direction issued by the Secretary, the Ministry considers that there are legislative provisions currently available within the Education and Training Bill that can be used to support compliance. These include, for example:

- State and state-integrated schools - a refusal to follow a direction could be grounds to use a statutory intervention, which provides for, amongst other things, the removal of the board and appointment of a Commissioner by the Minister;
- Private schools – failure to comply with a direction could be grounds for a registration to be suspended for failing to comply with statutory duties;
- ECE service providers – failure to comply with a direction could be grounds for a licence to be suspended;
- Hostels – failure to comply with a direction could be grounds for a hostel to be shut if it is not in the best interest of students for it to remain open; and
- Tertiary education organisations – failure to comply with a direction where, for example, there is a risk to the educational performance of students, or non-compliance with legislation, could be grounds for intervention by NZQA or TEC.

In addition, in the context of a state of emergency, transition period, or epidemic notice, failure to comply with a direction from the Secretary could also amount to an offence under other relevant emergency management or health and safety legislation such as the CDEM Act, Health Act and Health and Safety at Work Act

Given the factors outlined above, the Ministry is not proposing that any new measures be put in place to enforce compliance by governing authorities of education entities with a direction issued by the Secretary.

Other matters

If the Secretary has issued a direction under the proposed new emergency powers that applies to a school, then it may not be necessary for boards of trustees of schools to be able to exercise their powers under clause 6 of Schedule 20 of the Bill (S65E of the Act refers) to close a school in response to an emergency. Therefore, it is proposed that this power be removed when an applicable directive is in place.

Finally, the new powers will not affect the exercise of academic freedom currently set out in S161 and S222E of the Act.

POWER FOR THE SECRETARY TO REOPEN A SCHOOL THAT HAS BEEN CLOSED FOR REASON OF AN EMERGENCY

It is proposed that the Bill be amended to provide a power for the Secretary to direct a board to reopen a school that has been closed under clause 6 of Schedule 20 due to an emergency, where the Secretary has consulted the board and relevant others, and considers

the closure is no longer justified. This will help to ensure that schools reopen in a timely manner, as soon as it is safe, following an emergency event.

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Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

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

Regulated parties	<p>Education entities:</p> <p>Governing authorities of education entities may face a loss of autonomy as decisions are made by the Secretary at the national level, rather than individually at the local level</p> <p>There may be financial costs for education entities, and an impact to their operations</p> <p>For governing authorities that don't comply, there may be costs associated with the interventions that can be used to address non-compliance</p> <p>Potential impacts on those that work at education entities:</p> <p>Staff stress and anxiety may increase for staff of education entities employees that may need to work in different ways, such as from home; or as a result of job losses (e.g. in the case of some privately owned entities)</p> <p>Other businesses</p> <p>Associated businesses may be negatively impacted through a reduction in business activity</p>	medium	medium
Regulators	Additional cost and accountability for any directions including new funding to support remote	low	medium

	<p>learning, changing systems and processes to implement directives or to support education entities</p> <p>Additional costs associated with using existing interventions where necessary to address non-compliance</p>		
Wider government			
Other parties (students/whana u)	<p>Potential impacts on children, students and others that are enrolled at or attend education entities:</p> <p>The loss of routine and structure and a negative impact on educational outcomes and qualifications</p> <p>A disproportionate impact for already educationally disadvantaged children and students</p> <p>Potential impacts on parents, families and whanau:</p> <p>An increase in stress and mental health impacts for parents relying on providers for supervision, having to support delivery of education services at home and faced with paying fees while services are closed</p>	low	medium
Total Monetised Cost			
Non-monetised costs		<i>Low-medium</i>	<i>Medium</i>

