

Cabinet Paper material

Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
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2 June 2020

Ministry of Education

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Material redacted

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In Confidence

Office of the Minister of Education

Chair, Cabinet Social Wellbeing Committee

Education and Training Bill: policy approvals for Supplementary Order Papers

Proposal

- 1 This paper seeks approval to issue drafting instructions for one or more Supplementary Order Papers (SOPs) to amend the Education and Training Bill (the Bill) currently before the Education and Workforce Committee.

Executive Summary

- 2 The Education and Training Bill is currently being considered by the Education and Workforce Committee, which is due to report the Bill back to the House by 8 June 2020. The Bill consolidates education and training legislation into a single bill.
- 3 I propose a range of amendments to the Bill by one or more SOPs to be tabled in Parliament at the Committee of the Whole House stage. Some of those proposals result from the impacts of the current pandemic lockdown and longer term changes to respond to new emergency situations; others seek to improve the efficacy of the Bill and the education system.
- 4 My proposals to respond to COVID-19 and the lessons from this event are to:
 - 4.1 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;
 - 4.2 enable the Minister of Education to vary a tertiary funding determination, without a three-month 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;
 - 4.3 temporarily allow State and State-integrated schools to provide distance schooling offshore on a case-by-case basis, and to provide NCEA to those students where doing so is approved by the New Zealand Qualifications Authority (NZQA). Students who receive this offshore education must have a 2020 enrolment with the school that is supporting them;
 - 4.4 cancel Export Education Levy (EEL) payments for education providers enrolling international students for the 2020 and 2021 calendar years. This will ease financial pressure on providers, help to reduce the number of provider closures, and enable providers to focus on supporting students and maintaining quality educational offerings during the recovery.

- 4.5 provide a new set of powers for the Secretary for Education to act when a state of emergency, transition period or epidemic notice is in place to ensure that the response to the emergency or epidemic, and the 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 and government agencies. This includes the power to direct governing authorities of education entities to close and open for physical attendance or instruction or both, to place restrictions on attendance, to operate in specified ways, and to provide education or instruction in specified ways.
- 4.6 provide a power for the Secretary to direct a board to reopen a school that has been closed due to an emergency, and when the Secretary considers that the closure is no longer justified.
- 5 The other amendments to the Bill I propose are:
 - 5.1 In respect of school enrolment schemes, to:
 - 5.1.1 delay the commencement of the provisions in the Bill that transfer responsibility for school enrolment zones from school boards of trustees to the Ministry of Education, from the Bill's commencement date to 1 January 2021; and
 - 5.1.2 add a new provision to allow for the use of grandparenting provisions in relation to enrolment schemes at the discretion of the Secretary for Education, where their use is considered to be consistent with the purposes and principles of enrolment schemes in section 69 of the Bill;
 - 5.2 Allow the Minister of Education to establish sub-categories of private training establishments (PTEs) by Gazette notice. This is to allow the Minister initially to recognise English Language Schools as a distinct group of PTEs, but will also provide the Ministers with the flexibility to recognise other sub-categories of PTEs.

Relation to government priorities

- 6 This is a routine operational adjustment that requires Cabinet approval.
- 7 The proposals to enable schools to offer education offshore, to create a more nuanced approach for closing schools, for emergency powers, and for pastoral care and tertiary funding (both enabling the Minister to vary the tertiary funding mechanism and to cancel EEL payments) are a direct response to the COVID-19 emergency. They will enable educational institutions and learner groups to focus on the immediate response and recovery.

Background

- 8 The Bill was introduced to the House of Representatives (the House) on 2 December 2019. The Bill received its first reading and was referred to the Education and Workforce Committee on 5 December 2019. It is due to be reported back to the House by 8 June 2020.

- 9 The Bill will replace current education and training legislation with a new Education and Training Act, which will be simpler to navigate and more modern than current legislation. It also implements policy changes that have resulted from the Education work programme and the Government's response to the final report of the Tomorrow's Schools Review Independent Taskforce.
- 10 This paper includes policy proposals which respond to the lessons from the COVID-19 epidemic, and other proposals to improve the education framework through the Bill.

Responding to COVID-19

Extending the expiry date for the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice

- 11 The Education (Pastoral Care) Amendment Act 2019 amended the Education Act 1989 to, among other things, enable the Minister of Education to develop:
 - 11.1 a Code of Practice for the Pastoral Care for domestic tertiary students; and
 - 11.2 an Interim Code with an expiry date of 1 January 2021.
- 12 An Interim Code has been developed and issued, and NZQA has been working with providers and peak bodies to ensure it is being implemented.ⁱ Implementation of the Interim Code is progressing, with providers continuing to build their understanding of the Interim Code's requirements, assessing their policies and practices against the Code, and identifying improvements they can make. The pace of change has been affected by providers' need to respond to COVID-19 since early 2020.
- 13 Before issuing a long-term Code, the Minister is required to consult those parties that the Minister considers likely to be affected by the Code, including representatives of students, parents, providers and their staff; and also the Privacy Commissioner. The consultation requirement is not necessary before the issue of the Interim Code. This two-step process allowed for an immediate response to concerns about the care of domestic tertiary students, while ensuring the long-term Code would be subject to a full engagement process with learners, staff that work in the sector, peak bodies, and providers.
- 14 As the year has progressed, and peak bodies' work on responding to COVID-19 has become more significant, it has become impracticable for them to put energy either into the development of the long-term Code or progress the implementation of the Interim Code as quickly as expected. Providers and learners are focussed on the immediate response to COVID-19 and are telling the Ministry that they cannot engage in this work.
- 15 The Ministry has therefore refocussed planned engagement activity in order to provide information to students and providers about meeting basic needs, and supporting well-being, in response to COVID-19.
- 16 It is no longer practicable to have the new Code fully developed and implemented by 1 January 2021 – the date when the Interim Code expires. The Code needs to be developed in a manner that enables full engagement with regulated groups and intended beneficiaries of the regulation.

