



Briefing Note: Notes on amendments to schedules and agency feedback on the draft Education and Training Bill

To:	Hon Chris Hipkins, Minister of Education		
Date:	15 November 2019	Priority:	High
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Purpose of Paper

Following your feedback on the draft Education and Training Bill, this paper summarises the key changes we're making to the material in schedules to the Bill, including what will be transferred to regulations. It also provides a summary of feedback from agency consultation.

Summary

- We are continuing to iterate further drafts of the Bill with PCO. We have issued drafting instructions to reflect your comments and a revised approach to schedules and regulations.
- Feedback from consultation with education agencies and departments has been very helpful. One key change resulting from input from Te Puni Kōkiri and MSD is that the disputes panels provision setting out who can take a complaint will be amended from "students and parents" to "students and their whanau", which is in line with the policy intent of the new panels and with Cabinet's earlier policy approvals.

Proactive release

Agree that this Briefing will be proactively released.

Agree / Disagree

Ben O'Meara
Group Manager
Education System Policy
15/11/2019

Hon Chris Hipkins
Minister of Education

17/11/19

Schedules and regulations

1. In response to your comments on the material that had been placed in regulations and schedules for movement to regulations, we have reconsidered our approach.

Provisions relating to Boards

2. The clauses setting out what constitutes the various types of school boards will be moved back into the body of the Bill. We are taking the approach that all requirements around the composition of educational entities, including who must be on the respective boards and councils, should be in the main body of the Act.
3. Procedural constitutional matters will be retained in a permanent schedule. However procedural provisions for electing and co-opting board members will be in a schedule with a sunset clause.
4. New regulations will set out the operational detail for boards (e.g. meeting times).

Intervention provisions

5. Given that these are critical powers and to ensure a consistent approach across the sectors, all the clauses in Schedule 18 (interventions in state schools) and those in Schedule 31 (interventions in TEI councils) will be moved back into the body of the Bill.

Searches and surrender of property (Schedule 12), and Stand-downs, suspensions, exclusions and expulsions (Schedule 37)

6. There is an inconsistency in the treatment of these clauses and those dealing with the prohibition on corporal punishment and the physical force regime, which are located in the body of the Bill. Given that all four topic areas deal with fundamental matters concerning student rights, we propose to group them together in the same sub-part by shifting the whole of Schedules 12 and 37 into the main body of the Bill.

Teaching Council provisions

7. For all of the education entities (including the Teaching Council), their main empowering provisions will be in the main body, and the detailed operational provisions are in schedules. The schedule relating to Practising certificates and other matters (Schedule 35) will be a permanent schedule. We will also move the disciplinary regime and some of the teacher registration requirements in to this schedule. This will place all of the requirements relating to the regulatory regime for the teaching profession in the same place.

Enrolment records and school hostel inspection provisions

8. As agreed with you, we instructed PCO to move provisions relating to enrolment records and school hostel inspection provisions to schedules with sunset clauses. However, we've received advice back from PCO this week that it's not appropriate to do this. PCO correctly advised us that the school hostel provisions include powers of entry, which should sit in the main body of the Bill. PCO have also moved the enrolment records provisions back into the main body of the Bill because they have identified that on their own they do not warrant their own schedule or their own regulations.

9. No change has been made to the **provisions being moved directly to regulations** (and that therefore won't be found in the new Bill). These still include:
- a. Pastoral care and international student codes of practice;
 - b. Operational details for boards of trustees such as meeting requirements and delegation powers.
10. **The provisions to be included in schedules with sunset clauses** now cover:
- a. procedural provisions for electing and co-opting board members;
 - b. NSN numbers;
 - c. enrolment scheme details (except the purpose provision which will remain in the main body);
 - d. state school opening hours.
11. **Permanent schedules.** The following provisions were previously considered for inclusion in a sunset-clause schedule. However we are now recommending they remain in a permanent schedule (i.e. not be subject to a sunset clause):
- a. procedural requirements regarding the constitution of school boards;
 - b. provisions relating to teacher registration, certification and limited authority to teach.

Agency Consultation

12. Feedback from the Teaching Council, TEC and NZQA was very helpful in identifying and correcting minor errors and omissions. We also moved some TEC provisions for more logical placement. We are working with NZQA on drafting instructions to ensure that the prohibition on awarding NCEA offshore does not capture domestic students who undertake study outside of New Zealand for short periods of time. For example, when they are involved in representing NZ, and continue to be enrolled and assessed for NCEA through the school at which they are enrolled.
13. In response to feedback from TPK and MSD, we have amended the disputes resolution provisions by changing references to who can take a complaint from "students and parents" to "students and their whanau", which is in line with the policy intent of the new panels and with Cabinet's earlier policy approvals.
14. The Children's Commissioner commented that the disputes resolution panels are a mechanism that has the potential to fulfil children's rights and meet the recommendations of the UN Committee on the Rights of the Child.
15. However the Commissioner does not support the change from "physical restraint" to "physical force" and, along with the Disability Rights Commissioner, considers that the Bill should reference the UN Conventions. We remain of the view that the UN conventions should not be referred to in the Bill.

16. s 9(2)(f)(iv)
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