Expected benefits of proposed approach compared to taking no action

Regulated parties	<p>Education entities, tertiary education organisations and those that work at the entities:</p> <p>Ensures consistency across the sector and central coordination of decisions making</p> <p>Provides greater certainty and support in emergency situations</p>	low	medium
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Regulators	<p>Allows the Secretary to act sooner to maintain and support education in the event of emergency situations</p> <p>Can provide central coordination in times of a local or national state of emergency, transition period, or epidemic</p> <p>Provides the ability to centrally manage aspects of the crisis so that resources and capability can be prioritised and delivered appropriately.</p>	medium	medium
Wider government	The role of education agencies in a crisis and recovery will be clearer.	low	medium
Other parties (students/whana u)	<p>Potential impacts on children, students and others that are enrolled at or attend education entities:</p> <p>Closures of education entities in a state of emergency, transition period, or epidemic may provide a sense of reassurance for some children and students</p> <p>Supports the continuity of learning for students while school sites are closed and supports ongoing engagement</p> <p>Potential impacts on parents, families and whanau:</p> <p>Some will see this as providing greater certainty to support them in making parenting decisions.</p>	medium	medium
Total Monetised Benefit			
Non-monetised benefits		<i>Medium</i>	<i>Medium</i>

4.2 What other impacts is this approach likely to have?

This analysis has been prepared under a truncated timeframe, which has limited the opportunity to engage with the education sector and general public on the proposals, and has also constrained the time available to undertake analysis and gather evidence. Therefore, the analysis of impacts summarised in table 4.1 above and discussed below is based on evidence and information currently available.

While it is possible to identify the types of impacts that might occur as a result of the proposals discussed in this RIA, it is not possible to know the actual scope and magnitude of any impacts as these will be dependent on the circumstances within which the powers need to be exercised and the way in which they are exercised. It is also not possible to estimate the extent to which some of the impacts discussed below will be directly and/or fully attributable to the exercise of the powers outlined in this RIA, as opposed to some other source, such as the emergency event itself (e.g. physical damage to property that has the effect of physically closing education entities), or the exercise of powers under other emergency management legislation.

Potential impacts on education entities

As noted above, education entities are a mix of small to large non-profit organisations, crown entities, and private businesses. In the relatively rare event of a state of emergency, transition period, or epidemic notice, the new powers will mean that the Secretary will be able to direct the governing authorities of education entities on a range of matters related to their operation, management, and control in ways that are not possible at other times. While this is necessary for ensuring a centrally coordinated and appropriately managed response in an emergency, it is likely to raise concerns for some service providers in terms of uncertainty about the potential impacts on their business.

Key impacts are likely to include:

- **Autonomy:** A direction from the Secretary for Education, which educational institutions must comply with, may result in the governors of these entities making decisions that they would not have otherwise made, which may not be in the individual best interests of the entity (with potential repercussions on long term viability).

While these powers may somewhat reduce the autonomy of educational institutions, the impact on autonomy is attenuated by the fact that the Secretary may only issue directives on specific matters and educational institutions retain their control over how they implement/act on the directive (on matters that are not expressly prescribed in the directive).

In the case of Crown Entities, the requirement to act on directives/instructions in certain circumstances is already provided for by the Crown Entities Act 2004. For other types of entities affected by these new powers, such as early childhood education providers, the prospect of being directed/instructed by a third-party is likely to be considered significantly different to how they would normally operate and may create uncertainty and concern about how it may work in practice,

particularly as they bear the consequences (e.g. business risk etc.) of implementing the directives.

- **Financial:** Closures and other modifications to the operation of private businesses may be detrimental to profitability and, for some, may pose a risk to their viability. The extent of the financial impact is likely to differ between different types of educational institutions, and will depend on the nature of the directive (e.g. the extent to which it differs from 'normal' practice, the level of preparedness of the sector and community, availability and cost of resources needed to implement the directive). Operational funding provided by the Ministry does not cover all costs for education entities, such as ECE and tertiary providers, and many rely on fees charged for their services to meet their costs and remain viable

The nature of Government support to assist educational institutions to act on the directive will need to be determined at the time, as it will depend on the unique circumstances of the emergency and type of directive.

