



## Education Report: Draft Cabinet paper – Education and Training Bill: Third Tranche of Policy Approvals

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	28 August 2019	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1200361
<b>Drafter:</b>	Elizabeth Murray	<b>DDI:</b>	s 9(2)(a)
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<b>Messaging seen by Communications team:</b>	N/A		

### Purpose of report

This paper seeks your feedback on the attached draft Cabinet paper *Education and Training Bill: Third Tranche of Policy Approvals*.

### Summary

- The remaining policy approvals for the Education and Training Bill will be sought from Cabinet through two tranches of policy approvals (tranche three and tranche four).
- Tranche three seeks approval for policy proposals that are not affected by the review of Tomorrow's Schools and do not require public consultation.
- Proposals related to the following policy areas are included in the draft tranche three Cabinet paper attached (**Annex 1**):
  - removing the power for the principal of a school to remove a student for being "unclean";
  - changes to improve administration of student loans and allowances;
  - technical changes to improve the regulation of online learning;
  - removal of teacher appraisal;
  - experience requirements for renewal of teacher practicing certificates; and
  - school boards of trustees legal regime (including school board of trustee election provisions).
- We also propose that, following consideration of separate advice (METIS 1200361), you could include changes to better incorporate Te Tiriti o Waitangi in education legislation in the Cabinet paper for this tranche.

5. We would like to discuss tranche three with you at the Agency meeting on Monday 2 September. This is so Departmental consultation can occur from 3 to 10 September, with Ministerial consultation from 11 to 17 September. We are working towards you lodging the paper on 19 September for consideration at Cabinet Social Wellbeing Committee (SWC) on 25 September.
6. We will provide you with a draft Cabinet paper for tranche four, which seeks approval for the legislative proposals arising out of the Government response to Tomorrow's Schools, in the week of 2 September.
7. This timing is tight to ensure you can Introduce the Bill and refer it to Select Committee this year.

## Recommended Actions

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The Ministry of Education recommends you:

- a. **note** that the attached draft Cabinet paper contains proposals for tranche 3 of drafting instructions on the Education and Training Bill  
**Noted**
- b. **note** that the draft Cabinet paper contains the proposal to remove the power for the principal of a school to remove a student who is "unclean" which you have previously agreed to (METIS 1201104)  
**Noted**
- c. **note** that, following consideration of separate advice, we could add proposals for better incorporating Te Tiriti o Waitangi into the Education and Training Bill to the draft Cabinet paper  
**Noted**

## Policy proposals included in the draft Cabinet paper

- d. **agree** to progress amendments, requested by the Ministry of Social Development, that update the student loans and student allowances provisions to make them more workable, and address legislative anomalies  
**Agree / Disagree**
- e. **note** that, following your agreement in June 2019, we have consulted with targeted stakeholders on the proposed amendments to online learning, the feedback from which has been considered in recommending the final proposals in the draft Cabinet paper  
**Noted**
- f. **agree** to propose two minor technical amendments to the legislative framework for online learning:
  - i. updating the language in the legislation from "correspondence" to "distance";
  - ii. clarifying that schools can collaborate to offer online learning opportunities**Agree / Disagree**
- g. **agree** to remove the Teaching Council audit function for teachers' performance appraisals (as agreed through the Accord)  
**Agree / Disagree**

- h. agree to progress an amendment that allows the Teaching Council to make rules to enable the renewal of practicing certificates where there has been no recent teaching experience

Agree / Disagree

- i. **agree** to streamline the board of trustees provisions by moving some details of boards operations into regulations

Agree / Disagree

- j. **note** that the Ministry is currently reviewing the Education (School Trustee Elections) Regulations 2000, where substantive changes are needed to update the law on board elections

**Noted**

- k. **agree** to three minor amendments that we can make now to update the legislative framework for board of trustees elections:

- i. amending section 105(5) of the 1989 Act to require boards to give public notice of casual board of trustees vacancies through means including, but not limited to, publishing a notice in newspapers local to the area in which the board is located;
- ii. enabling the Minister to appoint a Commissioner after an election is declared invalid;
- iii. removing the Governor-General's power in section 118(1)(b) to make regulations prescribing the manner in which returning officers are to be appointed

Agree / Disagree

**Next steps**

- l. **agree** that following your feedback on the draft Cabinet paper, the Ministry should make amendments and commence Departmental consultation

Agree / Disagree

**Proactive Release Recommendation**

- m. **agree** that this Education Report is proactively released once the Education and Training Bill is introduced.

