



Education Report: Moving detailed provisions to Regulations alongside the Education and Training Bill

To:	Hon Chris Hipkins, Minister of Education		
Date:	10 September 2019	Priority:	High
Security Level:	In Confidence	METIS No:	1200361
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

The purpose of this paper is to provide you with advice on converting detailed provisions into Regulations on the commencement of the Education and Training Act.

Summary

1. You indicated your preference at the agency meeting on 2 September 2019 that we develop all provisions that deal with matters of detail in the Education Act 1989 (the Act) into new Regulations taking effect from the commencement date of the Education and Training Bill.
2. We have assessed the provisions in the Act to determine which sections might be appropriate for immediate conversion into Regulations. Much of the Board of Trustees provisions currently found in Schedule 6 of the Act and provisions relating to both the Code of Practice for the Pastoral Care of International Students and the International Students Disputes Resolution Scheme are appropriate for this, although it will require some detailed working through with Parliamentary Counsel Office (PCO). These provisions can be converted relatively easily without needing to update or amend the policy intent, and so should not be overly controversial to move into Regulations.
3. We also could consider converting provisions relating to administrative arrangements relating to the education organisations (e.g. Education New Zealand, Teaching Council), provisions relating to when State schools must be open, provisions relating to communities of learning, and provisions relating to the registration and certification of teachers into Regulations. However because these provisions require some updating and significant rework to be fit-for-purpose as Regulations, they will likely attract the attention of the Regulations Review Committee. We do not recommend proceeding with this option at this time.
4. However, some of these provisions can be moved into Schedules which could be subject to a sunset clause. Regulations could then be prepared to take effect from the expiry of the Schedules (or sooner if the regulations have been developed sooner). This will

enable reworking and consultation to take place over a period of time to be determined. This will also mean we do not require an amendment bill in the future to move the provisions to regulations.

5. Other provisions which we will look to move into Schedules in the Education and Training Bill will likely include details around enrolment zones, and State integrated schools. These matters will attract significant public attention and require consultation with the sector, with or without amendment to the policy intent. Some of these matters (including the enrolment zone provisions) are already on our work programme for review. The enrolment zone policy and provisions are to be reviewed as part of the Tomorrow's Schools as a Priority A (within the next 12 to 18 months).
6. A more detailed list of what will appropriately sit in Schedules that are either to be subject to a sunset clause or updated in the future and eventually moved to regulations, is being prepared in discussion with PCO. We will report back to you on this list in early October.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that any new Regulations will be reviewed by the Regulations Review Committee who may choose to launch an inquiry into their fitness for purpose
Noted
- b. **note** that the Board of Trustee provisions in Schedule 6 of the Education Act 1989 can be converted relatively easily into new Regulations because the material was updated in 2017, without the need to update or amend the policy intent
Noted
- c. **agree** that the Ministry should continue to progress work on Regulations to replace the current Board of Trustee provisions in Schedule 6 of the Education Act 1989
Agree / Disagree
- d. **agree** that we seek Cabinet approval in the tranche 5 Cabinet paper for moving provisions relating to the Code of Practice for the Pastoral Care of International Students and the International Disputes Resolution Scheme into new Regulations
Agree / Disagree
- e. **note** that other provisions which should ideally be moved into Regulations will require significant rework and/or consultation with the sector, as part of the process of converting them into Regulations
Noted
- f. **note** that any new Regulations to replace existing material in the Education Act 1989 will not be contained in the Education and Training Bill as introduced, and the development of the new Regulations, including any consultation, will need to occur in parallel with the House phase of the Bill
Noted

- g. **agree** that the Ministry should progress work on identifying those provisions that can be moved into Schedules to be subject to a sunset clause

Agree / Disagree

- h. **agree** that no other provisions be moved to Regulations in the Education and Training Bill process, because other work to update relevant policy is underway (e.g. enrolment zones and board of trustee elections provisions) and because significant rework, updating and consultation is required before removing these provisions from the primary legislation

Agree / Disagree

- i. **note** that a list of what can appropriately be located in Schedules that are either to be subject to a sunset clause or updated in the future and eventually converted into Regulations will be provided to you in early October

Noted

Proactive Release Recommendation

- j. **agree** that this Education Report is proactively released once the Education and Training Bill is introduced into the House of Representatives.

Agree/Disagree



Dr Andrea Schöllmann
Deputy Secretary
Education System Policy

10/09/2019



Hon Chris Hipkins
Minister of Education

18/9/19.

Background

1. Since it was enacted, the Education Act 1989 (the Act) has become an increasingly confusing combination of substantive law and matters of detail that would be more appropriately located in Regulations. To address this would require a full rewrite of the Act. In November last year, you agreed that the Education and Training Bill would not be a full rewrite [Metis 1112762 refers].

