

## Cabinet Paper material

### Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education  
Name of package Education and Training Bill: Approval for Introduction  
Date considered 02 December 2019

#### These documents have been proactively released:

**Cabinet Paper: Education and Training Bill: Approval for Introduction**

Date considered: 02 December 2019

Author: Ministry of Education

**Departmental Disclosure Statement**

Date considered: 02 December 2019

Author: Ministry of Education

**Education and Training Bill**

Publicly available on the New Zealand Legislation website

<http://www.legislation.govt.nz>

**Cabinet Minute: CBC-19-MIN-0046**

Date considered: 25 November 2019

Author: Cabinet Office

**CAB-19-MIN-0631 Report of the Cabinet Business Committee Minute**

Date considered: 02 December 2019

Author: Cabinet Office

**CAB-19 MIN-0631.02 Minute**

Date considered: 02 December 2019

Author: Cabinet Office

#### Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

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<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister of Education

Chair, Cabinet Business Committee

## **Education and Training Bill: Approval for Introduction**

### **Proposal**

1. I propose that the Education and Training Bill (the Bill) be approved for introduction into the House of Representatives.

### **Executive Summary**

2. The Bill has been finalised for introduction into the House of Representatives. The Bill s 9(2)(f)(iv) [REDACTED]
3. As a part of achieving the new vision for the education system, a new Act underpinning New Zealand's education legal regime is required, which is simpler, more modern, and less prescriptive.
4. The policy objectives of the Bill are to amalgamate and update education related statutes; implement the new policies that have resulted from the education work programme; and undertake the legislative amendments that have been agreed to as part of the Government's position on the final report of the Tomorrow's Schools Independent Taskforce.
5. The Bill should be introduced on 2 December 2019, and enacted as soon as possible after the Education and Workforce Committee has reported back to the House of Representatives.

### **Policy**

#### *General*

6. As previously discussed with Cabinet, part of my vision for the education system includes the creation of a new Act which is simpler, more modern, and less prescriptive. As the foundation of New Zealand's education legal regime, the Act would also bring together key aspects of statute based education law that are currently dispersed.
7. The Bill replaces the Education Acts 1989 and 1964, and incorporates Parts 7 to 7B of the State Sector Act 1988 (covering the education service) and those provisions of the Education (Update) Amendment Act 2017 that are subject to delayed commencement.<sup>1</sup>
8. The Bill replicates provisions from the introduction version of the Education (Vocational Education and Training Reform) Bill. These provisions will be

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<sup>1</sup> The provisions relate to the new strategic planning and reporting framework for State schools, which is due to come into effect no later than 1 January 2023.

updated to reflect any changes made as a result of the progression of this Bill through the House of Representatives.

9. In transferring the content of the Education Acts 1989 and 1964 to the Bill, the opportunity also has been taken to create a new, more user friendly structure and to update the law (including modernising language and technical changes).

#### *Cabinet Policy Approvals*

10. In addition to amalgamating and updating education statutes, the Bill implements the new policies that have resulted from the education work programme. The Bill also undertakes the legislative amendments that have been agreed to as part of the Government's position on the final report of the Tomorrow's Schools Independent Taskforce.
11. The policies that have been approved by Cabinet are set out in Appendix One of this paper.
12. Five aspects of the Bill are likely to be contentious. Post the announcement of the Government's position on the final report of the Tomorrow's Schools Independent Taskforce, there was extensive media and sector comment on the proposal for the responsibility of developing and consulting on school enrolment zones to be transferred from school boards of trustees (school boards) to the Education Service Agency within the Ministry of Education.
13. In 2016/17, a diverse range of submissions was received on the elevation of Tiriti o Waitangi/Treaty of Waitangi responsibilities relating to school boards into the Education Act 1989.<sup>2</sup> A similar response can be expected on the inclusion of a new signposting clause and strengthened Tiriti o Waitangi/Treaty of Waitangi responsibilities in the Bill.
14. Given the extent of the engagement on Cabinet paper proposals and prior Bills, strong interest can be expected from the disability community on both the clarification of the right to education in New Zealand and the changes being made to the legal framework governing the use of physical restraint in registered schools.
15. The transfer of the religious instruction and observances provisions from the Education Act 1964 to the Bill, along with the new requirement for school boards wishing to allow religious instruction in their school to do so on an "opt-in" basis, is expected to be contentious. During the Ministry of Education's recent consultation on the guidelines on religious instruction in primary schools, one hundred submissions were received.
16. The Ministry of Education will provide information about all policies associated with the Bill, including the five identified above, upon introduction of the Bill. All interested parties will have the opportunity to provide their views on the policies through the Select Committee process.
17. Legislative action is required in order to provide for a modern, accessible education statute. In addition, for the policies set out in Appendix One to this paper to have legal effect, legislative amendments are required.

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<sup>2</sup> The submissions were received on the then Education (Update) Amendment Bill.

### Further Cabinet policy approvals

18. During work on the Bill, five new matters were identified for inclusion in the Bill. In addition, two Cabinet decisions have been revisited.

### *Purpose statements*

19. It is modern drafting practice to include purpose statements or objects clauses in legislation. A purpose statement articulates the purpose of the relevant Part of the legislation and the policy objective that underlies it. Adding a formal purpose statement can help reduce possible ambiguity and makes it easier for users and the courts to interpret the Act.
20. Four purpose statements have been included in the Bill. These cover: early childhood education; primary and secondary education; tertiary education; and international education.

### *Tertiary Education Strategy*

21. The Bill carries across from the Education Act 1989 the Minister of Education's power to issue a Tertiary Education Strategy. There is one new amendment, which is that the Bill specifies that a Tertiary Education Strategy (TES) remains in place until it is either replaced or withdrawn.
22. The TES informs both the exercise of the functions of the Tertiary Education Commission and the New Zealand Qualifications Authority, and the development of the investment plans of tertiary education organisations. I consider that it is important that any existing TES is considered valid and does not expire until replaced by a new one, regardless of any timeframe explicitly or implicitly associated with it.

### *Enrolment schemes*

23. Cabinet has agreed to the responsibility for developing and consulting on enrolment schemes being shifted from school boards to the Ministry of Education (CAB-19-MIN-0539).
24. Section 11PA of the Education Act 1989 requires a school board to review the operation of its enrolment scheme annually unless the Secretary of Education (Secretary) has provided an exemption for any period not exceeding three years.
25. The exemption power was created in order to lessen the administrative burden for both boards and the Secretary in situations where it was clear that an enrolment scheme was still necessary to manage overcrowding. Most school boards with enrolment schemes now have an exemption from the annual review requirement.
26. To align the legislation and practice, Schedule 22 of the Bill specifies that the Secretary must, at least once every three years after the date on which an enrolment scheme has been implemented, review the operation of the scheme.

### *Rules on use of physical force at registered schools*

27. Cabinet has agreed to change the legal framework for the use of physical restraint in registered schools, including replacing the term “physical restraint” with the term “physical force” ( CAB-19-MIN-0559).
28. The Education Act 1989 provides the Secretary of Education with the power to make rules prescribing practice and procedure relating to the use of physical restraint. The Bill carries across the Secretary’s rule making powers and has been amended to specify that the rules must include a definition of physical force. I propose that the new definition should be set out in the rules within six months of the Bill having been enacted.

### *Education Review Office Power to Request Information*

29. Currently, the Education Review Office (ERO) conducts on site reviews of applicable organisations and services. Cabinet has also agreed to ERO having a new power to enter homes where home based ECE is taking place, for the purpose of reviewing and evaluating curriculum delivery and health and safety performance in the home as part of conducting a wider review of the home-based early childhood education service provider (CAB-19-MIN-0139).
30. To inform its on-site reviews, ERO has, as a matter of practice, been asking for information prior to or between on-site reviews. I consider that this practical approach to ensuring more effective and efficient on-site reviews should be reflected in the law. I propose therefore that the Chief Review Officer should have the power to request in writing from an applicable organisation or service, or early childhood education and care service provider, information that is reasonably necessary or desirable for the conduct of on-site reviews.

### *Regulation Making Powers – Dispute Resolution Schemes*

31. Cabinet has agreed to the appointment criteria for the Chief Referee responsible for dispute resolution panels, being specified in Regulations (CAB-19-MIN-0539). I consider that minimum criteria for appointment should be set out in the new Education and Training Act. This would allow for the early appointment of the Chief Referee to assist with the setting up of the disputes resolution panels, including the development of the associated Regulations.
32. I propose therefore to amend the earlier Cabinet decision to enable the minimum criteria for the appointment of a Chief Referee to be specified in the Bill, with any additional criteria to be specified in Regulations as required.

### *Public Notices*

33. Cabinet has agreed to require school boards to publish notices of casual vacancies through means including, but not limited to, newspapers local to the area in which the board is located (CAB-19-MIN-0503). Cabinet has also agreed to the various notices associated with the operation of enrolment schemes being given through any means including, but not limited to, publication in local newspapers (CAB-19-MIN-0539).
34. These Cabinet decisions have inadvertently and incorrectly maintained the current position of requiring that notification be made through a newspaper.

35. The requirement of providing notice through a local newspaper is an outdated practice that is not reflective of modern communications preferences and may no longer represent the best means of reaching the school community and other relevant parties.
36. I consider that the best means of notifying and reaching both the school community and any interested parties in the wider local community is something the school board is best placed to determine on a case by case basis. I propose therefore to require each school board, in the instances of notices associated with casual vacancies and the operation of enrolment schemes, to choose the most appropriate means of communicating to its school community and any other affected parties in the wider local community.

### **Impact Statements**

37. Sixteen regulatory impact statements (RIS) have previously been considered by Cabinet. For the full list, refer to Appendix Two of this paper.
38. For the list of exemptions, refer to Appendix Two of this paper.

### **Compliance**

39. The Bill complies with the following:
  - 39.1 the principles of the Treaty of Waitangi;
  - 39.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 39.3 the principles and guidelines set out in the Privacy Act 1993; and
  - 39.4 relevant international standards and obligations.
40. A disclosure statement has been prepared for the Bill.
41. The Bill does not comply with one aspect of the disclosure statement requirements and the LDAC Guidelines (2018 edition), relating to delegated legislation. The Bill changes the legal framework for the use of physical restraint in registered schools, with the term “physical restraint” being replaced by “physical force”. A definition of “physical restraint” is set out in the Education Act 1989. However, the Bill does not include a definition of “physical force”, with the term to be defined in Rules. The inclusion of a definition in the primary statute would satisfy the key principles of ensuring transparency and certainty in law-making, but these principles are outweighed by the need for flexibility in the practical application of the law.
42. The Ministry of Justice has undertaken a vet of the Bill for compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. I will advise the Committee of the outcome of the vet (if known) at the Committee meeting.
43. The Ministry of Education provided the Office of Privacy Commissioner with a consultation draft of the Bill. No issues were raised.