Agree / Disagree

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

28/08/2019

*Chris Hipkins*  
Hon Chris Hipkins  
Minister of Education

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## Background

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### Education and Training Bill – four tranches of policy proposals

1. The Education and Training Bill (Bill) is intended to be introduced in late November 2019. Cabinet has approved the first tranche of policy approvals. The Cabinet Social Wellbeing Committee (SWC) considered the second tranche on 28 August 2019.
2. Tranche three (draft Cabinet paper attached at **Annex 1**) will contain the proposals that have arisen outside of the review of Tomorrow's Schools and that do not require public consultation.
3. The Cabinet paper for tranche four, which will be provided to you in the week of 2 September, will be the vehicle for the legislative proposals that arise from the Government's response to the Independent Taskforce's (Taskforce) review of Tomorrow's Schools.
4. Separating tranches three and four allows time to consult Departments and Ministers on the Tomorrow's Schools legislative proposals before they go to SWC, as they cannot be consulted on until Cabinet agrees to the Government response to the Taskforce's report.
5. Allowing tranche three to go ahead earlier will enable maximum time for Parliamentary Counsel Office (PCO) to draft the Bill and for the Ministry to ensure a Bill is ready for introduction.

### Links to other advice

6. The draft Cabinet paper contains the proposal to repeal the power in the Education Act 1989 (1989 Act) for a principal to remove a student for being "unclean" (METIS 1201104), which you have already agreed to.
7. We are providing advice, in a separate Education Report, on the approach to reflecting Te Tiriti o Waitangi (Te Tiriti) in the Bill (METIS 1200361).
8. In addition to the four tranches of policy approvals, you have received a draft Cabinet paper on options for progressing the religious instruction provisions in the 1964 Act within the Bill (METIS 1200878). This paper is intended for consideration at SWC in September.

## Additional tranche three policy proposals

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### Student loans and allowances

9. The Ministry of Social Development (MSD) has requested amendments to Part 25 of the 1989 Act (which they administer) that relate to student allowances and the administration of student loans. These amendments are required to update the legislation, make it more workable, and address legislative anomalies.
10. MSD is recommending two amendments to the 1989 Act:
  - a. extending the time frame for laying charges for offences under section 226B and 236 to up to 12 months after the date that MSD becomes aware of the offending; and

- b. allowing MSD to hold social housing information together with other client information, and also use that information to assess student loan and student allowance entitlements, and for debt recovery, prosecution of offences, and imposing penalties (and vice versa).
11. It was a mistake in 2011 (when the offence was added to the 1989 Act) to not also include a provision to extend the timeframe for laying charges. MSD recommends this amendment to fix the mistake. Having a 12 month time does so and aligns this provision with similar offences in the 1989 Act and the Social Security Act 2018.
  12. Section 307A of the 1989 Act allows MSD to hold different types of information on clients on the same systems and to use that information interchangeably for the purposes of assessing entitlement to support and the recovery of debt. Social housing information is not currently included because the responsibility for social housing assessments was transferred to MSD after these provisions were enacted.
  13. MSD recommends the social housing proposal because a gap now exists in relation to storing and using client information. This means the original intention of providing authority to store and use client information cannot be realised. This amendment closes that gap.
  14. Both the Ministry of Justice and the Office of the Privacy Commissioner have been consulted on these proposals and are comfortable with the amendments. There was no wider consultation because these are technical amendments aimed at aligning the provisions with the policy intent behind them.

#### **Online learning**

15. In June, you agreed to progress engagement on technical changes to better support online learning within the Education and Training Bill (METIS 1175954). These changes include:
  - a. updating the language in the legislation from “correspondence” to “distance”;
  - b. clarifying that schools can collaborate to offer online learning opportunities; and
  - c. enabling multiple boards of trustees (boards) to enter one agreement to work together.
16. We have completed targeted engagement with the people who have a strong interest in online learning, including Te Aho o Te Kura Pounamu (Te Kura), the Virtual Learning Networks (VLNs), and s 9(2)(a) – an associate professor working in the online learning space.
17. In general, the people the Ministry engaged with supported the proposed amendments. However, the VLNs and s 9(2)(a) expressed some concerns about the use of the term “distance education”, which was not seen as being flexible or future-focused enough for the VLNs. VLNs also sought to be involved in further policy work about online learning.

#### *Updating the language in legislation*

18. We recommend progressing with the update of the language from “correspondence” to “distance.” The word “correspondence” is only used in reference to the correspondence school, Te Kura, which has stated that this change reflects the range of teaching and learning tools they now use.