- 17 I therefore propose delaying the expiry of the Interim Code by one year to 1 January 2022. This can be achieved by amending clause 44(3) of Schedule 1 to the Bill.
- 18 I also propose two consequential changes: continuing an explicit transitional provision to be clear that no dispute resolution scheme is required with the Interim Code, and a new provision to allow the Minister to make minor and technical changes to an Interim Code (without triggering the issue of an ongoing Code).
- 19 The key drawback of this option is that the Interim Code, which has not had the scrutiny of consultation, would continue for a further year. It would defer the implementation of the dispute resolution scheme for a year; however any student with complaints about their pastoral care under the Interim Code can make a complaint to the Code Administrator, as well as through the usual provider channels. The Interim Code is a disallowable instrument and so is open to Parliamentary scrutiny.

Further report to Cabinet on development of the long-term Code

- 20 In December 2019, I committed to report back to Cabinet by June 2020 on the ongoing Code, an associated dispute resolution scheme, and options for cost recovery for administration of the Code [SWC-19-MIN-0194 refers]. s 9(2)(f)(iv)
[REDACTED]
[REDACTED] I propose to defer this report back until an ongoing Code is developed for consultation, and I propose that the Committee rescind this decision.

Power to vary tertiary funding mechanisms immediately

- 21 I propose that the Minister of Education be able to vary a tertiary funding mechanism, without a stand-down period whenever there is an epidemic or state of emergency. 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.
- 22 If I vary a funding mechanism now, it would not take effect until 1 January 2021. Currently, when I vary a funding mechanism, 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).
- 23 This means that I cannot make changes to funding mechanisms to respond quickly to an epidemic or emergency, even if there is sector support for the change. Without a legislative change, it would not be possible for the rapid implementation of support proposals to assist with the recovery from COVID-19 or another epidemic or emergency. As the impacts on the tertiary sector become clearer, rules and conditions may have to be changed. I want to make this change so that I can confidently assure the sector that we can act rapidly and flexibly to support them in the uncertain times ahead.
- 24 The proposed legislative change does not change the quantum of funding available. However, the change may impact on the phasing of funding and the specific policy settings for the fund.

- 25 Without the change, any non-implementation of the funding mechanisms could be subject to legal challenge. While the risk of challenge may be low, any such challenge would be likely to succeed.
- 26 When the change is made, if there is an epidemic notice issued under the Epidemic Preparedness Act 2006 or a national or local state of emergency declared under the Civil Defence and Emergency Management Act 2002, I will be able to vary funding mechanisms immediately following consultation. In other cases, the existing stand-down period would continue to apply.
- 27 To achieve this change, I propose a SOP enabling the Minister to vary a funding determination immediately following consultation to respond to and/or support recovery from an epidemic and/or state of emergency.

Enabling students based offshore to continue their New Zealand schooling during the COVID-19 pandemic

- 28 There are currently around 12,600 international fee-paying students enrolled in NZ schools. These students, and the schools that host and educate them, currently face considerable uncertainty regarding the continuation of their study, if they return to their home countries later this year. It is unclear how long the pandemic-related travel restrictions will be in place.
- 29 State and State-integrated schools, with the exception of Te Kura (the distance school), cannot currently offer schooling to students based offshore because it is not within their stated roles and functions as set out in the Education Act 1989. This also means they cannot provide NCEA to students based offshore.
- 30 The Bill contains provisions to ban private schools and tertiary education organisations from providing NCEA offshore. This is because of the challenges and risks associated with ensuring quality when the teaching and assessment takes place outside of New Zealand.
- 31 As a response to the situation created by the COVID-19 epidemic, I propose that State and State-integrated schools be temporarily allowed to provide distance schooling to students based offshore, where approved by the Minister of Education, and where those students have a 2020 enrolment with the school.
- 32 For the same reasons, I also propose to temporarily allow the provision of NCEA to students based offshore on a case-by-case basis, where approved by NZQA in accordance with Rules, and where those students have a 2020 enrolment with the school.
- 33 NZQA will also be given authority to grant consent to assess specific standards that may be provided offshore in these cases, in order to mitigate the challenges of managing assessment conditions, particularly for internally-assessed standards, from a distance.
- 34 I intend for these arrangements to conclude by the end of the 2022 school year. They will only relate to situations where the students have a 2020 enrolment with the school, and will enable students who are already in NZ to continue their education offshore.

- 35 To achieve the changes, I propose to:
- 35.1 insert a power for the Minister of Education to approve State and State integrated schools on a case-by-case basis to offer distance education to students based offshore, where those students have a 2020 enrolment with the school;
 - 35.2 amend clause 426 to state that NCEA cannot be delivered outside New Zealand except in accordance with Rules made by NZQA under clause 423;
 - 35.3 amend clause 423 to expand NZQA's rule-making power to prescribe the process for, and the information required in, an application for NCEA being offered outside of New Zealand during the current COVID-19 pandemic, and to prescribe the criteria that NZQA must apply when considering such an application, including the requirement that those students have a 2020 enrolment with the school;
 - 35.4 amend clause 423 to enable NZQA to grant consent to assess for specific standards that may be provided to students based offshore in these cases; and
 - 35.5 make all of these arrangements time-limited, to expire at the end of the 2022 school year.