## **Consultation**

44. For details of the consultation undertaken on the Cabinet papers seeking policy approvals, refer to Appendix Three.
45. Two consultation drafts of the Bill were produced for Departmental consultation. The Departments consulted were: the Department of the Prime Minister and Cabinet; the State Services Commission; the Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation, and Employment; Te Puni Kōkiri; Ministry for Pacific Peoples; the Department of Corrections; New Zealand Police; the Office for Māori Crown Relations – Te Arawhiti; and the Office for Disability Issues.
46. A consultation draft of the Bill was also provided to the Disability Rights Commissioner, the Human Rights Commission, the Office of the Children's Commissioner, and the Office of the Privacy Commissioner.
47. Consultation drafts of relevant Parts of the Bill were provided to Education New Zealand, the New Zealand Qualifications Authority, the Tertiary Education Commission, and the Teaching Council of Aotearoa New Zealand (Teaching Council).
48. Consultation with the government caucus and other parties represented in Parliament will occur prior to the introduction of the Bill into the House of Representatives.

## **Binding on the Crown**

49. The new Education and Training Act will bind the Crown. On April 3, the Cabinet Social Wellbeing Committee considered the Cabinet paper setting out the first tranche of policy approvals for the Education and Training Bill, which included a statement confirming that the new Act would bind the Crown.

## **Creating new agencies or amending law relating to existing agencies**

50. Non applicable

## **Allocation of decision making powers**

51. Non applicable.

## **Associated regulations**

### *Conversion of existing provisions into regulations*

52. The Bill provides for a new regulation making power that will enable provisions relating to the operation of school boards currently located in the Education Act 1989 to be converted into regulations on the Bill's enactment. The regulations are expected to be of low to medium complexity.
53. The Bill provides for a further new regulation making power enabling provisions from Part 18A, "International Students", of the Education Act 1989 also to be converted into regulations on the Bill's enactment. The regulations are expected to be of low to medium complexity.

54. Part 18A contains provisions relating to the Code of Practice for the Pastoral Care of International Students and the Disputes Resolution Scheme. The Education Act 1989 is being amended through the Education (Pastoral Care) Amendment Bill to create a new legal framework for pastoral care which will cover both international and domestic tertiary students.
55. The Bill extends the new regulation making power relating to Part 18A to enable the provisions creating a legal framework for the pastoral care of international and domestic tertiary students, where appropriate, to also be converted into regulations on the enactment of the Education and Training Bill.
56. As work has progressed on the Education and Training Bill, a number of updated provisions have been grouped into four Schedules, with the aim of converting these Schedules into regulations post the enactment of the Bill. This requires new regulations making powers where necessary, and sunset clauses for the relevant Schedules of between 12 to 24 months duration, as appropriate.

#### *New regulations*

57. The Bill provides for a new regulation making power in relation to enrolment schemes. The regulations, to be made within 12 months of the Bill's enactment, will provide for the development of enrolment schemes by the Ministry of Education, including the extent to school boards of trustees may contribute to their design. The regulations are expected to be of low complexity.
58. The Bill also provides for a new power that will enable regulations to be made for the disputes resolution panels that will manage serious disputes between students, their parents, and schools. The regulations will be made within 12 months of the Bill's enactment and are expected to be of low to medium complexity.

#### **Other instruments**

59. Under the Bill, the Teaching Council may renew a teacher's practising certificate where the applicant either has recent teaching experience and professional learning and development or has agreed to undertake a refresh process. The Bill extends the existing rule making powers of the Teaching Council to enable it to make rules setting out the requirements of the refresh process.
60. The Teaching Council's rules are both legislative and disallowable instruments. The reasons for this were set out in the Explanatory Note to the then Education Amendment Bill (No 2), introduced in 2014.<sup>3</sup>
61. The Bill also creates a mandatory Code of Conduct for school boards. The Code will be a disallowable instrument, which allows for external scrutiny by the Regulations Review Committee. This is also consistent with the approach taken to the Code of Conduct for teachers.<sup>4</sup> The Explanatory Note to the Bill will set out these reasons for making the Code of Conduct for school boards a disallowable instrument.

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<sup>3</sup> The then Education Council rules were made legislative and disallowable instruments, as this replicated the existing legal arrangements in respect of rules made by the former New Zealand Teachers Council.

<sup>4</sup> Section 387(5) of the Education Act 1989.



## Definition of Minister/department

62. New Schedule 10, "Student allowances and administration of student loans", will be administered by the Ministry of Social Development. Clause 1 defines "chief executive" as having "the same meaning as in Schedule 2 of the Social Security Act 2018".<sup>5</sup>
63. The use of the term "chief executive", with its associated definition, replaces the previous term "Secretary" and its definition that were used in the previous Part 25 of the Education Act 1989.
64. The new interpretation clause in Part 1 of the Bill rationalises and updates the multiple definitions of "Minister", "Ministry" and "Secretary" that have been brought across from the various statutes.

## Commencement of legislation

65. The majority of the Bill will come into force on the day after the date of Royal assent.
66. The Bill creates a new objective for school boards to give effect to Te Tiriti o Waitangi/Treaty of Waitangi. The Bill provides for the commencement of this new objective being delayed until 1 January 2021. This aligns the commencement of the new objective with the beginning of the school financial year for planning and reporting purposes. It also allows sufficient time for schools to prepare to give effect to the new requirement of taking all reasonable steps to make available instruction in Tikanga and Te Reo Māori.
67. The Bill also carries over the delayed commencement of the new strategic planning and reporting regime for school boards. This is a consequence of the relevant provisions being incorporated into the Bill, as the Education (Update) Amendment Act 2017 is being repealed.

## Parliamentary stages

68. The Bill should be introduced into the House of Representatives on 2 December 2019, and enacted as soon as possible after it is reported back to the House.
69. The Bill should be referred to the Education and Workforce Committee for consideration.

## Proactive release

70. I intend to proactively release this Cabinet paper once the Bill has been introduced, subject to redaction as appropriate under the Official Information Act 1982.

## Recommendations

The Minister of Education recommends that the Committee:

1. **note** that the Education and Training Bill s 9(2)(f)(iv)

<sup>5</sup> "Chief executive" is defined as meaning "the chief executive of the responsible department".

2. **note** that the Education and Training Bill:
  - 2.1 amalgamates and updates education related statutes;
  - 2.2 implements the new policies that have resulted from the education work programme;
  - 2.3 undertakes the legislative amendments that have been agreed to as part of the Government's position on the final report of the Tomorrow's Schools Independent Taskforce;
3. **note** that it is modern drafting practice to include purpose statements or objects clauses, as aides to interpretation, in legislation;
4. **agree** to the inclusion of four purpose statements covering early childhood education, primary and secondary education, tertiary education, and international education in the Education and Training Bill;
5. **note** that there needs to be greater clarity about the continued validity of the Tertiary Education Strategy in circumstances where there is either an explicit or implicit timeframe for its replacement;
6. **agree** that the Education and Training Bill clarify that the Tertiary Education Strategy remains in place until a new Strategy is issued;
7. **note** that under the Education and Training Bill, responsibility for developing and consulting on school enrolment schemes has been shifted from school boards to the Secretary for Education;
8. **note** that most school boards are exempted from a requirement to annually review the operation of enrolment schemes;
9. **agree** that the annual review requirement be replaced, with the Secretary for Education to review enrolment schemes no later than every three years, or earlier if he or she chooses to do so;
10. **note** that the Education and Training Bill carries across the Secretary of Education's power to make rules prescribing practice and procedure relating to the use of physical restraint (now referred to as physical force);
11. **note** that the relevant clause in the Education and Training Bill has been amended to specify that the rules must include a definition of physical force;
12. **agree** that the new definition of physical force be included within the rules within six months of the Education and Training Bill having been enacted;
13. **note** that as a matter of practice, the Education Review Office has been asking for information from applicable organisations and services prior to or between on-site reviews;
14. **agree** that the Chief Review Officer may request in writing from an applicable organisation or service, or early childhood education and care service provider, information that is reasonably necessary or desirable for the conduct of on-site reviews;

15. **note** that Cabinet has previously agreed to the appointment criteria for the Chief Referee responsible for dispute resolution panels, being specified in Regulations (CAB-19-MIN-0539);
16. **note** that the Chief Referee will need to be appointed early on after the Education and Training Bill's enactment in order to assist with the setting up of the dispute resolution panels, including the development of the related Regulations;
17. **agree** to amend the previous Cabinet decision, to enable the minimum criteria for the appointment of the Chief Referee to be specified in the Education and Training Bill, with any additional criteria to be specified in Regulations as required;
18. **note** that school boards should not be required to use newspapers, an outdated means of communication, to publish either notices of casual vacancies or notices associated with the operation of enrolment schemes;
19. **note** that I propose to rescind the previous Cabinet decisions, because they incorrectly maintain the current position of requiring that notification be made through a newspaper
20. **agree** to rescind the decision recorded in CAB-19-MIN-0503, to amend section 105(5) of the Education Act 1989 to require school boards to give public notice of casual vacancies through means including, but not limited to, publishing a notice in newspapers local to the area in which the board is located;
21. **agree** to rescind the decision recorded in CAB-19-MIN-0539, to update the definition of 'give notice' in section 11B of the Education Act 1989 so that the various notices given during the operation of an enrolment scheme can be given through any means including, but not limited to, publication in local newspapers;
22. **agree** that a school board be required, in the instances of notices associated with casual vacancies and the operation of enrolment schemes, to choose the most appropriate means of communicating to its school community and any other affected parties in the wider local community;
23. **note** that the Education and Training Bill provides for a new regulation making power enabling provisions from Part 18A, "International Students" of the Education Act 1989 to be converted into regulations on the Bill's enactment;
24. **note** that the Education Act 1989 is being amended through the Education (Pastoral Care) Amendment Bill to create a new legal framework for pastoral care which will cover both international and domestic tertiary students;
25. **agree** to the extension of the new regulation making power to enable the provisions creating a legal framework for the pastoral care of international and domestic tertiary students, where appropriate, to be converted into regulations on the enactment of the Education and Training Bill;
26. **note** that four Schedules have been identified for conversion into regulations post the enactment of the Education and Training Bill;

27. **agree** to the inclusion of new regulation making powers where necessary, and sunset clauses of between 12 to 24 months duration, as appropriate, for the four Schedules in the Education and Training Bill;
28. **note** that the Education and Training Bill creates a new objective for school boards of trustees to give effect to Te Tiriti o Waitangi/Treaty of Waitangi;
29. **agree** that the commencement of the new objective for school boards of trustees to give effect to Te Tiriti o Waitangi/Treaty of Waitangi, be delayed until 1 January 2021;
30. **note** that the commencement of the new objective has been aligned with the beginning of the school financial year for planning and reporting purposes;
31. **note** that the decisions with drafting implications are subject to Parliamentary Counsel's direction as to how best to express these in legislation;
32. **note** that the Education and Training Bill is approved subject to Parliamentary Counsel making drafting changes prior to introduction to ensure that the policy approvals are given best effect and to improve the formulation of provisions carried into the Bill from existing legislation;
33. **approve** the Education and Training Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
34. **agree** that the Education and Training Bill be introduced on 2 December 2019;
35. **agree** that the government propose that the Education and Training Bill be:
  - 35.1 referred to the Education and Workforce committee for consideration;
  - 35.2 enacted as soon as possible after it is reported back to the House of Representatives.