19. The concerns of the VLNs and s 9(2)(a) can be addressed through the other proposal to clarify that schools can collaborate to offer online learning opportunities, not just learning opportunities at or from another school. ✓

*Clarifying that schools can collaborate to offer online learning opportunities*

20. Under section 158 of the 1989 Act, students enrolled at a State school may receive tuition at or from another specified school by agreement between the boards concerned. This section covers both genuine dual tuition arrangements and the use of facilities provided for or constructed for the use of students enrolled at multiple schools. There is some confusion that this means dual tuition cannot be provided online (because the provision also refers to physical facilities).
21. We recommend progressing with an amendment to create a new section covering multi-use facilities (to remove the connection between dual tuition and facilities). We will develop communications to support the Bill to make clear that "tuition," including dual tuition, can be delivered in-person and / or online. Students would still need to attend their enrolling school and would not be able to enrol as a student at more than one school. However the student could register for online courses at multiple schools. ✓

*Enabling multiple boards to enter one agreement to work together*

22. Schedule 6, clause 15(1) of the 1989 Act enables two boards to agree in writing for one of them to acquire materials for, and supply them to, or to do work for, the other, in exchange for payment. We engaged on broadening this ability to enable multiple boards to enter the same agreement for these specified purposes.
23. Engagement showed in principle support for broadening the flexibility for boards to work together, however some VLNs did not believe this change would help them as they are third parties who are not schools with boards of trustees. This would mean some VLNs would be unable to enter the agreements.
24. While we still support enabling multi-party agreements, further work would be needed about whether these agreements should be limited to being between boards of trustees. We therefore no longer recommend progressing with this amendment at this time.
25. Instead, we recommend considering it as part of broader policy work about how to best enable collaboration in the education system and who we want school boards of trustees to be able to collaborate with. This work would best be considered in light of the Government's response to the review of Tomorrow's Schools.

**Removal of teacher appraisal**

26. As part of the Accord developed by the Secretary for Education (Secretary), NZEI Te Riu Roa and PPTA Te Wehengarua, the parties (along with the New Zealand School Trustees Association and the Teaching Council) agreed to remove performance appraisal for teachers. This was in recognition that performance appraisal as an accountability instrument does not demonstrably lift teacher quality, and has instead contributed to a low trust, high workload environment. While the Accord has not yet been signed, teachers have an expectation that performance appraisal will be removed as part of the settlement of the Primary Teachers', Secondary Teachers', and Area School Teachers' collective agreements.
27. Section 382(i) of the 1989 Act provides that a function of the Teaching Council is to audit and moderate the appraisals for at least 10% of the practicing certificates issued or

renewed in each year. We propose repealing this requirement from the legislation. As appraisals will no longer be undertaken, the audit for appraisals will be redundant.

28. As you are aware, Parts 7, 7A and 7B of the State Sector Act 1998 are being transferred into the Bill. Section 77C of that Act provides that the Chief Executive of the Ministry may, from time to time, prescribe matters that are to be taken into account by employers in assessing the performance of teachers.
29. This provision was used in 1997 by the then Secretary to establish minimum requirements for the appraisal and assessment of teachers by employers. These requirements remain in force, and it will therefore be necessary to consider what changes are needed to them to align with the accord.
30. Further discussion with the NZSTA, unions and the Teaching Council is needed before any changes relating to s77C can be confirmed. We will therefore provide further advice in due course.

#### **Teacher experience and the renewal of practising certificates**

31. Currently, the 1989 Act does not enable the Teaching Council to renew a teacher's practising certificate if the applicant cannot demonstrate any teaching experience in the five years prior to the application.
32. This affects a small group of registered teachers who wish to renew their practising certificate but cannot demonstrate recent teaching experience because they have, for example, been raising a family or travelling overseas. It is appropriate that this group undergoes a process as part of their practicing certificate renewal to ensure their knowledge and practice is up to date.
33. The draft Cabinet paper proposes to amend the legislation to allow for those circumstances where teachers seeking renewal have no recent teaching experience but are prepared to commit to a specific plan to refresh their knowledge including professional learning and development. We propose that the Teaching Council should have an ability to make rules to define the refresh requirements.

#### **School boards of trustees legal regime (rationalisation of board provisions)**

34. The 1989 Act, as well as other statutes, provides a lot of detail on the powers, duties and procedures of boards of trustees. We believe that the provisions would benefit from being refocused and streamlined. As such, we propose to reorganise and modernise the provisions in the 1989 Act.

#### *Using Schedules as placeholders for regulations*

35. One part of this rationalisation is to trial an approach to using Schedules as a placeholder for including matters of detail in primary legislation that can be shifted into regulations at a later date.
36. Since it was enacted, the 1989 Act has become an increasingly confused combination of substantive law and matters of detail that would more appropriately be located in regulations. This has contributed significantly to the size of the Act and its complexity.