Cancellation of Export Education Levy payments

- 36 With regard to the Export Education Levy (EEL), I propose that an amendment is included in the Bill to:
- 36.1 Provide that no levies are payable for the periods of enrolment from 1 January 2020 to 31 December 2021;
 - 36.2 Provide that any levies paid for the periods of enrolment between 1 January 2020 and 31 December 2021 must be refunded.
- 37 Cabinet has agreed to suspend EEL obligations for 2020 as part of a 2020 Budget initiative which provides \$7 million to cover expenditure for 2019/20 and 2020/2021 [CAB-20-MIN-0219.27]. The proposed amendment would give effect to this decision and expand the cancellation of payment obligations until the end of 2021 to give additional opportunity for providers to remain viable and support COVID-19 response and recovery.
- 38 The Export Education Levy Regulations 2011 set out the amount of Levy payable, when the Levy is payable, and methods for calculating the Levy. These obligations cannot be retrospectively changed to remove the obligation to pay into the EEL for previous periods of enrolment, as there is no enabling provision in the primary legislation.
- 39 The proposed amendment would override specific payment obligations in the Regulations for enrolments during a defined period of time (2020 and 2021 calendar years), after which they would resume unchanged.

- 40 The reduction in international student numbers caused by the impact of COVID-19 means that many education providers are now facing considerable financial hardship. Cancelling the obligation to pay into the EEL for 2020 and 2021 will reduce financial pressure on providers, in keeping with other government support to struggling business sectors.
- 41 The legislation does not currently allow refunds from the EEL. This proposal will enable any levy payments made for enrolment periods in 2020 and 2021 to be refunded, and this will ensure that any payments made, particularly those made in the first two trimesters of 2020, are refunded.
- 42 Cancellation of payment obligations will help to reduce the number of provider closures, which can impact significantly on student achievement and wellbeing, result in staff job losses, and require substantial drawdown from the EEL to cover closure-related reimbursements. This relief will enable providers to focus on support for students and maintaining quality educational offerings during the period of COVID-19 recovery.
- 43 s 9(2)(f)(iv)

New powers for the Secretary for Education when a state of emergency or epidemic notice is in force

- 44 Work by the Ministry of Education to respond to the COVID-19 pandemic has highlighted critical gaps in the Education Act 1989 and the Bill in terms of the powers available to the Secretary for Education (the Secretary) for facilitating a nationally coordinated response to and recovery from an emergency. There is currently no provision for the Secretary to direct governing authorities of education entities to:
- 44.1 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);
 - 44.2 continue to provide education and instruction through distance and online learning while premises are physically closed;
 - 44.3 place restrictions on the attendance of groups of children, students, and/or workers; and
 - 44.4 require a school board to reopen a school that has been closed for an emergency under section 65E of the Education Act 1989, but where the Secretary considers the grounds for the closure are no longer justified.
- 45 These gaps have been temporarily addressed by the COVID-19 Response (Urgent Management Measures) Legislation Act 2020, 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.

- 46 However, without permanent legislative change, these gaps 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. This will mean that in future emergency events, the Secretary will not be able to direct education entities to be physically closed where this is necessary for the health, safety and wellbeing of children and students, or to continue to provide instruction while physically closed, such as through distance and online learning, in order to mitigate impacts on educational outcomes.
- 47 To ensure that our education legislation is fit for purpose in the event of a future local, regional or national emergency or epidemic, I propose to incorporate the key features of the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 amendments into the Bill through a SOP. This will ensure that we take 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.

Purpose and scope of the new emergency powers

- 48 I propose to establish a new set of powers in the Education and Training Act that the Secretary can use when a state of emergency or transition period¹ is declared under the Civil Defence and Emergency Management Act 2002 (the CDEM Act), or when an epidemic notice is in place under section 5(1) of the Epidemic Preparedness Act 2006 (the EP Act). The new powers will be available when a national state of emergency is declared under section 66 of the CDEM Act,² or when a local state of emergency is declared under section 68 of the CDEM Act, and when a national or local transition period is declared under Part 5A of the CDEM Act.
- 49 The purpose of the new powers is to ensure that the response to the event and the recovery from it by the education sector can be provided in a way that:
- 49.1 avoids, remedies or mitigates any actual or potential adverse effects; and
 - 49.2 facilitates coordinated processes and planning across the education sector.
- 50 To support a coordinated and timely response and recovery process, I propose 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), when a state of emergency or transition period is declared or when an epidemic notice is in place, to:
- 50.1 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);

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.

- 50.2 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;
 - 50.3 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;
 - 50.4 comply with specified requirements for the operation, management and control of the education entity; and
 - 50.5 provide education or instruction through the education entity in specified ways (e.g. through distance or online learning).
- 51 To support these amendments, I propose to make it clear in the legislation 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 lockdown 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.
- 52 Once issued, a direction by the Secretary under the new emergency powers will override every other provision of the Education and Training Act.
- 53 The new powers will not, in any way, affect any provisions in any other legislation, including, but not limited to, the CDEM Act, the Health Act 1956, the Health and Safety at Work Act 2015, and the EA Act. This means that education entities can still be closed and opened, and the attendance of children, students, and workers restricted, under, for example, the CDEM Act and the Health Act 1956, as has been the case for the response to the COVID-19 pandemic to date.

Definition of governing authority and education entity

- 54 For the avoidance of doubt, a governing authority in relation to an education entity means the body that is primarily responsible for the governance of the education entity.
- 55 Consistent with the powers provided by the COVID-19 Response (Urgent Management Measures) Legislation Act 2020, I recommend that an education entity means:
- 55.1 a registered school (as defined in section 2(1) of the Education Act 1989);
 - 55.2 a service provider (as defined in section 309 of the Education Act 1989);
 - 55.3 a hostel (as defined in section 2(1) of the Education Act 1989);
 - 55.4 a private training establishment (as defined in section 159(1) of the Education Act 1989);
 - 55.5 an institution (as defined in section 159(1) of the Education Act 1989); and
 - 55.6 an educational body (as defined in section 320 of the Education Act 1989).