- **Legal:** There will be legal requirements that governing authorities still need to meet irrespective of a direction from the Secretary. These could include, for example, requirements under the Health and Safety at Work Act 2015, and the Employment Relations Act 2000. There may also be additional compliance costs associated with implementing the Secretary's directive whilst also meeting all other legal obligations.
- **Impact on clients and community:** Closures and other modifications to the operation of educational institutions can have a significant impact on those they serve. Disruptions to education can have adverse consequences for the academic and social outcomes of children and young people, prolong exposure to potentially harmful home environments for some groups of students, and heighten the risk of academic disengagement. For many families, educational providers, such as ECE services and schools, are a key enabler of work-force participation and, for some, also play a critical role in assisting with other types of support (for example, food in schools, etc.). Disruption to the provision of ECE reduces the opportunity for young learners to benefit from the cognitive, social and developmental benefits of quality early childhood education, and may also reduce labour force participation (with flow-on effects on household income) for parents/caregivers.
- **Operational:** Implementing a directive made by the Secretary for Education is likely to impact on the operation of an educational institution. The nature of the operational impact will depend on the circumstances (e.g. the nature of the directive and emergency that it is responding to), and could range from minor 'tweaks' to substantive change. Existing settings, resources, and capability (at the time of the emergency and directive) will also influence the operational impact. For example, in the COVID-19 response, the effectiveness of online delivery of learning depended on variables such as technological resources, staff capability (e.g. proficiency/capability to utilise digital resources effectively as a teaching/learning tool), student readiness etc.

- Uncertainty and heightened risk: Boards, proprietors, principals, students, families and teachers may see this new power as providing greater certainty that the Ministry can take a leadership role in an emergency. However, there may be some concern about the potential for private business operations to be interrupted, and aspects of it controlled, by an external third party (without a direct financial interest in the business, and without accountability to shareholders).

Potential impacts on children, students and others that are enrolled at or attend education entities

Key impacts are likely to include:

- Wellbeing/social isolation – closures of educational institutions, such as schools, ECE and tertiary education settings, in a state of emergency, transition period, or epidemic may provide a sense of reassurance for some children and students, but for others it could cause a loss of routine and structure and increased anxiety. In some cases, sustained periods in the home environment may cause increased stress and conflict. Experience from school closures during the Christchurch earthquakes suggests that the routine and structure of school is beneficial for young people. The negative impacts of ECE, school and tertiary education closures are likely to have a disproportionate impact on children and young people that are already vulnerable due to their family circumstances (e.g. poverty and family violence) (see further comments below).
- Educational outcomes – even if appropriate remote learning options are available to all students, lengthy ECE, school and tertiary education closures are likely to have a negative impact on educational outcomes. This is because engagement is hard to retain for online only learning. Evidence from schools closures over summer holiday's show that educational outcomes suffer when children and students are away from school for sustained periods of time. For a number of children and students, suitable online alternatives are unlikely to be available (e.g. for very young children and those studying courses with a high level of practical content).
- Attainment of qualifications – loss of learning time is likely to have a negative impact on these working towards qualifications such as NCEA and tertiary qualifications, particularly where suitable replacement online learning options are not available. Interruptions to the tertiary education, whether due to school closure or modification of operations, may reduce student retention and lead to lower qualification attainment rates.
- Financial impacts – there may be costs for tertiary students associated with equipping themselves for a new form of instruction (e.g. remote or distance learning) as well as additional costs for students that have already paid fees but their ability to receive instruction and achieve a qualification within the expected timeframe is impeded. Some service providers, such as hostels, may also continue to charge fees while education entities are closed to ensure their ongoing viability.

- Impacts on those already disadvantaged – the negative impacts of emergencies and epidemics often fall disproportionately on those that are already experience disadvantage within education, health, and economic systems prior to an emergency. Māori and Pacific children and students are often over-represented in a many of these groups:
 - Learners from socio-economically disadvantaged backgrounds are less likely to have access to the resources to support home learning (either digital or hard copy)
 - Learners who depend on receiving food at school will lose access to it so may not be able to engage in learning due to inadequate nutrition
 - Learners in over-crowded or emergency living situations may not be able to engage effectively with remote learning
 - Learners who are vulnerable to abuse or safeguarding may lose access to a regular safe environment and contact with those who can provide support and/or intervention
 - Learners who require specialist support for their learning may lose access to the support, which will damage their educational outcomes
 - Learners with complex behavioural challenges or high or complex needs may not have access to caregivers who can provide continuity of learning or safely meet their needs
 - Where caregivers are not able to provide supervision for their children, there is a risk that those children will disengage from learning, making it difficult to reengage them once schools have reopened.