37. PCO has trialled a new approach to achieve a more enabling Act. In its current draft the Bill is organised into:
  - a. seven Parts that incorporate revised and updated substantive law; and
  - b. new Schedules (currently 27) that cover matters that are suitable for converting into regulations.
38. The Schedules (bar Schedule 1 covering transitional provisions) will progressively be made into regulations after the Bill's enactment. Doing this progressively will allow time for further policy work on the details of those provisions and consultation with the sector.
39. As a starting point, we recommend the Schedule that relates to the operation of school boards be made into regulations on enactment of the Bill. Any substantive policy changes to boards will be made into a new sub-Part of the Bill covering school boards, so the detail contained in the Schedule on boards is a good place to trial this new approach to using Schedules as placeholders for regulations.

#### *School board of trustee election provisions*

40. The current legislative framework for board of trustees elections is outdated and needs revising. The Education (School Trustee Elections) Regulations 2000 (Regulations) were enacted almost 19 years ago and have not been amended since. The Regulations are prescriptive and outdated. There are references to paper-based processes and forms of communication that are not as relevant to 21<sup>st</sup> century schooling.
41. You have asked for advice on how to shift the elections for boards of trustees to an online system within the Bill. The prescription that does not allow elections to be conducted online is found in the Regulations, rather than the primary legislation. We agree that work needs to be done on these Regulations to allow for the potential to use online voting, as well as general updating of the law.
42. We have begun a review of the Regulations which we intend to finish in mid-2020, in consultation with the sector and relevant stakeholders. This should allow the new regulations to be in force for the next triennial elections in 2022.
43. While the Regulations need updating, it is a broader issue than just legislation. It is likely that we will have to work through the operational issues of how it is possible to conduct elections via online methods. It is also important to look at what best practice is in conducting elections, particularly with new technology. We know that there have been issues with online voting in other areas and we want to make sure any changes to the board elections framework avoid these.
44. We anticipate creating relatively enabling regulations to take account of future technology changes. We will provide you with further advice as we develop these Regulations and associated operational systems.
45. However, while the work on the Regulations is underway, there are several provisions in the 1989 Act that could be changed to better facilitate elections. Some of these changes require more policy work. However, we have identified three changes that can be progressed in time for inclusion in the Bill:
  - a. amending section 105(5) of the 1989 Act to require boards to give public notice of casual board of trustees vacancies through means including, but not limited to, publishing a notice in newspapers local to the area in which the board is located (the current requirement is only to publish in newspapers, which is now outdated);

- b. enabling the Minister to appoint a Commissioner after an election is declared invalid. Currently section 101D(5) of the 1989 Act requires the Minister, if he or she has declared an election invalid, to reinstate the old board (i.e. the board that had been voted out at the invalidly conducted election) until a new election is held. The amendment would give the Minister the power to either reinstate the old board or appoint a Commissioner, on a case-by-case basis depending on which would be more appropriate;
- c. removing the Governor-General's power in section 118(1)(b) to make regulations prescribing the manner in which returning officers are to be appointed as it is overly prescriptive. Section 118(a)(b) already enables the Governor-General to make regulations prescribing the manner in which the elections are to be held (which includes how returning officers are appointed and conduct their functions).

## Next steps

- 46. Following your feedback, we will amend the draft Cabinet paper and begin Departmental consultation. We are working towards enabling you to lodge the paper on 19 September for consideration by SWC on 25 September.
- 47. This timing should ensure that PCO has enough time to finish the drafting of the Bill so that it is ready for introduction by late November. The table below provides the next stages until introduction of the Bill.

ACTION	DATE
Ministerial and departmental (concurrent) consultation on religious instruction Cabinet paper	TBA
Religious instruction Cabinet paper lodged	TBA
Religious instruction Cabinet paper at SWC	TBA
Draft Cabinet paper for tranche three to Minister	28 August
Draft Cabinet paper for tranche four to Minister	Week of 2 September
Departmental consultation on tranche three Cabinet paper	3 to 10 September
Ministerial consultation on tranche three Cabinet paper	10 to 17 September
Tomorrow's Schools Government response at SWC	18 September
Tranche three Cabinet paper lodged	19 September
Tomorrow's Schools Government response approved by Cabinet	23 September
Tranche three Cabinet paper considered by SWC	25 September
Departmental consultation on tranche four Cabinet paper	25 to 2 October
Ministerial consultation (in recess week) on tranche four Cabinet paper	3 to 9 October
Tranche four Cabinet paper lodged	10 October
Tranche four Cabinet paper considered at SWC	16 October
Final drafting by PCO	21 October to 14 November
Lodge approval to introduce LEG paper	14 November
LEG approval to introduce	19 November
Introduction of Education and Training Bill	In recess week 25 to 29 November
First reading	In sitting weeks 3 or 10 December
Select Committee – setting of timelines and calling for submissions	In last sitting week 18 December

## Annexes

- Annex 1: Draft Cabinet Paper – “Education and Training Bill: Third Tranche of Policy Approvals” *(attached separately)*