Authorised for lodgement  
Hon Chris Hipkins  
Minister of Education

## Appendix One: Cabinet Policy Approvals

1. The Bill implements policies to:

Cabinet Paper: “Review of Home-based Early Childhood Education – Proposals for Change” (CBC-19-Min-0002, CAB-19-MIN-0016)<sup>6</sup>

- require police vetting of all adults who live and, or may be present in a home in which children are receiving early childhood education and care;
- provide the Education Review Office with the power to enter homes where home-based early childhood education is taking place;

Cabinet Paper One: “Education and Training Bill – First Tranche of Policy Approvals” (CAB-19-MIN-0139)

- replace references to forms, standards, and classes with references to year levels (with certain exceptions);
- replace redundant continuing education provisions with new provisions giving school boards of trustees authority to be Adult and Community Education providers and to charge related fees;
- repeal spent and redundant provisions, including those relating to the bulk funding of early childhood education institutions a regulation making power for composite schools, and the requirement for teachers to take an oath of allegiance;
- in respect of home-based early childhood education, clarify that police vetting is required of all adults living in the home, even if they are not usually present when children are receiving early childhood education and care;
- specify that the purposes of the new entry power for the Education Review Office are to conduct assessments of teaching and curriculum implementation, and to monitor health and safety;

Cabinet Paper Two: “Education and Training Bill – Second Tranche of Policy Approvals” (CAB-19-MIN-0447)

- in transferring the Education Act 1964 provisions regarding the establishment and disestablishment of special schools, remove the redundant terms “special class” and “special clinic” and rename “special schools” as “specialist schools”;
- clarify that the right to education includes the right for enrolled students to attend the school in which they are enrolled for all the hours that the school is open for instruction;
- enable a student’s parents, the school principal, and the Secretary to agree to vary a student’s hours of attendance as part of a non-renewable transition attendance plan of no more than six months duration;
- prohibit the awarding of the National Certificate of Educational Achievement (NCEA) offshore, except in limited circumstances;
- make it an offence to breach the prohibition on awarding the NCEA offshore, with the penalty to be a fine of up to a maximum of \$10,000 for an institution;

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<sup>6</sup> The summary of the policies in this Cabinet paper only covers those policies with legislative implications.

Cabinet Paper Three: “Education and Training Bill – Third Tranche of Policy Approvals” (CAB-19-MIN-0503)

- allow for the more efficient and effective use of client information held by the Ministry of Social Development (MSD) for the purposes of the administration of social housing, social security benefits, and student loans and allowances;
- change the period for laying charges in respect of offences relating to MSD information requests from six months to up to twelve months after the date that MSD becomes aware of the offending;
- remove the requirement for the Teaching Council to audit and monitor teacher appraisals;
- enable the Teaching Council to renew a teacher’s practising certificate where the applicant either has recent teaching experience and professional learning and development or has agreed to undertake a refresh process;
- clarify that the definition of “satisfactory recent teaching experience” includes overseas teaching experience;
- remove the ability of a State school principal to preclude a student from attending school because the principal has reasonable grounds to believe that the student is not clean enough to keep attending school;
- replace the term “correspondence school” in legislation with “distance school” and provide for a definition of “distance school” that reflects the use of digital technologies to deliver education;
- clarify that dual tuition can be offered online;
- in the event of a school board election being declared invalid, enable the Minister of Education to either declare that the previous board remains in office until the new board takes office or direct the Secretary to appoint a commissioner to replace the previous board until the new board takes office;
- require school boards to give public notice of casual vacancies through means including, but not limited to, publishing a notice in local newspapers;
- remove the power for regulations to be made prescribing the manner in which returning officers are to be appointed for the purpose of school board elections;
- convert a Schedule of the Education Act 1989 relating to the operation of school boards into regulations on the enactment of the Bill;

Cabinet Paper Four: “Reform of the Tomorrow’s Schools System: Paper Two – Legislative Provisions” (CAB-19-MIN-0539)

- establish a mandatory Code of Conduct for members of school boards, with sanctions for non-compliance;
- refocus school boards on a wider range of objectives, not just educational achievement, in recognition of the important role that boards play in developing all aspects of New Zealand’s future generations;
- create new objectives for school boards, with boards to give effect to Te Tiriti o Waitangi/Treaty of Waitangi, and to relevant student rights set out in the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993, and the (new) Education and Training Act;
- set out specific duties for school boards to comply with when meeting their primary objectives;
- include a clause in the Bill which lists the specific measures provided throughout the Bill to address Te Tiriti o Waitangi/Treaty of Waitangi functions, duties, and powers;
- enable the Ministers of Education and Māori Crown Relations: Te Arawhiti to, after consultation with Māori, jointly issue and publish a statement specifying what education agencies must do to give effect to the expectations set out in the

Public Service Bill, with the objective of providing equitable education outcomes for students;

- empower the Minister of Education to specify criteria that must be met before a person is appointed as a school principal, and provide for a minimum six month transition period to allow for the development of the criteria;
- require a school board to consult with students (as appropriate), staff, and its school community when making school rules;
- shift the responsibility for developing and consulting on enrolment schemes from school boards to the Ministry of Education;
- update the relevant definition of “give notice” to enable the various notices associated with the operation of enrolment schemes to be given through any means including, but not limited to, publication in local newspapers;
- establish local panels to manage serious disputes between students, their parents, and schools;

Cabinet Paper Five: “Education and Training Bill – fifth tranche of policy approvals” (CAB-19-MIN-0559)

- replace the terms “physically restrain” and “physical restraint” with “physical force”;
- specify that physical force is to be used only as a last resort;
- create a new threshold for when force can be used, with a teacher or authorised staff member to have a reasonable belief that the use of force is necessary to prevent imminent harm;
- allow the Minister of Education to approve or decline applications to open a new early learning service based on specified criteria and, as part of the application process, request further information if required;
- enable the Ministry of Education to decline a licence application where the specified criteria cannot be or are not met;
- increase the penalty for a service provider operating an early childhood education and care centre without a licence, from \$200 for every day or part of a day on which the offence took place to a maximum of \$50,000;
- convert aspects of Part 18A, “International students”, of the Education Act 1989 into regulations on the enactment of the Bill;
- provide for a mandatory staff member position on the board of Te Aho o Te Kura Pounamu – the Correspondence School;
- enable the Education Review Office to obtain governance and management information from parent entities where the information relates to early learning services under their control; and
- allow the Minister of Education to appoint the deputy chair of the Teaching Council.

Cabinet Paper Six: “Progressing religious instruction within the Education and Training Bill” (CAB-19-MIN-0534)

- require school boards who wish to allow religious instruction in the schools that they govern to do so on an “opt-in” basis.

## **Appendix Two: Regulatory Impact Analysis**

### *Regulatory Impact Statements*

#### Cabinet Paper: Review of Home-based Early Childhood Education – Proposals for Change (CBC 19-MIN-0002, CAB-19-MIN-0016)

- “Raising the quality of home-based early childhood education”.

#### Cabinet Paper One: “Education and Training Bill – First Tranche of Policy Approvals” (CAB-19-MIN-139)

- “Raising the quality of home-based early childhood education” – includes the new power of entry for the Education Review Office.

#### Cabinet Paper Two: Education and Training Bill – Second Tranche of Policy Approvals (CAB-19-MIN-0447)

- “Prohibiting the awarding of NCEA offshore”; and
- “Strengthening the right to education by confirming the right to attendance”.

#### Cabinet Paper Three: Education and Training Bill – Third Tranche of Policy Approvals (CAB-19-MIN-0503)

- “Creating a pathway for teachers without recent teaching experience to return to teaching”;
- “Power for the Minister to appoint a Commissioner if a board of trustees election is declared invalid”; and
- “Student Loans and allowances”.

#### Cabinet Paper Four: “Reform of the Tomorrow’s Schools System: Paper Two – Legislative Provisions” (CAB-19-MIN-0539)

- “Board role in enrolment schemes”;
- “Code of Conduct for School Boards of Trustees”;
- “Education and Training Bill – Giving Better Effect to Te Tiriti o Waitangi”;
- “Establishing dispute resolution panels”;
- “Principal Appointment Eligibility Criteria”; and
- “Refocusing the role of school boards of trustees.”

#### Cabinet Paper Five: “Education and Training Bill – fifth tranche of policy approvals” (CAB-19-MIN-0559)

- “Clarification of the Education Review Office’s powers in respect of parent entities”;
- “Improving workability of physical restraint legislative framework”; and
- “Clarification of Network Planning in Early Learning”.

#### Cabinet Paper Six: “Progressing religious instruction within the Education and Training Bill” (CAB-19-MIN-0534)

- “Supplementary Analysis”: making religious instruction ‘opt-in’.



## *Exemptions*

### Cabinet Paper One: “Education and Training Bill – First Tranche of Policy Approvals” (CAB-19-MIN-0139)

1. With the exception of the new entry power for the Education Review Office, regulatory impact statements were not required for the policies set out in Cabinet paper one. An exemption applied, as the policies have no or only minor regulatory impacts.

### Cabinet Paper Two: “Education and Training Bill – Second Tranche of Policy Approvals” (CAB-19-MIN-0447)

2. A regulatory impact statement was not required for either the removal of the redundant terms “special class” and “special clinic” or the renaming of “special schools” as “specialist schools” (set out in Cabinet paper two). An exemption applied, as these technical amendments have no or only minor regulatory impacts.