- 56 I note that, by defining an education entity in this way, the Secretary will be able to direct private businesses (e.g. early childhood education providers, tertiary providers, and some 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. However, I consider that, on balance, this is both necessary and appropriate to ensure that a nationally consistent and coordinated response can be taken across the whole education system during the rare occurrence of a state of emergency, transition period or epidemic notice.

Requirements in relation to issuing a direction

- 57 I propose that the Secretary be able to issue a direction under the proposed 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. I also propose 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.
- 58 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, I do not consider that it is appropriate that they should continue to apply when a state of emergency, transition period or epidemic notice is not in place.
- 59 I recommend that every governing authority of an education entity to which a direction applies be required to give effect to the direction on the date on which the direction is given or on any later date that is specified in the direction. While governing authorities will already face strong incentives to publicly demonstrate compliance with a direction from the Secretary, there are mechanisms available within the Education and Training Bill to address non-compliance (e.g. the ability to remove a board of trustees of a state school and appoint a Commissioner, and the ability to suspend licences of ECE service providers). Failure to comply could also result in prosecution under other relevant emergency management or health and safety legislation such as the CDEM Act, Health Act and Health and Safety at Work Act.

Other matters

- 60 If the Secretary has issued a direction under the proposed new emergency powers that applies to a State school, then I do not consider it necessary for boards of trustees of State schools to be able to exercise their powers under clause 6 of Schedule 20 of the Bill (section 65E of the Education Act 1989 refers) to close a school in response to an emergency. Therefore, I recommend that this power be suspended when an applicable direction is in place.
- 61 Finally, the new powers will not affect the exercise of academic freedom, as it applies in the context of tertiary institutions, as currently set out in clauses 247 and 305 of the Bill (sections 160, 161 and 222E of the Education Act 1989 refer).

Enabling the Secretary to reopen a school that has been closed for reason of an emergency

- 62 Under clause 6 of Schedule 20 of the Bill, a board 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 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.
- 63 In some cases it can 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 can have a negative impact on the education and wellbeing of students and communities.
- 64 I propose to amend the Bill 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 other relevant stakeholders, and considers the closure is no longer justified. This will help to ensure that schools reopen in a timely manner, once it is safe, following an emergency.

Location of clause 6 of Schedule 20

- 65 Schedule 20 primarily sets out the administrative powers of the Minister of Education in respect of school opening hours. Schedule 20 will become regulations within two years of the commencement of the Bill. I propose, therefore, that clause 6, which deals with emergencies, be moved back into the body of the Bill, to be located with the Secretary's new powers to be exercised when a state of emergency, transition period, or an epidemic notice is in place. Emergency powers should not be located in regulations.

Delayed commencement for transfer of school enrolment zone responsibilities to the Ministry

- 66 Under the Education Act 1989, school boards of trustees are responsible for the development of enrolment zones in relation to their school.
- 67 The Bill shifts the responsibility for developing, consulting on and reviewing enrolment schemes from boards of trustees to the Ministry (through the Secretary for Education), which will give effect to it at a regional delegation level. This is intended to reduce the compliance burden for boards of trustees, provide more transparency and consistency for the system, and mitigate the risk of enrolment zones being used to serve the interests of individual schools in a way that causes detriment to other schools and students. The commencement date for the new enrolment scheme provisions in the Bill as introduced is the day after the date that the Bill receives the Royal assent – anticipated to be in July 2020.
- 68 There are two concerns about the current commencement date:
- 68.1 boards of trustees' work on school enrolment zone changes happens almost entirely from March to September. Scheme development and community consultation for 2020 will already be well underway throughout the country when responsibility will be transferred to the Ministry; and

- 68.2 it would be preferable for the Ministry to have more time to prepare to take on the new functions, develop new processes, issue instructions to State schools that already have enrolment schemes, and to recruit additional staff.
- 69 I am therefore proposing that the Bill be amended by SOP to delay the commencement date for these provisions from the day after the date the Bill receives the Royal assent to January 2021.

Enabling provision of grandparenting clauses in relation to enrolment schemes

- 70 I propose to enable grandparenting provisions for siblings of existing students in relation to enrolment schemes, to be used at the Secretary for Education's discretion.
- 71 The need to prevent overcrowding and manage available capacity has seen some schools needing to establish enrolment schemes and/or amend their existing schemes. Since 2002, the Ministry (at their discretion) and some schools have been using 'grandparenting' when making changes to their enrolment zones to help manage this change process.
- 72 Grandparenting provisions act as transition arrangements for the siblings of existing students when an enrolment scheme is implemented or amended, and the geographic home zone is changed as a result. Grandparenting for siblings of current students means that families retain the right to enrol all of their children at the school when the home zone amendment is adopted.
- 73 Grandparenting for siblings of existing students is not currently provided for in the Education Act 1989 or the Bill. However, for many families/whānau, preserving the ability for siblings to attend the same school is important to ensuring their best interests are being met. Other important considerations include not needing to engage and establish a connection with multiple schools, reducing school-related expenses by being able to hand uniform items down from one child to the next, and reducing transport costs or commuting times.
- 74 I consider that the Secretary for Education should have authority to use these grandparenting provisions at their discretion when they consider it is in the school and local community's best interest and can be managed within the existing schooling network. Their use must remain consistent with the purpose and principles of enrolment schemes as set out in section 69 of the Bill.
- 75 The Bill will ensure that, for students to be eligible for enrolment under the grandparenting provisions, they must:
- 75.1 at the time of enrolment be a sibling of a currently enrolled student who was enrolled at the school at the time the enrolment scheme or enrolment scheme amendment was implemented;
- 75.2 in the case of an enrolment scheme amendment, was formerly residing within the school's home zone prior to adoption of the new enrolment scheme amendment; and
- 75.3 s 9(2)(f)(iv)