Potential impacts on those that work at education entities

The proposed new powers enable the Secretary for Education to close or otherwise modify the operation of education providers in the event of a state of emergency, transition period, or when an epidemic notice is in force. In practice, this could have significant impacts on the working conditions for staff in the affected educational institutions (for example, on hours of work, location of duties etc.).

Collective Agreements

The existing Collective Agreements (which cover employees of the Boards of Trustees of state and state-integrated schools, and teachers employed by Kindergarten Associations) may not sufficiently support the efficient operation of education providers in the event that the new powers of the Secretary were invoked at the time of an emergency.

When setting restrictions on the attendance of students and those working at an education entity, the Secretary for Education must have due regard to any relevant employment, and health and safety legislation. There is a risk that this may narrow the range of feasible options available to the Secretary at the time of exercising emergency powers.

Further work is needed to better understand the flexibility afforded by the Collective Agreements. This work may, for example, consider contractual provisions on matters such as staff duties when schools are closed for instruction, hours of work and service based entitlements and payments. As part of this further work, the Ministry would also consider opportunities for sector engagement on these matters.

Other potential impacts on those that work at education entities

- There may be job and income losses for those employed by or contracted to privately owned education entities (e.g. ECE and tertiary service providers and hostels) whose operation becomes unviable due to closures or restricted attendance.
- The stress and anxiety already being experienced by workers at education entities during a state of emergency, transition or epidemic may, in some cases, be compounded by a direction from the Secretary to continue to provide education services, or deliver education services in a particular way.
- Many teachers and other people in the workforce have school aged children at home who will also need supervision if education entities are required to be closed in a state of emergency, and it may be difficult for them to perform their roles while also caring for their own children.
- There may be a need for some workers (e.g. teachers, teacher aides), to quickly upskill to be able to deliver education services in a way required by a direction from the Secretary, or to temporarily undertake alternative duties to support the emergency response (note: if these alternative duties fall outside the existing job description of the staff member, consent will be required). For example, some teachers may not have the digital literacy skills needed to provide online instruction to students in a way that best meets their learning requirements.

Potential impacts on parents, families and whānau

Potential impacts on parents, families and whānau as a result of the power for the Secretary to direct education entities to close and open in a state of emergency, transition period, or epidemic, and on other matters, include:

- Trust and confidence - the powers may provide greater certainty, and therefore greater trust and confidence, about the role for centralised direction, whether at a local, regional, or national level, in future emergency response and recovery situations.
- Supervision/childcare – many parents and caregivers of children aged under 14 rely on education services to provide childcare/supervision while they undertake paid and unpaid (e.g. voluntary) work. If the availability of these services is reduced (e.g. due to closure, reduced hours, reduced capacity, etc.), this may have implications for the ability of parents and caregivers to undertake these activities, and have flow on impacts on household income levels, employment and the labour market. This impact is likely to fall disproportionately on single parent families.
- Levels of unpaid labour – parents and caregivers may be required to support the delivery of education services at home. This may be at the same time they are also required to undertake paid employment from home. This impact may fall

disproportionately on women, as Census 2018 data shows that woman undertake more unpaid work, such as childcare, than men.

- Additional financial costs – there may be costs, for example, associated with purchasing resources and equipment, to support learning at home. For example, laptops, or devices that students can use to learn on at home. Some ECE and tertiary service providers and hostels may also continue to charge fees while education entities are closed to ensure the ongoing viability of their business. This impact is likely to fall disproportionately on lower income families.

Potential impacts on businesses that provide services to education entities

The impacts to businesses that provide services to education entities from a directive issued by the Secretary in a state of emergency, transition period or epidemic are likely to be indirect, but potentially significant. In particular:

- A business may no longer be able to provide services to an education entity where it has been directed by the Secretary to be physically closed or to operate in a specified way. This could impact on the profitability and ongoing viability of the business, depending how long it is no longer able to provide the service.
- A business may have to change the way it operates or provides services to an education entity to meet the requirements of the direction. This could affect the costs and profitability of the business.
- Home-based educators are contracted to education entities so there is a risk that these educators will not have any income if the service is closed and they are unable to continue charging fees to parents and caregivers.