### Cabinet Paper Three: “Education and Training Bill – Third Tranche of Policy Approvals” (CAB-19-MIN-0503)

3. A regulatory impact statement was not required for the conversion of a Schedule relating to the operation of school boards into regulations on the enactment of the Bill. An exemption applied, as the creation of new regulations would have no impacts on schools, individuals, and other stakeholders. The policy and effect of the clauses currently set out in Schedule 6 of the Education Act 1989 were not being altered.
4. Regulatory impact statements were not required for:
  - the removal of the requirement for the Teaching Council to audit and monitor teacher appraisals;
  - the removal of the ability of a State school principal to preclude a student from attending school because the principal has reasonable grounds to believe that the student is not clean enough to keep attending school; and
  - the changes to the legislative framework for school board elections (with the exception of the new power for the Minister to appoint a Commissioner if a school board election is declared invalid).

An exemption applied in all these cases, as the policies repealed or removed redundant legislative provisions.

5. Regulatory impact statements were not required for:
  - the clarification that the definition of “satisfactory recent teaching experience” included overseas teaching experience;
  - the replacement of the term “correspondence school” in legislation with “distance school”;
  - the creation of a new definition of “distance school”; and
  - the clarification that dual tuition could be offered online.

An exemption applied in all these cases, as the technical amendments were considered to be suitable for inclusion in a Revision Bill.

Cabinet Paper Five: "Education and Training Bill – fifth tranche of policy approvals"  
(CAB-19-MIN-0559)

6. A regulatory impact statement was not required for:

- the conversion of aspects of Part 18A, "International students", of the Education Act 1989 into regulations on the enactment of the Bill;
- the inclusion of a staff member on the board of Te Aho o Te Kura Pounamu – the Correspondence School; and
- the Minister's power to appoint the deputy chair of the Teaching Council.

An exemption applied in all these cases, as the policies would have none or only minor regulatory impacts.

### **Appendix Three: Consultation on Cabinet Papers Seeking Policy Approvals**

#### **Cabinet Paper: “Review of Home-based Early Childhood Education – Proposals for Change”**

1. The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Health; Inland Revenue; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Business, Innovation and Employment; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; Tertiary Education Commission; and New Zealand Qualifications Authority.
2. The State Services Commission and Department of the Prime Minister and Cabinet were informed.
3. Public consultation on the discussion document on the Review of Home-Based early childhood education was undertaken from 21 August to 30 September, with 1,943 responses<sup>7</sup> being received.

#### **Cabinet Paper One: “Education and Training Bill – First Tranche of Policy Approvals”**

4. The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; New Zealand Police; Office for Disability Issues; Tertiary Education Commission; and New Zealand Qualifications Authority.
5. The State Services Commission and Department of the Prime Minister and Cabinet were informed.

#### **Cabinet Paper Two: “Education and Training Bill – Second Tranche of Policy Approvals”**

6. The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; Office for Disability Issues; Tertiary Education Commission; and New Zealand Qualifications Authority.
7. The State Services Commission and Department of the Prime Minister and Cabinet were informed.
8. The Disabled Persons Organisations Coalition was consulted on the policy proposals regarding special schools and strengthening the right to education.

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<sup>7</sup> This includes survey responses and submissions.

9. Public consultation on the policy proposals was undertaken from 14 May to 14 June 2019, with 73 submissions being received. These included submissions from the following organisations representing the views of disabled people:
- the Disability Rights Commissioner, IHC New Zealand, CCS Disability Action, Disabled Persons Assembly NZ, VIPS Equity in Education, Hear for Families Auditory Processing Disorder NZ, Inclusive Education Action Group, People First NZ, and Education For All.

Cabinet Paper Three: “Education and Training Bill – Third Tranche of Policy Approvals”

10. The following government departments and public bodies were consulted:
- The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; New Zealand Police; Office for Disability Issues; Tertiary Education Commission; and New Zealand Qualifications Authority
11. The State Services Commission and Department of the Prime Minister and Cabinet were informed.

Cabinet Paper Four: “Reform of the Tomorrow’s Schools System: Paper Two – Legislative Provisions”

12. The following government departments and public bodies were consulted:
- The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Business, Innovation and Employment; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; and New Zealand Qualifications Authority.
13. The State Services Commission and the Department of the Prime Minister and Cabinet were informed.
14. The policy proposals set out in Cabinet paper four are based on the final report of the Tomorrow’s Schools Independent Taskforce. The Taskforce undertook extensive consultation over a fifteen month period which included:
- a Cross Sector Advisory Panel;
  - public surveys;
  - public meetings (over 200 in 20 towns and cities across New Zealand);
  - a formal submissions process;
  - social media; and
  - targeted meeting with education sector stakeholders.
15. In addition, evidence was obtained from Pacific fono and wānanga held as part of the wider education work programme engagement.

Cabinet Paper Five: “Education and Training Bill – fifth tranche of policy approvals”

16. The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation, and Employment; Ministry of Foreign Affairs and Trade; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; Department of Corrections; New Zealand Police; Office for Disability Issues; Tertiary Education Commission; New Zealand Qualifications Authority; and the Office of the Children’s Commissioner.
17. The State Services Commission and the Department of the Prime Minister and Cabinet were informed.
18. The Teaching Council of Aotearoa New Zealand were consulted on the physical restraint policy proposals.

Cabinet Paper Six: “Progressing religious instruction within the Education and Training Bill”

19. The following government departments and public bodies were consulted:
  - The Treasury; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; and Office for Disability Issues.
20. The State Services Commission and the Department of the Prime Minister and Cabinet were informed.
21. The Minister of Education met with the Religious Diversity Centre to inform the development of the Cabinet paper.
22. The Ministry of Education recently consulted on guidelines on religious instruction in primary schools, which encouraged the adoption of a signed consent process. One hundred submissions were received. Adopting a policy of allowing for religious instruction to be provided on an opt-in basis aligns with the views expressed by the majority of submitters.

# Departmental Disclosure Statement

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Education and Training Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 November 2019.

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## Part One: General Policy Statement

The Education and Training Bill (the Bill) establishes and regulates an education system to provide New Zealanders with lifelong learning opportunities so that they engage fully in society.

The Bill creates a new Education and Training Act which is simpler, more modern and less prescriptive than the current legislation. It also implements policy changes that have resulted from the education work programme and undertakes the amendments required to support the Government's response to the final report of the Tomorrow's Schools Review Independent Taskforce.

### Accessibility and workability

Education is critical to the wellbeing of children and young people and to their ability to fully participate in the labour market, society and their communities. It is essential that the relevant legislation is accessible and workable.

The Education Acts 1964 and 1989 (1964 and 1989 Acts) underpin the operation of the early childhood, schooling and tertiary education systems. Some of the provisions are now dated and do not reflect current policy or practice. The legislation has been subject to many and frequent amendments resulting in a proliferation of parts, areas of prescriptive detail and unwieldy numbering.

An added complication is that key aspects of these systems are regulated by provisions in two other statutes. Vocational education and training is covered by the Industry Training and Apprenticeships Act 1992. Some education service employment and employee related matters are dealt with in the State Sector Act 1988.

The Bill consolidates this legislation into a single statute by replacing the Education Acts 1964 and 1989, parts 7, 7A and 7B of the State Sector Act 1988 and those provisions of the Education (Update) Amendment Act 2017 that are subject to delayed commencement.

The Bill replicates provisions from the introduction version of the Education (Vocational Education and Training Reform) Bill. These provisions will be updated to reflect any changes made as a result of the progression of this Bill through the House of Representatives with a view to replacing the Industry Training and Apprenticeships Act 1992.

The Bill also replicates provisions from the introduction version of the Education (Pastoral Care) Amendment Bill. These provisions will be updated to reflect any changes made as a result of the progression of this Bill through the House of Representatives. Some of the pastoral care provisions will be moved directly to new regulations rather than remaining in the primary legislation.

Provisions have been updated to modernise language, correct errors, address inconsistencies, address the numbering and parts, and remove spent and redundant provisions. This will make the legislation clearer and more closely aligned with modern practice. Key updating changes include:

- renaming "special schools" as "specialist schools"
- replacing the term "correspondence school" with "distance school" and defining "distance school" to reflect the use of digital technologies to deliver education
- clarifying that dual tuition can be offered online
- removing the ability for school principals to preclude "unclean" students from attending school.

In addition to an overarching purpose statement, to assist with understanding, the Bill includes purpose statements that cover early childhood education, primary and secondary education, tertiary education, and international education.



Legislative structure has been improved by grouping provisions in a more logical order. The Bill's structure follows the journey of a student through the education system, progressing from early childhood education, to primary and secondary schooling and then to tertiary education and vocational training.

The Bill also provides for some matters currently dealt with in primary legislation to be located in regulations. These matters belong more properly in delegated legislation because they relate to technical detail and administration for which greater flexibility to respond to societal, technological and other changes, is desirable.

Some of the more detailed provisions relating to the operation of school boards of trustees, international students and pastoral care of domestic students, will be converted into regulations that take effect on the day after the date on which the Bill receives the Royal assent. Other provisions require updating before they can be converted to regulations.

## **Policy changes resulting from the education work programme**

### *Early childhood education*

The Bill establishes new licensing criteria for early learning services to enable licensing decisions to reflect demographic and community needs. This will provide for a more active network management approach for all new early learning education and care centres and home based services looking to enter the market, so that service provision is more closely aligned with the needs of parents, whānau and communities. The Minister of Education will be able to decline a licence application where the specified criteria cannot be or are not met. The Bill also:

- Amends the offence for a service provider operating an early childhood education and care centre without a licence, where there is no reasonable excuse for doing so, to carry a maximum penalty of \$50,000.
- Enables the Education Review Office (ERO) to obtain relevant information to enable it to access governance and management information from parent entities where it relates to early learning services under the control of those entities.

ERO currently has limited oversight of the quality of curriculum delivery by home-based educators and of the health and safety of children receiving home-based early childhood education. To improve ERO's oversight of the home-based early childhood education sector, the Bill provides ERO with the power to enter homes where home-based early childhood education is taking place to 'review and evaluate curriculum delivery and health and safety performance'.

The Bill also requires police vetting of all adults who live or may be present in a home in which children are receiving early childhood education.