Power to establish Private Tertiary Establishment (PTE) sub-categories

- 76 I propose to enable the Minister of Education to establish sub-categories of PTEs by *Gazette* notice.
- 77 Clause 323 of the Bill enables the Minister of Education to recognise a registered establishment as a community tertiary education provider. This enables community tertiary education providers to be recognised for regulatory purposes as a distinct grouping of PTEs.
- 78 I consider that English Language Schools are another distinct grouping of PTEs that should also be recognised for regulatory purposes.
- 79 Rather than continuing to establish new categories one-by-one through legislative change, I propose to establish a provision enabling the Minister to identify PTE sub-categories through a *Gazette* notice. This would save House time for administrative changes.
- 80 Once Gazetted, the sub-categories of PTEs could be used as needed for regulatory purposes by NZQA or the Ministry of Education in relation to things such as quality assurance, levy payment, etc. Any changes to regulatory provisions relating to individual categories will follow standard requirements for consultation and due process.
- 81 To achieve this change, I propose a SOP removing clause 323 and replacing it with a provision enabling the Minister of Education to recognise PTE sub-categories by *Gazette* notice.

Treaty of Waitangi/Tiriti o Waitangi

- 82 There are no Treaty of Waitangi/Tiriti o Waitangi implications from these proposals.

Next steps

- 83 If Cabinet agrees to these proposals, I will arrange for the issuing of drafting instructions to amend the Bill. I intend to seek Cabinet Legislation Committee's agreement in early May to the SOP/s and for me to table them in the House in time for them to be considered by the Committee of the Whole House.

Financial Implications

- 84 s 9(2)(f)(iv)
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Legislative Implications

- 85 Amendments are required to the Bill which is currently before the Education and Workforce Committee. If approved by Cabinet, the proposed amendments will be tabled in one or more SOPs when the Bill is at the Committee of the Whole House stage.
- 86 There will not be an opportunity for public consultation, as the Bill is due to be reported back to the House by 8 June 2020. Proposals relating to pastoral care are a response to pressures on sector and learner groups due to COVID-19, and aim to reduce the burden of consultation on these groups during 2020, by deferring development to 2021.

Regulatory Impact Statement

- 87 The Regulatory Quality Team at the Treasury has determined that:
- 87.1 The proposal to delay the expiry date of the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice is a direct COVID-19 response and Treasury has suspended the RIA requirements in accordance with Cabinet decision (CAB-20-MIN-0138).
 - 87.2 The proposal to enable students based offshore to continue their New Zealand schooling during the COVID-19 pandemic is a direct COVID-19 response and Treasury has suspended the RIA requirements in accordance with Cabinet decision (CAB-20-MIN-0138).
 - 87.3 The regulatory proposal in this paper relating to an extension of the commencement date for the transfer of responsibilities for school enrolment schemes is exempt from the regulatory impact analysis requirements. The proposal would have no or only minor impacts on businesses, individuals or not-for-profit entities.
 - 87.4 The proposal relating to the cancellation of EEL payments is not a direct Covid-19 response, and a Regulatory Impact Analysis should be provided to support Cabinet decision. A Supplementary Analysis Report (SAR) is recommended. The SAR will be completed for inclusion with the Cabinet paper seeking approval for the SOP, which I intend to bring to Cabinet Legislation Committee on 23 June.
- 88 The Ministry of Education Quality Assurance Panel has reviewed the Summary RIA for the Minister to identify sub-sector groupings of PTEs through Gazette notice and considers that it partially meets the Quality Assurance criteria as there was limited consultation on the proposal. The panel notes that the engagement with other affected sub-sectors will take place prior to any changes that involve them being introduced.
- 89 The Ministry of Education Quality Assurance Panel has reviewed the RIA on additional policy changes to the Education and Training Bill to address issues identified in the response to COVID-19. The RIA covered establishing new powers for the Secretary for Education in an emergency and variation of tertiary education funding mechanisms without a stand-down period. The panel considers that the RIA partially meets the Quality Assurance criteria. The panel notes that while the

proposals were clearly set out in the RIA, they were developed on a tight timeframe which meant that there was no consultation with the sector on the proposals. However, the RIA notes that there is an opportunity to develop a plan with the sector on how these proposals will work in practice.

- 90 The Ministry of Education Quality Assurance Panel has reviewed the Summary RIA on advice for grandparent clauses and transitional arrangements in enrolment schemes and considers that it partially meets the Quality Assurance criteria. The panel notes that there was not adequate time to undertake consultation, however the engagement that the Ministry has had through implementing grandparenting schemes provided valuable insights but it will be important to monitor the implementation of this proposal.

Regulatory Impact Analysis on broadening the scope for the Education Review Office to request information

- 91 On 18 March 2020 Cabinet agreed to broaden the scope of ERO's information seeking powers to allow ERO to request information prior to, or between, on-site reviews for the purpose of performing the Chief Review Officer's functions [CBC-19-MIN-0046 and SWC-20-MIN-0015 refers].
- 92 The Ministry was unable to complete the required regulatory analysis prior to Cabinet decisions being made. Attached to this paper is the regulatory impact statement titled *Amendment to ERO's information seeking powers*.
- 93 The Ministry of Education Quality Assurance Panel has reviewed the RIA "Amendment to ERO's information seeking powers" and considers that it partially meets the Quality Assurance criteria. The Panel noted that key stakeholders were not consulted on the proposal in the RIA, however it considered that this was somewhat mitigated by ERO identifying that the proposal will have little impact on providers as it is consistent with current practice and providers do not need to provide the information, as outlined in the proposal, if it is administratively burdensome.

Climate Implications of Policy Assessment

- 94 There are no climate implications associated with the proposed changes.