Potential impacts on the Ministry of Education

Employment relations and payroll issues

The Ministry of Education is cognisant that not all parts of the current system have been designed with the degree of flexibility envisaged by the proposed changes, including the Collective Agreements (see comments above) that cover much of the schooling workforce, and the education payroll system.

While these characteristics of the system would not become problematic until the emergency powers are invoked, the Ministry recognises that there is a need to work with the sector ahead of time so that, when the powers are invoked, payroll and employment relations matters may proceed smoothly.

In particular, payroll issues may be particularly challenging. It is difficult to identify the impacts on payroll until a change is anticipated and changes to the payroll system take time to bed in. For example, in case of the COVID-19 response, the previously unexpected change to term dates (and their timing) mean that the payroll system was not able to be adjust to reflect these changes, which had flow-on consequences.

In the event of a change that impacts on payroll system, the Ministry of Education would need to engage with the payroll provider to work through potential impacts. They would need to investigate what the proposed change would mean in terms of the ability to change the system, how quickly this could be achieved, and what the flow-on effects are for individuals. Any change may potentially carry a significant cost.

Undertaking pre-emptive, preparatory work (i.e. before such time as the emergency powers are next invoked) is critical for supporting sector preparedness for emergency situations. The lessons learned in the course of responding to the COVID-19 situation will provide a strong platform on which to progress this work, offering rich empirical evidence from an unprecedented emergency event. The systems and processes put in place in response to the COVID-19 situation, and the lessons learned from the experience, is expected to reduce the costs of responding to emergency situations in future. Nonetheless, it does not preclude the possibility of industrial relations matters that may arise at the time of a future emergency event that are of a context-specific or unforeseen nature, and, therefore, would be worked through at the time of the event.

Similarly, there is a need for pre-emptive policy to be developed with regard to funding for education entities, such as ECE and tertiary providers, during a closure for the purposes of a state of emergency, transition period, or epidemic. This includes what funding might be available if the Secretary directs the service to have less children or students than usual. Lessons learned during the response to COVID-19 will be used to inform this work.

Relationship with the sector

Potentially, if the Secretary for Education issues a direction for educational institutions that they disagree with, then there is a risk that this could be damaging to the relationship and reduce the sector's trust and confidence in the Ministry and could also result in litigation (for example, a dispute relating to terms and conditions).

Monitoring of compliance and enforcement

The Ministry will be required to monitor the compliance of governing authorities with a directive issued by the Secretary. The Ministry already has a range of mechanisms and feedback loops in place across the education system, so this is not expected to result in any significant additional costs. There will be costs associated with using existing mechanisms within the legislation to address non-compliance if and when this occurs, including legal and financial costs.

Section 5: Stakeholder views

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

As noted above, the truncated timeframe within which these proposals have been prepared has prevented consultation with the education sector and general public. There are likely to be future opportunities to engage the sector on these proposals, however. This may, for example, include engagement with the education workforce (teachers, principals, early childhood educators, etc.), learners, parents, and others to gather feedback on their experiences with remote learning during the COVID-19 response to inform the future use of the powers.

The following government agencies have been consulted on the proposals: The Treasury, the Department of the Prime Minister and Cabinet, the National Emergency Management Agency, the State Services Commission, Ministry of Social Development, Office for Disability Issues, Ministry for Women, Te Puni Kōkiri, Ministry for Pacific Peoples, Oranga Tamariki-Ministry for Children, Ministry of Justice, Ministry of Business, Innovation and Employment, the Ministry of Health, the Department of Corrections, the New Zealand Police, the Teaching Council of Aotearoa New Zealand, the Education Review Office, the Tertiary Education Commission, Education New Zealand and the New Zealand Qualifications Authority.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

How will the proposed approach be given effect

Legislation change will be sought through a Supplementary Order Paper for the Education and Training Bill at the Committee of the Whole stage.

The change is proposed to take effect when the Bill receives Royal Assent.

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These changes would be implemented by the Ministry of Education and will become part of our ongoing operational and enforcement activity. As we are not expecting these powers to be used very often, we have time to develop an emergency/crisis education plan with education sector stakeholders that will set out how the proposals will work in practice and what it will take to make them work. While the proposals needed to be worked through in a short time frame, this will enable MOE to consult and engage with stakeholders on how to successfully implement them and how to manage education through a crisis.

