

Departmental Disclosure Statement

Education Amendment Bill

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.

30 January 2018

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Part One: General Policy Statement

The Education Amendment Bill (the **Bill**) amends the Education Act 1989 and the related Education (Update) Amendment Act 2017. The public policy objectives of the Bill are to:

- strengthen the quality of schooling education by removing the provisions relating to national standards and the partnership school model from legislation:
- improve the governance of tertiary education institutions by restoring places for staff and students on their councils:
- support the introduction of fees-free tertiary education, by creating a new offence of making a false representation in relation to an application for fees-free tertiary education:
- improve the new strategic planning and reporting framework for State and State integrated schools and enable a smooth transition to the new regime:
- resolve a number of errors and omissions in the Education Act 1989 and the Education (Update) Amendment Act 2017, and to address minor and technical issues in the Education Act 1989.

The Education Act 1989 allows the Minister to set national standards for student achievement through a *Gazette* notice. Schools have been required to report against these to parents and the Secretary for Education. Reporting beyond a focus on literacy and numeracy, which would include student progress and development of competencies, provides a richer and more accurate picture of a student's education. Although the relevant *Gazette* notices have been revoked, the Bill amends the Education Act 1989 so that national standards cannot be reinstated in future. This amendment paves the way for work with experts and stakeholders to develop a new system.

The Bill removes the ability for the Minister and sponsors to contract to establish partnership schools kura hourua (also known as charter schools). This is in line with the Government's pre-election commitments. The New Zealand State school system, especially the curriculum, already has the flexibility to allow the creativity and innovation that were part of the rationale for allowing the establishment of partnership schools kura hourua.

The Bill provides transitional arrangements to allow time for negotiations about the future of those schools that are already operating.

There is no requirement under the Education Act 1989 for staff and students to be represented on the councils of universities, institutes of technology and polytechnics (**ITPs**) and wānanga. To reinstate the important role of staff and students in institutional decision making, the Bill provides guaranteed staff and student representation on the councils of all tertiary education institutions. Because ITPs have a smaller total council size, the Bill increases the maximum number of their council members from eight to ten.

There are transitional arrangements to allow for the amendment of the constitutions of tertiary education institutions and the development of appointment and election processes.

Under current settings, the Tertiary Education Commission requires some students to make statutory declarations that they have not previously accessed tertiary education above a certain level, in New Zealand or overseas. A statutory declaration can be a high compliance burden for students. In future, these students will be able to make an ordinary declaration. The Bill introduces a new offence provision for making a false representation, without reasonable excuse, in relation to an application to be considered eligible for fees-free tertiary education. The penalty is a fine of up to \$5,000.

The Education (Update) Amendment Act 2017 introduced a new strategic planning and reporting framework for State and State integrated schools. The Bill makes a number of improvements to that framework, including:

- requiring school boards of trustees to develop a strategic plan at least once every three years, or, if the Secretary for Education determines, at more frequent intervals, rather than the current four year cycle. This amendment will ensure that the timeframes are more aligned with board electoral and accountability cycles:
- enabling school boards of trustees to ask the Secretary for Education to approve significant amendments at any time:
- addressing minor technical issues, including reinstating reporting requirements that were inadvertently removed through the Education (Update) Amendment Act 2017.

Under the Education (Update) Amendment Act 2017, the provisions establishing the new strategic planning and reporting framework are to come into force no later than 1 January 2019. To enable a smooth transition to the new framework, including the development of associated regulations, the Bill postpones the commencement date to no later than 1 January 2020.

The Bill also makes a number of miscellaneous minor and technical amendments to the Education Act 1989, including the correction of cross-references.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	YES
<p>Considering Education Regulation in New Zealand, The Taskforce on Regulations Affecting School Performance, May 2014: http://www.education.govt.nz/ministry-of-education/specific-initiatives/taskforce-on-regulations-affecting-school-performance/</p> <p>Final report of the Education and Science Committee on the Education (Update) Amendment Bill, 20 March 2017: https://www.parliament.nz/resource/en-NZ/SCR_72629/828834f2affb2fdfe2c6675262f27db80fd45631</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Three regulatory impact statements have been developed:</p> <ul style="list-style-type: none"> • Repealing the Legislation Allowing for Partnership Schools Kura Hourua; Ministry of Education; 16 January 2018. • Repealing the Empowering Provision for National Standards; Ministry of Education; 16 January 2018. • Offence provision to support fees-free declarations; Ministry of Education; 16 January 2018. <p>Each of the regulatory impact statements can be found here: www.education.govt.nz/ministry-of-education/regulatory-impact-statements/education-amendment-bill-2018</p>	
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?	NO
<p>The RIA Team in the Treasury advised that independent assessment was not required for these three RISs, because the RISs did not meet the threshold for assessment.</p>	