Population Implications

- 95 There are no population implications.

Human Rights

- 96 There are no human rights implications associated with the proposed changes.

Consultation

- 97 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 Kōiri, 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 were consulted on this paper.

- 98 No consultation has been conducted with tertiary education providers in relation to the proposal to enable the Minister to establish sub-categories of PTEs or the proposal to vary funding mechanisms without a stand down period.
- 99 No consultation has been conducted in relation to the proposals for the Code of Practice for the Pastoral Care of Domestic Tertiary Students. These proposals respond to pressures on sector stakeholders, and reduce the burden of consultation and engagement on these groups in the immediate response to COVID-19. NZQA is comfortable with delaying the expiration of the interim code by one year to 1 January 2022.

Communications

- 100 The contents and implications of the SOPs will be communicated to the relevant sector bodies either as soon as practicable where they relate to the COVID-19 response, or as soon as the SOPs are released to Parliament.

Proactive Release

- 101 This report will be proactively released following consideration of the SOP via Parliament.

Recommendations

- 102 The Minister for Education recommends that the Committee:

- 1 **note** that the Education and Training Bill is currently being considered by the Education and Workforce Committee and is due to be reported back to the House by 8 June 2020
- 2 **agree** to the issuing of drafting instructions for one or more SOPs to:

Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice

- 2.1 delay the expiry date for the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice, from 1 January 2021 to 1 January 2022, by amending clause 44(3) of Schedule 1 to the Education and Training Bill, and with consequential changes to be clear that no dispute resolution scheme for domestic tertiary students is required in the period of the Interim Code, and to allow the Minister of Education to make minor and technical changes to the Interim Code if required before issuing an ongoing Code

Tertiary funding mechanism

- 2.2 amend clause 9 of Schedule 17 of the Education and Training Bill to allow the Minister to vary a tertiary funding mechanism immediately following consultation when the change(s) respond to or support recovery from an epidemic or national/local state of emergency

Provision of NCEA offshore

- 2.3 insert a power for the Minister of Education to approve State and State integrated schools on a case-by-case basis to offer distance education to students based offshore where those students have a 2020 enrolment with the school
- 2.4 amend clause 426 to state that NCEA cannot be delivered outside New Zealand except in accordance with Rules made by NZQA under clause 423
- 2.5 amend clause 423 to expand NZQA's rule-making power to prescribe the process for, and the information required in, an application for offering NCEA outside of New Zealand during the current COVID-19 pandemic, and to prescribe the criteria that NZQA must apply when considering such an application, including the requirement that those students have a 2020 enrolment with the school
- 2.6 amend clause 423 to enable NZQA to grant consent to assess for specific standards that may be provided to students based offshore in these cases
- 2.7 make the amendments referred to in paragraphs 2.3-2.6 above time limited, to expire at the end of the 2022 school year

Cancellation of Export Education Levy payments

- 2.8 amend the Bill to provide that no levies are payable for the periods of enrolment from 1 January 2020 to 31 December 2021
- 2.9 amend the Bill so that any levies paid for the periods of enrolment between 1 January 2020 and 31 December 2021 must be refunded

New emergency powers for Secretary for Education

- 2.10 provide a new set of powers for the Secretary for Education to use when a state of emergency is declared under section 66 or section 68 of the Civil Defence and Emergency Management Act 2002 (the CDEM Act), a transition period is declared under Part 5A of the CDEM Act, or an epidemic notice is in place under section 5(1) of the Epidemic Preparedness Act 2006, whereby:
 - 2.10.1 the purpose of the new powers is to ensure that the response to the state of emergency or epidemic, and the recovery from it, by the education sector, can be provided in a way that:
 - 2.10.1.1 avoids, remedies or mitigates any actual or potential adverse effects; and
 - 2.10.1.2 facilitates coordinated processes and planning across the education sector and government agencies

- 2.10.2 the Secretary can direct the governing authority of an education entity (or the governing authorities of a class of education entities) to:
 - 2.10.2.1 close and open an education entity or any part of it (including in relation to all or any specified category, class or year group, of students)
 - 2.10.2.2 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
 - 2.10.2.3 set restrictions on the attendance of students and those working at an education entity, after having due regard to any relevant employment and health and safety legislation
 - 2.10.2.4 comply with specified requirements for the operation, management and control of the education entity, and
 - 2.10.2.5 provide education or instruction through the education entity in any specified ways (e.g. through distance or online learning)
- 2.10.3 'instruction' may include the provision of education services through online, remote and distance learning, as well as through other means
- 2.10.4 once issued, a direction by the Secretary will override every other provision of the Education and Training Act
- 2.10.5 the new powers do not, in anyway, affect the provisions or exercise of powers contained in any other 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
- 2.10.6 for the purposes of the new powers, a governing authority means the body that is primarily responsible for the governance of the education entity;
- 2.10.7 for the purposes of the new powers, an education entity means:
 - 2.10.7.1 a registered school (as defined in section 2(1) of the Education Act 1989)
 - 2.10.7.2 a service provider (as defined in section 309 of the Education Act 1989)
 - 2.10.7.3 a hostel (as defined in section 2(1) of the Education Act 1989)
 - 2.10.7.4 a private training establishment (as defined in section 159(1) of the Education Act 1989)
 - 2.10.7.5 an institution (as defined in section 159(1) of the Education Act 1989), and