### *Primary and secondary schooling*

The Bill clarifies that the right to a free State education includes the right for enrolled students to attend the school in which they are enrolled for all the hours that the school is open for instruction. This will help those students not currently supported by their school to attend fulltime, to realise that aspect of their right to education. It will also improve New Zealand's compliance with related international obligations. It will be possible at the request of the parents for a student's parents, the school principal, and the Secretary for Education to agree to vary a student's hours of attendance as part of a non-renewable transition attendance plan of no more than six months duration. This is intended to meet concerns that this change will disadvantage those students whose families consider that their needs are best met by attending school for fewer hours. The transition plan must be considered by all parties involved to be in the child's best interests.

The Bill's structure also locates the different aspects of the right to a free State education, and related board duties and obligations, in one Part of the Bill (Part 3) to make it easier for students and their whānau to understand and realise these rights.

To protect the quality and reputation of the National Certificate of Educational Achievement (NCEA) qualification, the Bill prohibits, with two exceptions, the offshore awarding of NCEA and makes it an offence (carrying a maximum penalty of \$10,000 for an institution) to breach the prohibition. The exceptions are that distance schools can award NCEA to domestic students based offshore and NCEA can be awarded in Pacific Realm countries with which New Zealand has cross-government agreements enabling secondary schools in those countries to award NCEA. Both exceptions are permitted now. The prohibition closes a legislative loophole in the 1989 Act that prevents State schools, but not private schools and tertiary education providers (TEPs) from awarding NCEA offshore. Under the Bill, the prohibition will apply to State schools, private schools and TEPs.

To address the lack of certainty in the schooling sector about when and how school staff can use physical restraint, and what types of other physical contact with students are permitted the Bill makes the following changes to the current 'physical restraint' framework for schools:

- including a requirement that physical force is used only as a last resort
- replacing the terms 'physically restrain' and 'physical restraint' with 'physical force', with consequential amendments to relevant definitions
- changing the threshold for when physical force can be used from when a teacher or authorised staff member reasonably believes 'the safety of the student or of any other person is at serious and imminent risk' to when a teacher or authorised staff member reasonably believes 'it is necessary to prevent imminent harm to the student or another person'
- defining 'harm' for the purpose of these provisions as 'harm to health, safety or wellbeing of the student or the person, including any significant emotional distress suffered by the student or person'. This includes harm to other students, teachers and teacher aides
- requiring the Secretary for Education to make rules defining 'physical force' within six months of the Bill receiving Royal Assent.

The Bill will make it easier for teachers to re-enter the profession after taking a break from teaching, while ensuring they are competent to teach. Teachers wanting to renew their practising certificates who lack satisfactory recent teaching experience under the 1989 Act, will, in some circumstances, be able to instead undergo a refresh process prescribed in rules made by the Teaching Council.

The Bill also clarifies that, in specified circumstances, satisfactory recent teaching experience can include overseas teaching experience and removes the now redundant requirement for the Teaching Council to audit teacher appraisals<sup>1</sup>.

To make the school board election provisions more workable, the Bill provides that if a school board election has been invalidated and another election is required, the Minister will have an additional option of being able to appoint a commissioner to run the school until the new board is in place. Currently, the Minister can only reinstate the previous board, which is not always feasible or desirable. The Bill also updates the provisions for notifying the community of casual board vacancies by removing the requirement to provide notice through community newspapers and enabling boards to use more modern means of communication.

The provision of religious instruction by schools will change from an opt out to an opt in process to reduce the administrative burden of complying with the law under the best practice recommendations in the current guidelines. Currently under the 1964 Act, it is not compulsory for students to attend religious instruction or observances held by their school, but if parents or guardians do not want their children to attend, they must inform the school principal of this in writing.

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<sup>1</sup> The government agreed through the 2019 collective bargaining process with NZEI Te Riu Roa and the New Zealand Post Primary Teachers' Association/ Te Wehengarua to remove the requirement for teacher appraisals.

This has resulted in some children being placed in religious instruction sessions without the full and informed consent of parents and caregivers who may not have been aware of the religious instruction sessions occurring, or of the need to inform the principal in writing that they do not want their child to attend. The Bill will address this by requiring schools that provide religious instruction to operate an opt-in process. Schools can continue to operate an opt-out process for religious observances.

The Bill also makes two changes to strengthen governance arrangements. There is a new mandatory requirement for a staff representative on the board of Te Aho o Te Kura Pounamu (Te Kura), the correspondence school and the Minister will be able to appoint a deputy chair to the Teaching Council.

#### *Tertiary and vocational education and training*

The Bill makes a number of changes to the student loans and allowances provisions administered by the Ministry of Social Development (MSD) to enable more efficient and effective use of client information, and to align the limitation period for laying charges for information-related offences with the limitation periods that apply to similar offences administered by MSD under the 1989 Act and the Social Security Act 2018.

### **Amendments to support the Government's position on the final report of the Tomorrow's Schools Independent Taskforce**

#### *School governance*

Several amendments give effect to the Government's aim of strengthening school governance and improving transparency and accountability. The objectives for school boards of trustees under the 1989 Act have been revised to:

- ensure school governance is underpinned by Te Tiriti o Waitangi and relevant student rights
- refocus boards on a wider range of objectives so that educational achievement is no longer the only primary objective – the Bill proposes that it is one of four primary objectives
- make it clear to boards what they have to do in order to meet the revised objectives.

To assist boards in meeting their objectives and carrying out their functions and duties effectively, the Bill enables the Minister to issue a mandatory national code of conduct for boards, backed up with the remedies of censure and removal from the board, where a member repeatedly and or significantly fails to comply with the minimum standards set out in the code of conduct. The code will apply to all board members, but the remedies will not apply to school principals.

The code has been made a disallowable instrument to provide for external scrutiny through the Regulations Review Committee. The code's status is also consistent with the approach taken to the Code of Conduct for teachers.

The Bill introduces a requirement for Boards to consult their students (as appropriate), staff and school when making bylaws (rules). As well as bringing boards into line with other entities empowered to make bylaws, it will also enable greater staff, student and community engagement with key governance decisions that may significantly impact them.

#### *The Treaty of Waitangi/Te Tiriti o Waitangi*

The Bill contains a number of amendments aimed at giving better effect to the Treaty of Waitangi/Te Tiriti o Waitangi (Te Tiriti). At the school level, changes to board objectives are the primary means of providing in legislation for boards to give better effect to meeting their obligations under Te Tiriti. Objective 4 requires boards to give effect to Te Tiriti by:

- working to ensure that their plans, policies and local curriculum reflect local tikanga, mātauranga Māori and te ao Māori

- making instruction available in te reo and tikanga Māori
- achieving equitable outcomes for Māori students.

At the system level, the Bill makes it easier for those in the education sector to understand their rights and obligations under Te Tiriti by locating in one place key provisions in the Bill that recognise and respect the Crown's responsibility to give effect to Te Tiriti.

The Bill will also enable the Minister of Education and the Minister responsible for Māori Crown Relations: Te Arawhiti, after consultation with Māori, to jointly issue and publish a statement made and gazetted under the new Education and Training Act to specify what education agencies must do to give effect to the Public Service Bill expectations in relation to Te Tiriti, with the objective of providing equitable education outcomes for all students. The intention is a formal and publicly accessible statement that provides greater specificity around what education agencies must do to comply with Te Tiriti.

#### *Disputes resolution*

To address long-standing unmet needs for an independent external disputes resolution scheme for the schooling sector, the Bill enables the Minister to establish local complaint and dispute resolution panels to help students and their whānau who have not been able to resolve serious rights-based disputes with the school. Key features of the scheme include

- the purpose of the dispute resolution panels is to resolve serious disputes between students and their parents, and their school, in an effective, flexible and timely manner
- serious disputes are defined as disputes relating to stand-downs, suspensions, exclusions and expulsions, learning support, racism and other types of discrimination, physical and emotional safety, physical force, enrolment and attendance, rights to education, and other matters of a similar gravity
- panels will be made up of local members, and members from a central list of experts maintained by the Ministry, appointed by the chief referee
- the chief referee (and deputies if required) will be appointed by the Minister and will be responsible for the oversight and management of panels
- panels will resolve disputes by mediation and determination and can make recommendations and, with the prior consent of both parties, binding decisions (the latter can be enforced by the parties through the courts)
- panels can also recommend that boards reconsider their rules/bylaws or policies if they are inconsistent with student rights and make declarations that rules/bylaws or policies breach student rights
- to ensure accessibility and inclusion, there is no fee for accessing any of the panel services, and panel processes and procedures will be culturally appropriate, accessible to disabled students, and will respect the diversity of the local student population
- where appropriate, such as removals disputes, panel processes and procedures will also draw on restorative practices
- detailed matters including panel procedures and processes and appointment criteria and processes for panel members, will be provided for in regulations.

#### *Other amendments*

The Bill shifts the responsibility for developing, consulting on and reviewing enrolment schemes from boards of trustees to the Ministry who will give effect to it at a regional delegation level. This will reduce the compliance burden for boards, 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, and instead focus on what is best for all learners and schools in the area. It will enable a more cohesive approach to managing the provision of quality education for all learners within a community, their whānau, and the regional schooling network. The Bill also changes the frequency for reviewing a school's enrolment scheme from annually to at least once every three years.

The Bill requires the Minister to issue minimum eligibility criteria for appointments to school principal roles. This will help to strengthen leadership in the schooling system. The criteria will take the form of minimum national standards that apply to all principal appointments made after

the criteria has come into force. The criteria will be issued by Gazette notice and will come into force six months after Gazettal to allow sufficient time for the criteria to be socialised with the sector.

The Bill also enables ERO to make written requests for information related to on-site reviews.