This will include developing guidance for:

- education providers and their staff on the proposals and what that means for them;
- Ministry staff on how to interpret and use the updated regulations; and
- students, families and whānau that sets out what education provision means for them during a state of emergency, transition period or epidemic.

As part of, and to inform, the work on operational policy, the Ministry also intends to reflect on the lessons learned in the course of the response to the COVID-19 pandemic and, going forward, recovery from it (in the context of educational settings) to garner an understanding of what worked well and opportunities to improve the response in the event of future emergencies. This work may, for example, include engagement with the education workforce (teachers, principals, early childhood educators, etc.), learners, parents, and others to gather feedback on their experiences with remote learning during the COVID-19 response.

Section 7: Monitoring, evaluation and review

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

No specific monitoring or evaluation framework will be developed as the specific proposals will only be actioned the next time the emergency powers are required. However, we will monitor the outcomes from the current COVID-19 crisis and work with education stakeholder groups to understand what worked well and to identify opportunities for continuous improvement. For example, the Ministry may also undertake ex-post (or, if possible, real-time) engagement with sector and affected parties whenever the emergency provisions are triggered.

7.2 When and how will the new arrangements be reviewed?

We are not anticipating that these powers will be used very often and so it is difficult to build in a formal review. However, they will be reviewed after epidemics and other emergencies to assess their effectiveness. Further, the COVID-19 pandemic has meant that all aspects of the education system has had to adapt and operate and function in a different way and so the lessons learnt throughout this crisis will be used to develop guidance and a plan for any future crisis or epidemic.

PART II – Tertiary Funding

The following proposals result from the impacts of the current pandemic lockdown and longer term changes to respond to new emergency situations. They are:

- delay the expiry date of the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice, in response to the disruption from COVID-19. This change will enable the Interim Code to remain in place until 1 January 2022 and will address the difficulty of developing a new Code while key stakeholders are coping with and responding to the current epidemic notice; (received an exemption to the RIA process);
- enable the Minister of Education to vary a tertiary funding determination, without a stand-down period. This will enable the Minister to respond to and/or support recovery from an epidemic and/or state of emergency. I want to make this change permanent so that I can confidently assure the sector that we can act rapidly and flexibly to support them in the uncertain times ahead; and
- allow State and State-integrated schools to be temporarily allowed to provide distance schooling offshore on a case-by-case basis and to temporarily allow the provision of NCEA to students based offshore, where approved by the New Zealand Qualifications Authority (NZQA) in accordance with its Rules; (received an exemption to the RIA process).

Note that the expiry date to the code of practice and providing distance learning offshore received exemptions to the RIA process and so this section will solely consider the tertiary funding mechanisms to respond to and recover from emergencies.

Section 1: Problem definition and objectives

1.1 What is the policy problem or opportunity?

Funding mechanisms to respond to and recover from emergencies

Work undertaken by the Ministry to respond to the COVID-19 pandemic has highlighted critical gaps in the Education Act 1989 and the Education and Training Bill in terms of the powers available to help the Government respond swiftly to the impacts of an emergency on tertiary education. In particular, if the Minister considers a variation to a funding mechanism (the rules which guide the Tertiary Education Commission (TEC) in making funding decisions), currently the revised funding mechanism takes effect three months after the variation or at the beginning of the next calendar year, whichever is later. This means that tertiary education organisations are bound to the conditions in place before an emergency takes place, and the TEC and Ministry are unable to relax or change them to provide support until the beginning of the following calendar year. While the Ministry has been able to work around options in the current situation, these create a more fractured, less transparent system that could cause confusion and extra work for the TEC, tertiary education organisations, and learners, at a time when swift, simple responses are required.

Waving the stand down period in times of an epidemic or state of emergency allows Government to respond appropriately to the needs of the tertiary sector to support tertiary

education organisations, providers, learners and the TEC. The ability to respond to national and local states of emergency allows for the funding mechanism to be tailored to the particular emergency and those affected by the emergency.

