



Education Report: Approval to Release Exposure Drafts of New Education and Training Bill Regulations

To:	Hon Chris Hipkins, Minister of Education		
Date:	4 February 2020	Priority:	High
Security Level:	In Confidence	METIS No:	1219130
Drafter:	Jo Jansen-Thomson	DDI:	s 9(2)(a)
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper seeks your agreement to publicly release the exposure drafts of the new regulations to come into effect on the commencement of the Education and Training Bill, and to provide those drafts to the Education and Workforce Committee.

Recommended Actions

The Ministry of Education recommends that you:

- approve** the release of the exposure drafts of new regulations relating to both the operation of school boards and the pastoral care codes to the public on 11 February 2020
Agree / Disagree
- approve** the release of the exposure drafts of new regulations relating to both the operation of school boards and the pastoral care codes to the Education and Workforce Committee, for the information of members, on 11 February 2020
Agree / Disagree
- note** that, as required by the "Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown" (CO (19) 2), the Ministry's Chief Legal Adviser has confirmed that release of the exposure drafts will not create a legal risk for the Crown

Noted

Proactive Release Recommendation

- d. **agree** that this education report will be proactively released once the regulations relating to the operation of school boards of trustees and the pastoral care codes are made public.

Agree / Disagree

Ben O'Meara
Ben O'Meara
Group Manager
Education System Policy

04/02/2020

Hon Chris Hipkins
Hon Chris Hipkins
Minister of Education

10/2/20

*On the pastoral care regs I'd like the
Select Committee to consider whether clauses
4.5 and 6 should be moved back into the
primary legislation.*

Exposure drafts

1. In December 2019, drafting instructions were issued to Parliamentary counsel for two exposure drafts of new regulations to come into effect on the commencement of the Education and Training Bill. The new regulations respectively deal with the operation of school boards of trustees and the codes of practice for the pastoral care of domestic and international students.
2. You have approved in principle the release of the exposure drafts to the general public and the Education and Workforce Committee this month (Metis 1213207 refers). The release of exposure drafts is intended to reassure the select committee and the education sector that no substantive policy changes have been made as part of the process of converting provisions currently located in the Education Act 1989 into regulations.
3. In the exposure draft of the new regulations dealing with the operation of school boards of trustees, minor changes have been made to the existing provisions to update the language and clarify the law. In addition, two lengthy provisions covering delegations and meetings have been split up to make the regulations easier to follow.
4. In the exposure draft of the new regulations dealing with the pastoral care codes, minor changes have been made to reflect the change in format from an Act to regulations.
5. The final exposure drafts are attached for your review and approval to release to the general public and the Education and Workforce Committee.

Process for release

6. Draft legislation is subject to legal professional privilege, with the privilege being held by the Attorney-General. However, under the "Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown" (CO (19) 2), the Attorney-General has agreed to waive legal professional privilege in draft legislation without further reference to him if the Chief Legal Adviser of the Department responsible for the legislation confirms that the release will not create a legal risk for the Crown. The Ministry's Chief Legal Adviser has given this confirmation in respect of the two exposure drafts of the new regulations.
7. The release of exposure drafts for a purpose other than consultation, and to both the general public and a Parliamentary select committee, is unusual. In developing the process for release, we have sought advice from the Office of the Clerk and the Cabinet Office. In order for the Education and Workforce Committee to have the exposure drafts in time for the presentation of the Ministry's Initial Brief on the Education and Training Bill on Wednesday 12 February, the process is as follows:
 - a. post your approval and the waiver of legal professional privilege, the exposure drafts will be made public;
 - b. we propose to make the exposure drafts public on the Ministry's website on Tuesday 11 February;
 - c. shortly afterwards, we will forward the exposure drafts to the Committee Clerk for the attention of the Education and Workforce Committee. By releasing the drafts publicly first, the normal prohibitions on the release of documents that could be either used in the Committee's final report on the Education and Training Bill or discussed in the private proceedings of the Committee will not apply.

Annexes

- Annex 1: Exposure draft - Education Pastoral Care Regulations 2020
- Annex 2: Exposure draft - Education School Boards Regulations 2020