- 2.10.7.6 an educational body (as defined in section 320 of the Education Act 1989)
- 2.10.8 the direction may be issued through written notice and must be published in the Gazette and on a website owned and operated by the Ministry of Education as soon as possible after it has been issued
- 2.10.9 the direction may be renewed or amended at any time while the state of emergency, transition period, or epidemic notice is in force
- 2.10.10 the direction expires 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
- 2.10.11 every governing authority of an education entity to which a direction applies is required to give effect to the direction on the date on which the direction is given or on any later date that is specified in the direction
- 2.10.12 boards of trustees of schools may not exercise their powers under clause 6 of Schedule 20 of the Education and Training Bill (section 65E of the Education Act refers) to close a school in an emergency where a relevant and current direction has been issued by the Secretary
- 2.10.13 the exercise of academic freedom in the context of tertiary institutions under sections 247 and 305 of the Education and Training Bill is unaffected
- 2.10.14 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 that the closure is no longer justified; and
- 2.10.15 move clause 6 of Schedule 20 from the Schedule into the body of the Education and Training Bill, to be located with the Secretary's new powers to be exercised when a state of emergency or an epidemic notice is in place

Enrolment schemes

- 2.11 delay the commencement date of the provisions relating to the transfer of enrolment schemes from school boards to the Ministry of Education from the day after the Education and Training Bill receives the Royal assent to January 2021
- 2.12 provide the Secretary for Education with the discretionary authority to provide for the grandparenting of enrolment schemes when they consider it is in the school and local community's best interest and can be managed within the existing schooling network by ensuring grandparented students retain the right to enrol at a school if:
 - 2.12.1 at the time of enrolment, a sibling of a student was enrolled at the school at the time the enrolment scheme or enrolment scheme amendment was implemented

2.12.2 in the case of an enrolment scheme amendment, the sibling was formerly residing within the school's home zone prior to adoption of the new enrolment scheme amendment

2.12.3 s 9(2)(f)(iv)

2.12.4 amend the Education and Training Bill so that grandparented students are treated as living in the home zone

Private training establishments (PTEs)

2.13 remove clause 323 of the Education and Training Bill and replace it with a new provision enabling the Minister of Education to establish PTE sub-categories by *Gazette* notice

RIA relating to an amendment to ERO's information seeking powers

- 3 **note** the regulatory impact assessment relating to an amendment to allow the Education Review Office to request information for the purpose of performing the Chief Review Officer's functions, which was agreed by Cabinet on 18 March 2020, has also been lodged with this Cabinet paper [CBC-19-MIN-0046 and SWC-20-MIN-0015 refers]
- 4 **agree** that the Parliamentary Counsel Office have discretion to draft one or more SOPs to give effect to the above recommendations, as it considers appropriate
- 5 **note** that the recommendations with drafting implications are subject to Parliamentary Counsel's direction as to how best to express these in legislation, and
- 6 **agree** to rescind Cabinet's 4 December 2019 decision (Pastoral Care of Domestic Tertiary Students) Code of Practice, for me to report back to Cabinet by June 2020 on a proposed long-term Education (Pastoral Care of Domestic Tertiary Students) Code of Practice (the Code), dispute resolution scheme, and options for cost recovery of Code administration [SWC-19-MIN-0194 refers].

Authorised for lodgement
Hon Chris Hipkins
Minister of Education



Cabinet Social Wellbeing Committee

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.

Education and Training Bill: Policy Approvals for Supplementary Order Papers

Portfolio **Education**

On 27 May 2020, the Cabinet Social Wellbeing Committee:

- 1 **referred** the paper under SWC-20-SUB-0054 to Cabinet on 2 June 2020 for further consideration;
- 2 **invited** the Minister of Education to submit a revised paper, if required, to reflect the discussion at the meeting regarding the proposed new emergency powers for the Secretary of Education.

Vivien Meek
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon Dr David Clark
Hon Tracey Martin
Hon Willie Jackson
Hon Aupito William Sio
Hon Poto Williams
Hon Julie Anne Genter
Jan Logie, MP

Officials present from:

Office of the Prime Minister



Cabinet

Minute of Decision

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Education and Training Bill: Policy Approvals for Supplementary Order Papers

Portfolio **Education**

On 2 June 2020, following reference from the Cabinet Social Wellbeing Committee (SWC), Cabinet:

- 1 **noted** that the Education and Training Bill is currently being considered by the Education and Workforce Committee and is due to be reported back to the House by 8 June 2020;
- 2 **agreed** to the issuing of drafting instructions for one or more Supplementary Order Papers (SOP) to:

Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice

- 2.1 delay the expiry date for the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice, from 1 January 2021 to 1 January 2022, by amending clause 44(3) of Schedule 1 to the Education and Training Bill, and with consequential changes to be clear that no dispute resolution scheme for domestic tertiary students is required in the period of the Interim Code, and to allow the Minister of Education to make minor and technical changes to the Interim Code if required before issuing an ongoing Code;

Tertiary funding mechanism

- 2.2 amend clause 9 of Schedule 17 of the Education and Training Bill to allow the Minister to vary a tertiary funding mechanism immediately following consultation when the change(s) respond to or support recovery from an epidemic or national/local state of emergency;

Provision of NCEA offshore

- 2.3 insert a power for the Minister of Education to approve State and State integrated schools on a case-by-case basis to offer distance education to students based offshore where those students have a 2020 enrolment with the school;
- 2.4 amend clause 426 to state that NCEA cannot be delivered outside New Zealand except in accordance with Rules made by the New Zealand Qualifications Authority (NZQA) under clause 423;

- 2.5 amend clause 423 to expand NZQA's rule-making power to prescribe the process for, and the information required in, an application for offering NCEA outside of New Zealand during the current COVID-19 pandemic, and to prescribe the criteria that NZQA must apply when considering such an application, including the requirement that those students have a 2020 enrolment with the school;
- 2.6 amend clause 423 to enable NZQA to grant consent to assess for specific standards that may be provided to students based offshore in these cases;
- 2.7 make the amendments referred to in paragraphs 2.3-2.6 above time limited, to expire at the end of the 2022 school year;