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?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The Regulatory Impact Statement, "Repealing the Legislation Allowing for Partnership Schools Kura Hourua" (see question 2.3 above) discusses the potential costs and benefits associated with the policy to repeal the provisions allowing for partnership schools.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
The effective enforcement of the new offence provision to support fees-free declarations will require the Tertiary Education Commission to monitor/audit fees-free eligibility rules and where necessary to initiate enforcement action in relation to possible offences. This is discussed in the Regulatory Impact Statement, "Offence provision to support fees-free declarations" (see question 2.3 above).	
The costs and benefits associated with the repeal of the provisions allowing for partnership schools kura hourua will be impacted by the working through of the partnership school kura hourua contracts. This is discussed in the Regulatory Impact Statement, "Repealing the Legislation Allowing for Partnership Schools Kura Hourua" (see question 2.3 above).	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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?
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The policies to be given effect by the Education Amendment Bill do not affect New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

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?

The Ministry of Education has assessed the Bill against the principles of the Treaty of Waitangi, and the following implications have been raised regarding the proposal to restore staff and students to tertiary education institution councils:
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The proposed changes to require staff and students to be represented on TEI councils may weaken current arrangements for the active protection of mātauranga Māori and reduce the scope for iwi representative on councils due to council size restrictions. Iwi representation is critical to the principle of active protection of mātauranga Māori.
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In December 2017, the Ministry of Education wrote to the three Wānanga informing them of the proposed changes. The Ministry intends to work with the Wānanga to identify and address any issues or concerns they may have.
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Consistency with the New Zealand Bill of Rights Act 1990

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?	YES
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Advice provided to the Attorney-General by the Ministry of Justice on the Education Amendment Bill 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/ .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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The Bill creates a new offence of making a false representation in relation to an application for fees-free tertiary education.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice (MoJ) was consulted on the offence provision and expressed a preference for a higher threshold of proof of guilt, based on “knowledge or intention” in relation to a false representation. In particular, MoJ was concerned that the present formulation would potentially criminalise people who acted without knowledge or an intention to mislead the State.</p> <p>The Ministry of Education considers that the requirement for the prosecution to prove absence of reasonable excuse on the part of an applicant, together with the defendant’s ability to defend a charge on the basis of reasonable excuse (such as honest and reasonable mistake) will provide adequate safeguards to the rights of the defendant.</p> <p>The fees-free application process will make it explicit that the applicant is personally responsible for ensuring the truth and accuracy of the statements made in relation to eligibility for fees-free education, and may face prosecution for making false statements. Applicants will therefore be on notice of their obligation to take special care to ensure the accuracy of statements on matters about which the applicant will typically have both direct and personal knowledge.</p> <p>The MoJ considered that a fine of up to \$5,000 was appropriate given that the fees-free entitlement constitutes a significant financial benefit once the policy is fully rolled out.</p>	

Privacy issues

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?	YES
<p>The Bill replaces section 319B(1)(a), which provides that authorised persons may, without a warrant, enter and inspect the premises of early childhood and education and care centres. The new paragraph gives authorised persons the same powers of entry and inspection in respect of offices of a service provider associated with those premises.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Privacy Commissioner was consulted on the proposed amendment to section 319B(1)(a). No concerns were raised about this amendment.</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>Policy proposals relating to the removal of provisions relating to national standards, the repeal of provisions allowing for partnership schools kura hourua, and the reinstatement of staff and student representation on TEI councils were campaigned on during the 2017 General Election.</p> <p>Public consultation on the Update of the Education Act was held from 2 November to 14 December 2015. This included proposed changes to school strategic planning and reporting. The summary of submissions to the consultation can be found on the Ministry's website here: http://www.education.govt.nz/assets/Uploads/Summary-of-submissions-final.pdf.</p> <p>The amendments creating a new strategic planning and reporting framework for schools were set out in the Education (Update) Amendment Bill, which was the subject of consideration by the then Education and Science Committee in 2016/2017. This included consideration of oral and written submissions.</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?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

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?	NO
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Powers to make delegated legislation

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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill amends the regulation making powers in section 95 of the Education (Update) Amendment Act 2017, by including new powers to make regulations for the expiry and amendment of strategic plans and the content of annual reports.</p> <p>The regulations made under section 95 will set out the detailed requirements for the new strategic planning and reporting regime. They will be drafted by the Parliamentary Counsel Office and subject to review by the Regulations Review Committee.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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