Proactively Released by the Minister of Education

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<i>"Our Schooling Futures: Stronger Together"</i> , Final report by the Tomorrow's Schools Independent Taskforce, July 2019. The report will be available on the Ministry of Education's website, <a href="http://www.education.govt.nz">http://www.education.govt.nz</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>16 regulatory impact statements were provided to inform the policy decisions that led to the Education and Training Bill. The regulatory impact statements listed below can be located at: <a href="https://education.govt.nz/regulatory-impact-assessments-for-education-and-training-bill-proposals">https://education.govt.nz/regulatory-impact-assessments-for-education-and-training-bill-proposals</a></p> <ul style="list-style-type: none"><li>• <i>"Raising the quality of home-based early childhood education"</i>, Ministry of Education. Issue date: 23 January 2019.</li><li>• <i>"Prohibiting the awarding of NCEA offshore"</i>, Ministry of Education. Issue date: 21 August 2019.</li><li>• <i>"Strengthening the right to education by confirming the right to attendance"</i>, Ministry of Education. Issue date: 21 September 2019.</li><li>• <i>"Creating a pathway for teachers without recent teaching experience to return to teaching"</i>, Ministry of Education. Issue date: 19 September 2019.</li><li>• <i>"Power for the Minister to appoint a Commissioner if a board of trustees' election is declared invalid"</i>, Ministry of Education. Issue date: 19 September 2019.</li><li>• <i>"Student Loans and allowances"</i>, Ministry of Education. Issue date: 19 September 2019.</li><li>• <i>"Board role in enrolment schemes"</i>, Ministry of Education. Issue date: 11 October 2019.</li><li>• <i>"Code of Conduct for School Boards of Trustees"</i>, Ministry of Education. Issue date: 11 October 2019.</li><li>• <i>"Education and Training Bill – Giving Better Effect to Te Tiriti o Waitangi"</i>, Ministry of Education. Issue date: 11 October 2019.</li><li>• <i>"Establishing dispute resolution panels"</i>, Ministry of Education. Issue date: 11 October 2019.</li><li>• <i>"Principal Appointment Eligibility Criteria"</i>, Ministry of Education. Issue date: 11 October 2019.</li></ul> <p>For the remainder of the regulatory impact statements, see Appendix One.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
<p>With the exception of the supplementary analysis on making religious instruction 'opt-in', no independent analysis of the quality of the 16 regulatory impact statements was required as the statements did not meet the threshold for assessment.</p> <p>A joint panel with representatives from the RIA team in the Treasury and the Ministry of Education reviewed the supplementary analysis on making religious instruction 'opt-in'. The panel considered that the supplementary analysis met quality assurance criteria.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<ul style="list-style-type: none"> <li><i>Power for the Minister to appoint a Commissioner if a board of trustees' election is declared invalid</i> (see question 2.3 above)</li> </ul> <p>For the comments on the size of the potential costs and benefits, see page 5 of the regulatory impact statement.</p> <ul style="list-style-type: none"> <li><i>Network Planning in Early Learning</i> (see question 2.3 above)</li> </ul> <p>For the comments on the size of the potential costs and benefits, see pages 20-21 of the regulatory impact statement</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
For the regulatory impact statements addressing these matters, see Appendix One.	



## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The policies to be given effect by the Education and Training Bill do not affect New Zealand's international obligations.

Under the United Nations Convention on the Rights of the Child and the Rights of People with Disabilities, the right to education includes a right to access an inclusive, quality education on an equal basis with others and where required, to receive effective, individualised support to participate in education. The Education and Training Bill will make it clear that all students, including those with learning support needs, have a right to attend the school in which they are enrolled on a fulltime basis.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Ministry of Education has developed a Māori Education Strategic Framework, which was used to assess a number of the policy proposals that the Bill gives effect to, including those relating to the need to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi across the education system.

The Ministry of Education engaged with Te Puni Kōkiri and the Office for Māori Crown Relations – Te Arawhiti over the course of developing proposals to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi across the education system. Both organisations were provided with a consultation version of the Bill for review.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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YES

Advice provided to the Attorney-General by the Ministry of Justice is expected to be available on the Ministry of Justice's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>



## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>The Bill makes it an offence for an institution to contravene the prohibition on the awarding the National Certificate of Educational Achievement for study outside of New Zealand. The maximum fine for an institution that commits an offence is \$10,000.</p> <p>For the revised penalty relating to the offence of operating an early childhood education and care service without a licence, see the answer to question 4.4 below.</p> <p>The Education and Training Bill carries over existing offences from the Education Act 1989. It also includes the new offence relating to breaches of applicable codes of practice by a provider or signatory provider, which is being created through the Education (Pastoral Care) Amendment Bill, and the amended offence relating to the use of a prohibited term, which is set out in the Education (Vocational Education and Training Reform) Amendment Bill.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice was consulted on the new offence relating to an institution contravening the prohibition on the awarding of the National Certificate of Educational Achievement for study outside of New Zealand, as part of Departmental consultation on Cabinet paper two: "Education and Training Bill – Second Tranche of Policy Approvals".</p> <p>As a result of consultation with the Ministry of Justice, the wording of the offence was adjusted to make it clear that this was a standard mens rea offence. The Ministry had no issues with the proposed maximum fine of \$10,000.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>The Bill enables client information held by the Ministry of Social Development for the purposes of the administration of social housing, social security benefits, and student loans and allowances, to be held on the same file, the same system or systems, and to be used interchangeably for the purposes of assessing entitlement to any of the four types of support, debt recovery, undertaking prosecutions, and imposing penalties.</p>	

<b>3.5. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted about the policy proposals relating to the use of client information held by the Ministry of Social Development and was comfortable with these.</p>	

## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Consultation drafts of the Education and Training Bill were provided to: the Department of the Prime Minister and Cabinet; the State Services Commission; the Treasury; the Education Review Office; the Ministry of Social Development; Oranga Tamariki – The Ministry for Children; Ministry of Justice; Ministry of Business, Innovation, and Employment; Te Puni Kōkiri; Ministry for Pacific Peoples; New Zealand Police; the Office for Māori Crown Relations – Te Arawhiti; the Office for Disability Issues; the Disability Rights Commissioner; the Human Rights Commission; the Office of the Children's Commissioner; and the Office of the Privacy Commissioner.</p> <p>Consultation drafts of relevant Parts of the Education and Training Bill were provided to Education New Zealand, the New Zealand Qualifications Authority; the Tertiary Education Commission; and the Teaching Council of Aotearoa New Zealand.</p> <p>Details of the consultation undertaken on the proposals set out in the suite of Cabinet papers relating to the Bill are set out in Appendix Two.</p>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill carries over existing strict liability offences including the offence of a service provider operating an early childhood education and care service without a licence. The Bill increases the maximum penalty from \$200 for every day or part of a day on which the offence took place to a maximum of \$50,000. The increased fine provides a more effective deterrent to any provider seeking to operate a centre without a licence.</p> <p>The Ministry of Justice were consulted about the increased penalty, and had no issues with either the offence or the penalty.</p> <p>The Bill also carries over existing reverse onus offences covering situations where a parent has failed or refused to ensure that a child or young person is enrolled at a registered school, or is the parent of a child or young person who is not attending either the registered school or doing the course work of the correspondence school, at which the child or young person is enrolled.</p>	

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
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The Bill enables the Minister of Education to establish panels to resolve disputes between students, their parents and whānau, and the school. Panels, once established, will have the power to make a determination about student rights, for example, the rights to education and attendance at school. The relevant clauses are broad enabling provisions, with further detail about the qualifications of panel members, procedures for decision making, and the application of the principles of natural justice to be provided for in regulations. Panels will be administered by the Ministry of Education but panel members have a statutory duty to act independently when performing the functions and exercising the powers of a panel. In keeping with panels providing an accessible pathway that is cheap and timely, there is no appeal from panel decisions. However, parties who are unsatisfied with the outcome of panels will still have the opportunity to take their complaint to the Ombudsman or seek a judicial review in the High Court.

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>The Bill changes the legal framework for the use of physical restraint in registered schools, including replacing the term “physical restraint” with the term “physical force”. The existing power of the Secretary for Education to make rules prescribing practice and procedure has been retained.</p> <p>A definition of “physical restraint” is set out in the Education Act 1989. However, the Bill provides for the term “physical force” to be defined in rules. This provides for greater flexibility in the practical application of the law, by enabling the definition to be adapted as required to reflect the use of physical force in registered schools.</p> <p>The existing rules relating to the use of physical restraint are disallowable instruments, which enables external scrutiny by the Regulations Review Committee. The Bill does not change this status.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p><i>Regulations – Conversion of existing provisions</i></p> <p>The Bill contains powers that will enable the conversion of a number of statutory provisions into regulations on the Bill’s enactment. As part of the conversion process, there will be minor language changes and some modernising of out-of-date provisions. The new sets of regulations will cover:</p> <ul style="list-style-type: none"> <li>• the operation of school boards of trustees</li> <li>• international education</li> <li>• pastoral care Codes of Practice.</li> </ul> <p>For further details of new powers to make regulations and other instruments, see Appendix Three.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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## Appendix One: Further Information Relating to Part Two

### Regulatory impact analysis – question 2.3

- *“Refocusing the role of school boards of trustees”*, Ministry of Education. Issue date: 11 October 2019.
- *Clarification of the Education Review Office’s powers in respect of parent entities*, Ministry of Education. Issue date: 11 October 2019.
- *“Improving the workability of the physical restraint legislative framework”*, Ministry of Education. Issue date: 11 October 2019.
- *Network Planning in Early Learning*, Ministry of Education. Issue date: 11 October 2019.
- *“Supplementary Analysis: making religious instruction ‘opt-in’”*, Ministry of Education. Issue date: 8 November 2019.

### Extent of impact analysis available – question 2.6

Yes (a) and (b):

- *“Raising the quality of home-based early childhood education”*.
- *“Prohibiting the awarding of NCEA offshore”*.
- *“Strengthening the right to education by confirming the right to attendance”*.
- *“Board role in enrolment schemes”*.
- *“Code of Conduct for School Boards of Trustees”*.
- *“Education and Training Bill – Giving Better Effect to Te Tiriti o Waitangi”*.
- *“Principal Appointment Eligibility Criteria”*.
- *“Refocusing the role of school boards of trustees”*.
- *“Clarification of the Education Review Office’s powers in respect of parent entities”*.
- *“Improving the workability of the physical restraint legislative framework”*.
- *“Network Planning in Early Learning”*.
- *“Supplementary Analysis: making religious instruction ‘opt-in’”*.

## Appendix Two: Further Information Relating to Part Three

### External consultation – question 3.6

#### Cabinet Paper: “Review of Home-based Early Childhood Education – Proposals for Change”

- The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Health; Inland Revenue; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Business, Innovation and Employment; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; Tertiary Education Commission; and New Zealand Qualifications Authority.
- The State Services Commission and Department of the Prime Minister and Cabinet were informed.
- Public consultation on the discussion document on the Review of Home-Based early childhood education was undertaken from 21 August to 30 September, with 1,943 responses being received (this includes survey responses and submissions).

#### Cabinet Paper One: “Education and Training Bill – First Tranche of Policy Approvals”

- The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; New Zealand Police; Office for Disability Issues; Tertiary Education Commission; and New Zealand Qualifications Authority.
- The State Services Commission and Department of the Prime Minister and Cabinet were informed.