Moving provisions to Regulations without update or consultation

2. Parliamentary Counsel Office has confirmed that any new Regulations (whether updated from the provisions previously in primary legislation, or otherwise) will be scrutinised by the Regulations Review Committee. We need to ensure that the Regulations are consistent with Parliamentary Standing Orders. Given the nature and volume of potential Regulations, ensuring this compliance will take time.
3. We are using the Legislation Guidelines (2018 edition) to progress work on the Bill's structure. We have proposed in the draft Cabinet paper for tranche three [METIS 1200361 refers] that the Schedule relating to the operation of school boards be made into Regulations as the Bill is progressing through the House. Post the moving of clauses setting out the objectives and duties of school boards into the body of the Bill, we can convert the Schedule covering the operation of school boards into Regulations at this stage. Many details contained in the Schedule were streamlined and updated in 2017 when the then Education (Update) Amendment Bill was developed. We only need to make minor amendments (for example, updating the language in the legislation from "presiding trustees" to "chair") to be able to make these details into Regulations.
4. We have also identified provisions relating to both the Code of Practice for the Pastoral Care of International Students and the International Disputes Resolution Scheme that can be converted into Regulations as the Bill progresses through the House. We are also considering moving detailed provisions relating to fees paid by international students into a new Schedule which would remain in the Education and Training Act, once passed.
5. Parliamentary counsel has raised the possibility of placing provisions into Schedules that are subject to a sunset clause. Counsel has suggested a time period of two years, which would enable Regulations to be prepared to take effect from the expiry of the Schedules. There are a number of provisions (such as those relating to communities of learning) that could be moved into such Schedules. A sunset clause would allow for the necessary reworking and consultation to be undertaken. We are considering what other provisions would fall into this category.
6. Currently, a number of the more detailed provisions in the Act that would ideally be converted at some point into Regulations include out of date references, are highly technically complex, and are no longer fit for purpose. In addition, whether the content has been amended or not, these "new" Regulations will attract a high level of attention from the sector and relevant stakeholders. For example:
 - a. New Schedule 7, Enrolment Schemes: there is a considerable amount of detail that could be simplified. These provisions are controversial, and we are aware that many stakeholders would like these amended to, for example, rearrange the priority order for out-of-zone enrolments to enable children of teachers to have a higher priority. These provisions are to be reviewed in the next 12 to 18 months (Priority A workstream for the Tomorrow's Schools Taskforce response). Transferring these provisions into Regulations without update would likely cause

upset and confuse those stakeholders who have been seeking changes to the priority order.

- b. New Schedule 22, State Integrated Schools: This will need substantial work to convert the Schedule into Regulations, as the current drafting reflects the language of the Private Schools Conditional Integration Act 1975. The Association of Proprietors of Integrated Schools should be consulted over any changes (even minor wording ones). Moving these provisions into Regulations without any changes will also likely attract the attention of the Regulations Review Committee.

Risks associated with updating potential regulation material covering matters where there are existing Regulations and rules

- 7. Some detailed provisions which we might ultimately want to move into Regulations cover matters where there are already existing legislative instruments (Regulations and Rules). Converting these provisions into Regulations will require consideration of these existing legislative instruments (as well as the primary legislation), which in many instances may be outdated and also require policy review.
- 8. For example, new Schedules 19 and 20 cover election of trustees to boards of State schools (amongst other things). Converting these to Regulations will require consideration of the existing Education (School Trustee Elections) Regulations 2000.
- 9. However, the Education (School Trustee Elections) Regulations 2000 were enacted almost 19 years ago and have not been amended since. A review of these Regulations is currently underway, and we intend to consult on proposed amendments early next year. These Regulations are prescriptive and outdated. There are references to paper-based processes and forms of communication that are not relevant to 21st century schooling.
- 10. The review of these Regulations will involve creating relatively enabling Regulations to take account of future technology changes. This includes policy work to address the operational issues of how it is possible to conduct the elections for boards of trustees via online methods and what best practice is in place in conducting elections, particularly when it comes to new technology.
- 11. Other examples include new Schedules 4 and 5 covering attendance matters and new Schedule 14 covering school hostels. Converting these Schedules into Regulations will require consideration of the existing Education (School Attendance) Regulations 1951 and the Education (Hostels) Amendment Regulations 2018 respectively.
- 12. Furthermore, we have provisions in the Education Act 1989 relating to stand-down, suspensions, exclusions and expulsions, and accompanying Rules which set out the details. With the Bill, we may end up creating a three tiered systems of Act provisions, Regulations and rules. Again, we have to consider more than just provisions in the Education Act 1989 in creating Regulations. There will be a similar exercise for surrender of property and searches, where there are existing rules to take into account.

Next steps

- 13. We do not advise progressing all of the new Regulations in parallel with the House phase of the Education and Training Bill. If you agree, we will:
 - a. work with Parliamentary Counsel on the drafting of the new school board of trustees regulations, to replace Schedule 6 of the Education Act 1989, and the

new International Education regulations (to be included in tranche 5), post Cabinet approval;

- b. continue to progress work on reviewing the out-of-date Education (School Trustee Elections) Regulations 2000;
- c. consider what provisions can be moved into Regulations, as part of the review of enrolment schemes being undertaken over the next 12 to 18 months; and
- d. provide you in October with a list of what should sit in Schedules, for updating and eventual movement into Regulations, via sunset clauses.