Cancellation of Export Education Levy payments

- 2.8 amend the Bill to provide that no levies are payable for the periods of enrolment from 1 January 2020 to 31 December 2021;
- 2.9 amend the Bill so that any levies paid for the periods of enrolment between 1 January 2020 and 31 December 2021 must be refunded;

New emergency powers for Secretary for Education

- 2.10 provide a new set of powers for the Secretary for Education to use when a state of emergency is declared under section 66 or section 68 of the Civil Defence and Emergency Management Act 2002 (the CDEM Act), a transition period is declared under Part 5A of the CDEM Act, or an epidemic notice is in place under section 5(1) of the Epidemic Preparedness Act 2006, whereby:
 - 2.10.1 the purpose of the new powers is to ensure that the response to the state of emergency or epidemic, and the recovery from it, by the education sector, can be provided in a way that:
 - 2.10.1.1 avoids, remedies or mitigates any actual or potential adverse effects; and
 - 2.10.1.2 facilitates coordinated processes and planning across the education sector and government agencies;
 - 2.10.2 the Secretary can direct the governing authority of an education entity (or the governing authorities of a class of education entities) to:
 - 2.10.2.1 close and open an education entity or any part of it (including in relation to all or any specified category, class or year group, of students);
 - 2.10.2.2 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;
 - 2.10.2.3 set restrictions on the attendance of students and those working at an education entity, after having due regard to any relevant employment and health and safety legislation;

- 2.10.2.4 comply with specified requirements for the operation, management and control of the education entity; and
- 2.10.2.5 provide education or instruction through the education entity in any specified ways (e.g. through distance or online learning);
- 2.10.3 'instruction' may include the provision of education services through online, remote and distance learning, as well as through other means;
- 2.10.4 once issued, a direction by the Secretary will override every other provision of the Education and Training Act;
- 2.10.5 the new powers do not, in anyway, affect the provisions or exercise of powers contained in any other 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;
- 2.10.6 for the purposes of the new powers, a governing authority means the body that is primarily responsible for the governance of the education entity;
- 2.10.7 for the purposes of the new powers, an education entity means:
 - 2.10.7.1 a registered school (as defined in section 2(1) of the Education Act 1989);
 - 2.10.7.2 a service provider (as defined in section 309 of the Education Act 1989);
 - 2.10.7.3 a hostel (as defined in section 2(1) of the Education Act 1989);
 - 2.10.7.4 a private training establishment (as defined in section 159(1) of the Education Act 1989);
 - 2.10.7.5 an institution (as defined in section 159(1) of the Education Act 1989); and
 - 2.10.7.6 an educational body (as defined in section 320 of the Education Act 1989);
- 2.10.8 the direction may be issued through written notice and must be published in the Gazette and on a website owned and operated by the Ministry of Education as soon as possible after it has been issued;
- 2.10.9 the direction may be renewed or amended at any time while the state of emergency, transition period, or epidemic notice is in force;
- 2.10.10 the direction expires 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;
- 2.10.11 every governing authority of an education entity to which a direction applies is required to give effect to the direction on the date on which the direction is given or on any later date that is specified in the direction;

- 2.10.12 boards of trustees of schools may not exercise their powers under clause 6 of Schedule 20 of the Education and Training Bill (section 65E of the Education Act refers) to close a school in an emergency where a relevant and current direction has been issued by the Secretary;
- 2.10.13 the exercise of academic freedom in the context of tertiary institutions under sections 247 and 305 of the Education and Training Bill is unaffected;
- 2.10.14 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 that the closure is no longer justified; and
- 2.10.15 move clause 6 of Schedule 20 from the Schedule into the body of the Education and Training Bill, to be located with the Secretary's new powers to be exercised when a state of emergency or an epidemic notice is in place;

Enrolment schemes

- 2.11 delay the commencement date of the provisions relating to the transfer of enrolment schemes from school boards to the Ministry of Education from the day after the Education and Training Bill receives the Royal assent to January 2021;
- 2.12 provide the Secretary for Education with the discretionary authority to provide for the grandparenting of enrolment schemes when they consider it is in the school and local community's best interest and can be managed within the existing schooling network by ensuring grandparented students retain the right to enrol at a school if:
 - 2.12.1 at the time of enrolment, a sibling of a student was enrolled at the school at the time the enrolment scheme or enrolment scheme amendment was implemented;
 - 2.12.2 in the case of an enrolment scheme amendment, the sibling was formerly residing within the school's home zone prior to adoption of the new enrolment scheme amendment;
 - 2.12.3 the sibling remains living at the grandparented address for the duration of their enrolment at the school; and
 - 2.12.4 amend the Education and Training Bill so that grandparented students are treated as living in the home zone;

Private training establishments (PTEs)

- 2.13 remove clause 323 of the Education and Training Bill and replace it with a new provision enabling the Minister of Education to establish PTE sub-categories by Gazette notice;

3 **noted** that the regulatory impact assessment relating to an amendment to allow the Education Review Office to request information for the purpose of performing the Chief Review Officer's functions, which was agreed by Cabinet on 18 March 2020, has been lodged with this Cabinet paper [CBC-19-MIN-0046 and SWC-20-MIN-0015];

- 4 **agreed** that the Parliamentary Counsel Office have discretion to draft one or more SOPs to give effect to the above proposals, as it considers appropriate;
- 5 **noted** that the proposals above with drafting implications are subject to Parliamentary Counsel's direction as to how best to express these in legislation;
- 6 **noted** that on 4 December 2019, SWC invited the Minister of Education to report back to SWC with a proposed draft ongoing Code, dispute resolution scheme, and cost-recovery options by June 2020;
- 7 **rescinded** the decision referred to in paragraph 6 above.

Michael Webster
Secretary of the Cabinet