#### Cabinet Paper Two: “Education and Training Bill – Second Tranche of Policy Approvals”

- The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; Office for Disability Issues; Tertiary Education Commission; and New Zealand Qualifications Authority.
- The State Services Commission and Department of the Prime Minister and Cabinet were informed.
- The Disabled Persons Organisations Coalition was consulted on the policy proposals regarding special schools and strengthening the right to education.
- Public consultation on the policy proposals was undertaken from 14 May to 14 June 2019, with 73 submissions being received. These included submissions from the following organisations representing the views of disabled people:
  - the Disability Rights Commissioner, IHC New Zealand, CCS Disability Action, Disabled Persons Assembly NZ, VIPs Equity in Education, Hear for Families Auditory Processing Disorder NZ, Inclusive Education Action Group, People First NZ, and Education For All.

#### Cabinet Paper Three: "Education and Training Bill – Third Tranche of Policy Approvals"

- The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; New Zealand Police; Office for Disability Issues; Tertiary Education Commission; and New Zealand Qualifications Authority.
- The State Services Commission and Department of the Prime Minister and Cabinet were informed.

#### Cabinet Paper Four: "Reform of the Tomorrow's Schools System: Paper Two – Legislative Provisions"

- The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Business, Innovation and Employment; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; and New Zealand Qualifications Authority.
- The State Services Commission and the Department of the Prime Minister and Cabinet were informed.
- The policy proposals set out in Cabinet paper four are based on the final report of the Tomorrow's Schools Independent Taskforce. The Taskforce undertook extensive consultation over a fifteen month period which included:
  - a Cross Sector Advisory Panel;
  - public surveys;
  - public meetings (over 200 in 20 towns and cities across New Zealand);
  - a formal submissions process;
  - social media; and
  - targeted meeting with education sector stakeholders.
- In addition, evidence was obtained from Pacific fono and wānanga held as part of the wider education work programme engagement.

#### Cabinet Paper Five: "Education and Training Bill – fifth tranche of policy approvals"

- The following government departments and public bodies were consulted:
  - The Treasury; Education Review Office; Ministry of Social Development; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry of Business, Innovation, and Employment; Ministry of Foreign Affairs and Trade; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; Department of Corrections; New Zealand Police; Office for Disability Issues; Tertiary Education Commission; New Zealand Qualifications Authority; and the Office of the Children's Commissioner.
- The State Services Commission and the Department of the Prime Minister and Cabinet were informed.
- The Teaching Council of Aotearoa New Zealand were consulted on the physical restraint policy proposals.

Cabinet Paper Six: "Progressing religious instruction within the Education and Training Bill"

- The following government departments and public bodies were consulted:
  - The Treasury; Oranga Tamariki – the Ministry for Children; Ministry of Justice; Ministry for Women; Te Puni Kōkiri; Ministry for Pacific Peoples; and Office for Disability Issues.
- The State Services Commission and the Department of the Prime Minister and Cabinet were informed.
- The Minister of Education met with the Religious Diversity Centre to inform the development of the Cabinet paper.
- The Ministry of Education consulted on guidelines on religious instruction in primary schools, which encouraged the adoption of a signed consent process. One hundred submissions were received.



## Appendix Three: Further Information Relating to Part Four

### Powers to make delegated legislation- question 4.8

#### *Regulations – Schedules*

A number of statutory provisions have been grouped into four Schedules, with the aim of converting these Schedules into regulations post the enactment of the Bill. The Bill provides for new regulation making powers where necessary, and sunset clauses for the relevant Schedules of between 12 to 24 months. The Schedules are:

- Schedule 22, “Enrolment schemes”.
- Schedule 23, “When State schools must be open”.
- Schedule 25, “Electing and co-opting board members to boards of State schools, terms of office of board members, and eligibility”.
- Schedule 26, “National student numbers”

#### *New Regulations*

There are two new regulation making powers in the Bill. The Bill enables regulations to be made which would provide for the development of enrolment schemes by the Ministry of Education, including the extent to which school boards of trustees may contribute to their design.

The Bill also enables regulations to be made for the school dispute resolution scheme, including prescribing:

- the criteria for the appointment and removal of dispute resolution panel members;
- the maximum number of panel members; and
- additional criteria for the appointment of the Chief Referee.

The Bill carries over existing regulation making powers, which have been located in one subpart for easy access.

#### *Other Instruments*

The Bill enables the Teaching Council to renew a teacher’s practising certificate where the applicant either has recent teaching experience and professional learning and development or has agreed to undertake a refresh process. The Bill extends the existing rule making powers of the Teaching Council to enable it to make rules setting out the requirements of the refresh process.

The Teaching Council’s rules are both legislative and disallowable instruments, which ensures that the rules are drafted by Parliamentary counsel and can be scrutinised by the Regulations Review Committee.

The Bill creates a mandatory Code of Conduct for school boards of trustees. The Bill specifies that the Code will be a disallowable instrument, which provides for scrutiny by the Regulations Review Committee.



# Cabinet Business Committee

## Minute of Decision

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### Education and Training Bill: Approval for Introduction

Portfolio                      Education

On 25 November 2019, the Cabinet Business Committee:

#### Background

- 1        **noted** that the Education and Training Bill s 9(2)(f)(iv)
- 2        **noted** that the Education and Training Bill:
  - 2.1        amalgamates and updates education related statutes;
  - 2.2        implements the new policies that have resulted from the education work programme;
  - 2.3        undertakes the legislative amendments that have been agreed to as part of the government's position on the final report of the Tomorrow's Schools Independent Taskforce;

#### Additional policy decisions

##### Purpose statements

- 3        **noted** that it is modern drafting practice to include purpose statements or objects clauses, as aides to interpretation, in legislation;
- 4        **agreed** to the inclusion of four purpose statements covering early childhood education, primary and secondary education, tertiary education, and international education in the Education and Training Bill;

##### Tertiary Education Strategy

- 5        **noted** that there needs to be greater clarity about the continued validity of the Tertiary Education Strategy in circumstances where there is either an explicit or implicit timeframe for its replacement;
- 6        **agreed** that the Education and Training Bill clarify that the Tertiary Education Strategy remains in place until a new Strategy is issued;

**Reviewing the operation of enrolment schemes**

- 7 **noted** that under the Education and Training Bill, responsibility for developing and consulting on school enrolment schemes has been shifted from school boards to the Secretary for Education;
- 8 **noted** that most school boards are exempted from a requirement to annually review the operation of enrolment schemes;
- 9 **agreed** that the annual review requirement be replaced, with the Secretary for Education to review enrolment schemes no later than every three years, or earlier if he or she chooses to do so;

**Physical restraint**

- 10 **noted** that the Education and Training Bill carries across the Secretary of Education's power to make rules prescribing practice and procedure relating to the use of physical restraint (the rules) (now referred to as physical force);
- 11 **noted** that the relevant clause in the Education and Training Bill has been amended to specify that the rules must include a definition of physical force;
- 12 **agreed** that the new definition of physical force be included within the rules within six months of the Education and Training Bill having been enacted;

**Education review office access to information to inform on-site reviews**

- 13 **noted** that as a matter of practice, the Education Review Office has been asking for information from applicable organisations and services prior to or between on-site reviews;
- 14 **agreed** that the Chief Review Officer may request in writing from an applicable organisation or service, or early childhood education and care service provider, information that is reasonably necessary or desirable for the conduct of on-site reviews;

**Pastoral care of international and domestic students**

- 15 **noted** that the Education and Training Bill provides for a new regulation making power enabling provisions from Part 18A, "International Students" of the Education Act 1989 (the Act) to be converted into regulations on the Bill's enactment;
- 16 **noted** that the Act is being amended through the Education (Pastoral Care) Amendment Bill to create a new legal framework for pastoral care which will cover both international and domestic tertiary students;
- 17 **agreed** to the extension of the new regulation making power to enable the provisions creating a legal framework for the pastoral care of international and domestic tertiary students, where appropriate, to be converted into regulations on the enactment of the Education and Training Bill;

**Other amendments**

- 18 **noted** that four schedules have been identified for conversion into regulations post the enactment of the Education and Training Bill;

- 19 **agreed** to the inclusion of new regulation making powers where necessary, and sunset clauses of between 12 to 24 months duration, as appropriate, for the four schedules in the Education and Training Bill;
- 20 **noted** that the Education and Training Bill creates a new objective for school boards of trustees to give effect to Te Tiriti o Waitangi/Treaty of Waitangi;
- 21 **agreed** that the commencement of the new objective for school boards of trustees to give effect to Te Tiriti o Waitangi/Treaty of Waitangi be delayed until 1 January 2021;
- 22 **noted** that the commencement of the new objective has been aligned with the beginning of the school financial year for planning and reporting purposes;

### **Amendments to previous policy decisions**

- 23 **noted** that in October 2019, the Cabinet Social Wellbeing Committee (SWC) agreed to the appointment criteria for the Chief Referee responsible for dispute resolution panels being specified in regulations [SWC-19-MIN-0154];
- 24 **noted** that the Chief Referee will need to be appointed early on after the Education and Training Bill's enactment in order to assist with the setting up of the dispute resolution panels, including the development of the related regulations;
- 25 **agree to recommend** that Cabinet rescind the previous decision referred to in paragraph 23, and instead enable the minimum criteria for the appointment of the Chief Referee to be specified in the Education and Training Bill, with any additional criteria to be specified in regulations as required;
- 26 **noted** that:
- 26.1 in September 2019, SWC agreed to amend section 105(5) of the Act to require boards of trustees 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 [SWC-19-MIN-0132];
- 26.2 in October 2019, SWC agreed to update the definition of "give notice" in section 11B of the Act so that the various notices given during the operation of a scheme can be given through any means including, but not limited to, publication in local newspapers [SWC-19-MIN-0154];
- 27 **noted** that school boards should not be required to use newspapers, an outdated means of communication, to publish either notices of casual vacancies or notices associated with the operation of enrolment schemes;
- 28 **noted** that the Minister of Education proposes to rescind the decisions referred to in paragraph 26 above because they incorrectly maintain the current position of requiring that notification be made through a newspaper;
- 29 **agreed to recommend** that Cabinet rescind the decisions referred to in paragraph 26 above;
- 30 **agreed** that a school board be required, in the instances of notices associated with casual vacancies and the operation of enrolment schemes, to choose the most appropriate means of communicating to its school community and any other affected parties in the wider local community;

**Legislative matters**

- 31 **noted** that the decisions with drafting implications are subject to Parliamentary Counsel Office direction as to how best to express these in legislation;
- 32 **noted** that the approval of the Education and Training Bill is subject to Parliamentary Counsel Office making drafting changes prior to introduction to ensure that the policy approvals are given best effect and to improve the formulation of provisions carried into the Bill from existing legislation;
- 33 **approved** the Education and Training Bill [PCO 21113/10.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 34 **agreed** that the Education and Training Bill be introduced on 2 December 2019;
- 35 **agreed** that the government propose that the Education and Training Bill be:
- 35.1 referred to the Education and Workforce committee for consideration;
- 35.2 enacted as soon as possible after it is reported back to the House of Representatives.