To ensure that our education legislation is fit for purpose in the event of a future local, regional or national emergency or epidemic, it is proposed to give the Minister the ability to adjust funding mechanisms if there is a national or local emergency declared under the Civil Defence and Emergency Management Act 2002 and/or the Epidemic Preparedness Act 2006. This will ensure that the system takes advantage of the lessons learned from the COVID-19 pandemic, and avoid the need for urgent legislative amendments when faced with a future local, regional, or national emergency or epidemic.

1.2 Who is affected and how?

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

This change affects the Minister, Tertiary Education Commission and funded/unfunded tertiary education organisations. The change will increase the agility and responsiveness of funding arrangements when there is an epidemic or state of emergency.

The change is supported by the Tertiary Education Commission. While there has not been time to consult with tertiary education organisations on the proposal, they have raised concerns about being held to account for pre-COVID-19 arrangements given the change in focus that has been required for them to respond to the epidemic notice.

1.3 What are the objectives sought in relation to the identified problem?

The purpose for removing the stand-down period for tertiary funding mechanism changes (in the event of an emergency) is to improve the effectiveness and efficiency of funding mechanisms, so that the TEC and tertiary education organisations can respond quickly to the COVID-19 situation, other epidemics and national/local states of emergency.

Section 2: Options

2.1 What options have been considered?

Power to vary tertiary education funding mechanisms without a stand-down period

Funding mechanisms cover the majority of funds the Tertiary Education Commission uses to fund tertiary education organisations. Funding mechanisms set out a fund's purpose and the Minister's policy settings for the fund. Under the current settings, when a funding mechanism is changed, the change takes effect three months after the variation or at the beginning of the next calendar year, whichever is later. The stand-down requirement is

currently set out in Schedule 17, clause 9, of the Education and Training Bill (Section 159OA of the Education Act 1989 refers).

To enable compliance during an epidemic, the Governor-General can modify or restrict an enactment based on the recommendation of a Minister (section 15 of the Epidemic Preparedness Act 2006 refers). However, this is only possible when an epidemic notice is in place. We seek a legislation change to vary funding mechanisms with a stand down, when an epidemic notice is in place and when there is a state of emergency and to support recovery from the epidemic or emergency. If section 15 of the Epidemic Preparedness Act 2006 was used, there would be limited ability for tertiary education organisations to be consulted on the change and it would be more likely to have unintended consequences.

The preferred option is to enable the Minister to be able to vary funding mechanisms immediately following consultation, in circumstances where there is an epidemic notice issued under the Epidemic Preparedness Act 2006 or a national or local state of emergency declared the Civil Defence and Emergency Management Act 2002. In other cases, the existing stand-down period would continue to apply.

Variations to tertiary education funding mechanisms

The following three alternative options were considered:

- 1) Leave the legislation as it stands currently, and use an alternative funding arrangement to deliver the support which is required (e.g. a letter of delegation to convey new or additional funding).

However, the Minister can only delegate something that he has legal authority to do himself. In the case of tertiary education funding, the Minister has no authority to direct the TEC in the administration of funding outside the scope of a funding mechanism, including the allocation or use of funding, the suspension or revocation of funding, or the pursuit or discontinuance of recovery action for breach of funding conditions.

A letter of delegation could be used to convey new or additional funding. However, this does not address issues with the funding mechanisms already in place and the need for TEC to hold tertiary education organisations to account for the funding. The Government, in turn, needs to hold the TEC to account for its use of the funding. A delegation to TEC to administer funding in a particular way in the exercise of its powers would have no legal authority and could expose TEC to potential legal challenge.

- 2) Change the legislation to allow the Minister to implement a variation immediately after consultation, if it was in the national interest, rather than tying it specifically to emergency notices. This could be problematic in the case of a local emergency (e.g. a major earthquake effecting one region) where support is required for providers in one region, and not nationally.
- 3) Remove the consultation requirements as well as the stand down period. Prior to varying a funding mechanism, the Minister is required to consult with all organisations that would be affected by a variation that the Minister proposes and all other persons and organisations that the Minister considers ought to be consulted. With the objective to improve the efficiency of funding mechanisms, removing consultation requires would speed up the process. However, consultation is an important part of the system,

and supports the objective of effectiveness, as funding mechanisms are more likely to be effective if the sector understands and is on board with the changes. Consultation is also important to allow for the identification and mitigation of any unintended consequences of the proposed changes