Vivien Meek  
Committee Secretary

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**Present:**

Rt Hon Winston Peters (Chair)  
Hon Kelvin Davis  
Hon Grant Robertson  
Hon Phil Twyford  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Andrew Little  
Hon Carmel Sepuloni  
Hon Dr David Clark  
Hon Nanaia Mahuta  
Hon Tracey Martin  
Hon James Shaw

**Officials present from:**

Department of the Prime Minister and Cabinet

**Hard-copy distribution:**

Minister of Education



# Cabinet

## Minute of Decision

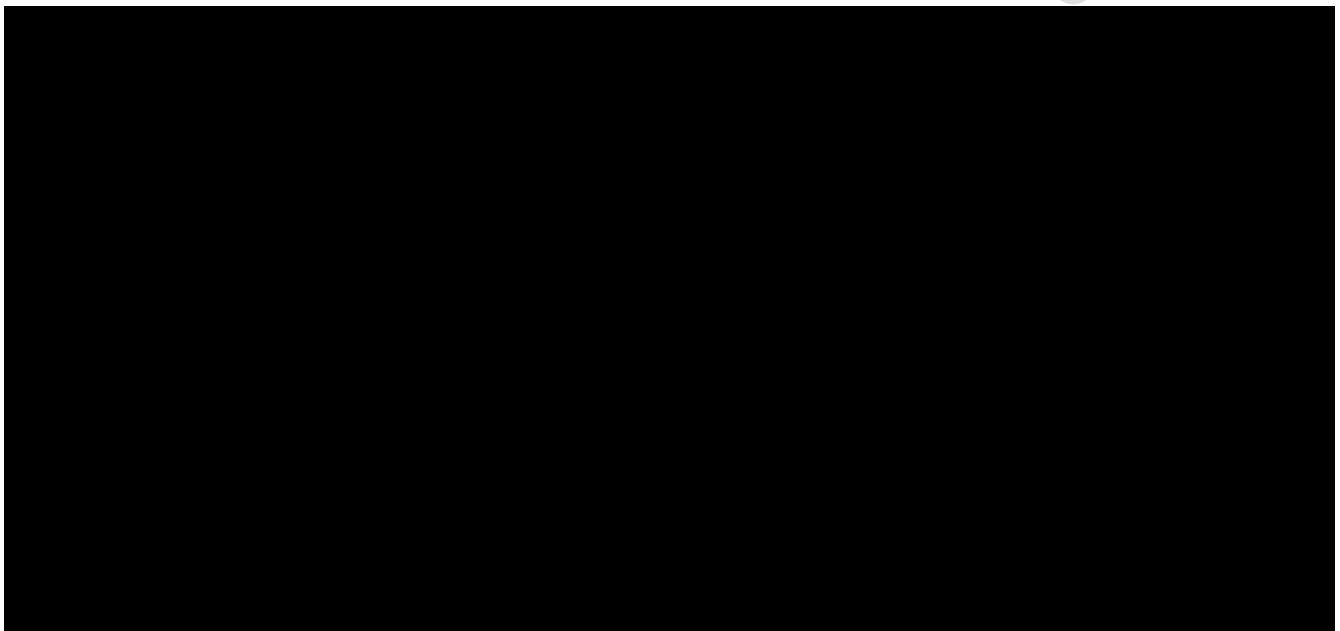
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### Report of the Cabinet Business Committee: Period Ended 29 November 2019

On 2 December 2019, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 29 November 2019:



CBC-19-MIN-0046    **Education and Training Bill: Approval for Introduction**  
Portfolio: Education

Separate minute:  
CAB-19-MIN-0631.02

Michael Webster  
Secretary of the Cabinet

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**Hard-copy distribution:**  
Cabinet Business Committee



# Cabinet

## Minute of Decision

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### Education and Training Bill: Approval for Introduction

Portfolio                      Education

On 2 December 2019, following reference from the Cabinet Business Committee, Cabinet:

#### Background

- 1        **noted** that the Education and Training Bill holds a s 9(2)(f)(iv) [REDACTED]
- 2        **noted** that the Education and Training Bill:
  - 2.1        amalgamates and updates education related statutes;
  - 2.2        implements the new policies that have resulted from the education work programme;
  - 2.3        undertakes the legislative amendments that have been agreed to as part of the government's position on the final report of the Tomorrow's Schools Independent Taskforce;

#### Additional policy decisions

##### Purpose statements

- 3        **noted** that it is modern drafting practice to include purpose statements or objects clauses, as aides to interpretation, in legislation;
- 4        **agreed** to the inclusion of four purpose statements covering early childhood education, primary and secondary education, tertiary education, and international education in the Education and Training Bill;

##### Tertiary Education Strategy

- 5        **noted** that there needs to be greater clarity about the continued validity of the Tertiary Education Strategy in circumstances where there is either an explicit or implicit timeframe for its replacement;
- 6        **agreed** that the Education and Training Bill clarify that the Tertiary Education Strategy remains in place until a new Strategy is issued;

**Reviewing the operation of enrolment schemes**

- 7 **noted** that under the Education and Training Bill, responsibility for developing and consulting on school enrolment schemes has been shifted from school boards to the Secretary for Education;
- 8 **noted** that most school boards are exempted from a requirement to annually review the operation of enrolment schemes;
- 9 **agreed** that the annual review requirement be replaced, with the Secretary for Education to review enrolment schemes no later than every three years, or earlier if he or she chooses to do so;

**Physical restraint**

- 10 **noted** that the Education and Training Bill carries across the Secretary of Education's power to make rules prescribing practice and procedure relating to the use of physical restraint (the rules) (now referred to as physical force);
- 11 **noted** that the relevant clause in the Education and Training Bill has been amended to specify that the rules must include a definition of physical force;
- 12 **agreed** that the new definition of physical force be included within the rules within six months of the Education and Training Bill having been enacted;

**Education review office access to information to inform on-site reviews**

- 13 **noted** that as a matter of practice, the Education Review Office has been asking for information from applicable organisations and services prior to or between on-site reviews;
- 14 **agreed** that the Chief Review Officer may request in writing from an applicable organisation or service, or early childhood education and care service provider, information that is reasonably necessary or desirable for the conduct of on-site reviews;

**Pastoral care of international and domestic students**

- 15 **noted** that the Education and Training Bill provides for a new regulation making power enabling provisions from Part 18A, "International Students" of the Education Act 1989 (the Act) to be converted into regulations on the Bill's enactment;
- 16 **noted** that the Act is being amended through the Education (Pastoral Care) Amendment Bill to create a new legal framework for pastoral care which will cover both international and domestic tertiary students;
- 17 **agreed** to the extension of the new regulation making power to enable the provisions creating a legal framework for the pastoral care of international and domestic tertiary students, where appropriate, to be converted into regulations on the enactment of the Education and Training Bill;

**Other amendments**

- 18 **noted** that four schedules have been identified for conversion into regulations post the enactment of the Education and Training Bill;
- 19 **agreed** to the inclusion of new regulation making powers where necessary, and sunset clauses of between 12 to 24 months duration, as appropriate, for the four schedules in the Education and Training Bill;



- 20 **noted** that the Education and Training Bill creates a new objective for school boards of trustees to give effect to Te Tiriti o Waitangi/Treaty of Waitangi;
- 21 **agreed** that the commencement of the new objective for school boards of trustees to give effect to Te Tiriti o Waitangi/Treaty of Waitangi be delayed until 1 January 2021;
- 22 **noted** that the commencement of the new objective has been aligned with the beginning of the school financial year for planning and reporting purposes;

### Amendments to previous policy decisions

- 23 **noted** that in October 2019, the Cabinet Social Wellbeing Committee (SWC) agreed to the appointment criteria for the Chief Referee responsible for dispute resolution panels being specified in regulations [SWC-19-MIN-0154];
- 24 **noted** that the Chief Referee will need to be appointed early on after the Education and Training Bill's enactment in order to assist with the setting up of the dispute resolution panels, including the development of the related regulations;
- 25 25.1 **rescinded** the previous decision referred to in paragraph 23 above, and instead
- 25.2 **agreed** to enable the minimum criteria for the appointment of the Chief Referee to be specified in the Education and Training Bill, with any additional criteria to be specified in regulations as required;
- 26 **noted** that:
- 26.1 in September 2019, SWC agreed to amend section 105(5) of the Act to require boards of trustees 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 [SWC-19-MIN-0132];
- 26.2 in October 2019, SWC agreed to update the definition of "give notice" in section 11B of the Act so that the various notices given during the operation of a scheme can be given through any means including, but not limited to, publication in local newspapers [SWC-19-MIN-0154];
- 27 **noted** that school boards should not be required to use newspapers, an outdated means of communication, to publish either notices of casual vacancies or notices associated with the operation of enrolment schemes;
- 28 **noted** that the Minister of Education proposes the decisions referred to in paragraph 26 above be rescinded because they incorrectly maintain the current position of requiring that notification be made through a newspaper;
- 29 **rescinded** the decisions referred to in paragraph 26 above;
- 30 **agreed** that a school board be required, in the instances of notices associated with casual vacancies and the operation of enrolment schemes, to choose the most appropriate means of communicating to its school community and any other affected parties in the wider local community;

### Legislative matters

- 31 **noted** that the decisions with drafting implications are subject to Parliamentary Counsel Office direction as to how best to express these in legislation;

- 32 **noted** that the approval of the Education and Training Bill is subject to Parliamentary Counsel Office making drafting changes prior to introduction to ensure that the policy approvals are given best effect and to improve the formulation of provisions carried into the Bill from existing legislation;
- 33 **approved** the Education and Training Bill [PCO 21113/10.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 34 **agreed** that the Education and Training Bill be introduced on 2 December 2019;
- 35 **agreed** that the government propose that the Education and Training Bill be:
- 35.1 referred to the Education and Workforce committee for consideration;
- 35.2 enacted as soon as possible after it is reported back to the House of Representatives.

Michael Webster  
Secretary of the Cabinet

***Secretary's Note:** This minute replaces CBC-19-MIN-0046. Cabinet agreed to the recommendations from CBC in paragraphs 25 and 29 to rescind previous Cabinet decisions*

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**Hard-copy distribution:**

Prime Minister  
Deputy Prime Minister  
Minister of Education