Section 3: Impact analysis

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

Regulated parties	Adjustments to funding mechanisms will be made within existing funding and there are not expected to be additional costs	low	medium
Regulators			
Wider government	The TEC will need to give effect to the new funding mechanism.	Low	medium
Other parties			
Total Monetised Cost			
Non-monetised costs		<i>low</i>	<i>medium</i>

Expected benefits of proposed approach compared to taking no action

Regulated parties	Additional support supplied in efficient ways	medium	medium
Regulators	The ability to vary funding mechanisms to take account of the emergencies without a stand down. Support provided in efficient and transparent ways, rather than through complicated ways.	medium	medium
Wider government	Tertiary education organisations will be better able to support epidemic/emergency responses and the associated recovery.	low	medium

Other parties			
Total Monetised Benefit			
Non-monetised benefits		<i>Medium</i>	<i>Medium</i>

Section 4: Stakeholder views

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

The Tertiary Education Commission, the organisation with responsibility for giving effect to the funding mechanisms and monitoring performance, supports the change.

While there has not been time to consult with tertiary education organisations on the proposal, they have raised concerns about being held to account for pre-COVID-19 arrangements.

Section 5: Implementation risks and mitigation

5.1 How will the new arrangements be given effect?

The Minister of Education will be able to vary funding mechanisms without a stand-down, in circumstances where there is an epidemic notice issued under the Epidemic Preparedness Act 2006 or a national or local state of emergency declared the Civil Defence and Emergency Management Act 2002. The Ministry of Education will advise, with operational input from the TEC, on what changes are required to the funding mechanisms. Because the funding mechanisms are still subject to the consultation requirements set out in section 159OA of the Education Act 1989, tertiary education organisations will be able to indicate their support for the variation or indicate any concerns. This information will inform the Minister's decision.

Significant change in a short period of time: Introducing the provision to vary tertiary education funding mechanisms without a stand-down period creates a risk that this legislation change could be used to quickly change all funding mechanisms within a calendar year. This risk is mitigated because its use is linked to the response to or recovery from COVID-19, another epidemic or a national or local emergency. Its use is also tempered by the need for consultation which will allow for benefits and risks, including unintended consequences to be surfaced.

Consultation: The Tertiary Education Commission has asked to be consulted on any change to the funding mechanisms, to ensure that they can operationalise the proposed changes effectively. This concern will be addressed by following existing practices, that is, by ensuring that the TEC is consulted on any proposed variations to funding mechanisms.

There is an assumption that any variation to support the sector in times of emergency will be viewed positively by the sector. Any risk that they would not support a proposal will be

mitigated by the legislative requirement for the Minister to consult with all organisations that would be affected by a variation that the Minister proposes, and all other persons and organisations that the Minister considers ought to be consulted.

There is also an assumption that any affected parties will be in a position to be consulted. When in an emergency, affected parties may be occupied with more pressing concerns, such as student and staff welfare. The Ministry will acknowledge that student and staff welfare comes first when asking for sector views, and ensure the feedback can be given in a number of formats, making sure to accommodate the individual circumstances of each affected organisation.

Implementation: When a funding mechanism variation is proposed, section 159OA of the Education Act 1989 requires the Minister to consult all organisations that would be affected by a variation that the Minister proposes and all other persons and organisations that the Minister considers ought to be consulted. The proposal to vary a funding mechanism without a stand down does not affect this consultation requirement. The scope, timing, and process for consultation will take into account the epidemic and/or emergency.

Section 6: Monitoring and Review

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

No specific monitoring and evaluation of this proposal is planned as impacts would only be able to be evaluated during and after times of emergency.

In the longer term, the Ministry will develop emergency management arrangements, in consultation with peak bodies and tertiary education organisations, to ensure that there are effective legislative and operational arrangements to support the response to and recovery from an epidemic and/or a national or local state of emergency. The proposed emergency management arrangements will take into account the lessons learnt from the response to and recovery from COVID 19.

6.2 When and how will the new arrangements be reviewed?

Officials will regularly review funding arrangements to ensure that they are fit for purpose. Tertiary education organisations will be consulted on any funding mechanism variations. Their feedback will be taken into account when the Minister makes decisions about funding mechanisms.