

Departmental Disclosure Statement

Education Amendment Bill (No 2)

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.

10 August 2018

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Part One: General Policy Statement

The Education Amendment Bill No 2 (the **Bill**) amends the Education Act 1989, the Education Act 1964, and the Education (Update) Amendment Act 2017. The Bill clarifies the functions, duties and powers of specified education entities.

The public policy objectives of the Bill are to -

- ensure that the Education Council of Aotearoa New Zealand's decisions on matters relating to the teaching profession are made within the context of Government policy;
- require private schools to be a safe place for students;
- remove provisions, due to come into force on 31 December 2019, which would enable communities of online learning to be established while the future of online learning is considered in the context of wider education sector reviews;
- ensure that school boards cannot adopt a cohort entry policy that enables children to begin school as part of a cohort before the age of 5 years.

Education Council decision-making

The purpose of the Education Council of Aotearoa New Zealand is to ensure safe and high-quality leadership, teaching, and learning for children and young people in early childhood, primary, and secondary schooling. The Council has a broad range of functions, including in relation to setting standards for initial teacher education and establishing teacher registration criteria. The degree of public interest means that there needs to be some ability for the Government to influence the work of the Council on behalf of all New Zealanders and, in particular, children and young people.

The Bill will introduce a requirement that the Council consult the Minister of Education before making changes to the standards for qualifications that lead to teacher registration or to the teacher registration criteria. It will also give the Minister discretion to issue a Government policy direction relating to 1 or more functions of the Council that the Council must have regard to when performing its functions. The Government policy direction must be issued by notice in the Gazette to ensure transparency. These provisions will ensure that the public interest is protected and the Government is able to respond to Education Council proposals and decisions in a timely manner.

The provisions in this Bill complement the changes to the Education Council's composition that are being made through the Education (Teaching Council of Aotearoa) Amendment Bill. It is therefore intended that they come into force by Order in Council at the same time as the amendments in that Bill.

Including student safety in private schools' registration criteria

Minimum standards of safety for students required of State and State integrated schools should also apply to private schools. It is particularly important that the law be explicit that schools must provide a safe physical and emotional environment, given the lasting impacts that bullying and other forms of emotionally harmful behaviour in schools can have on students. The Bill provides a new registration criterion that a private school is a safe physical and emotional place for its students. This will ensure that:

- students' physical and emotional safety is considered by the Secretary for Education when assessing a private school's application for registration;
- a private school's registration may be cancelled if the Secretary has concerns about the safety of the school's students;
- the Education Review Office can review private schools' safety policies and procedures.

Communities of online learning

In 2017, the Education Act 1989 was amended by the Education (Update) Amendment Act 2017 to introduce a new regime to expand the provision of distance education through communities of online learning. The new legislative provisions allowed for distance education for part-time and

full-time tuition, and enabled accreditation of distance education provision by public or private providers through a statutory accreditation system. These provisions are repealed. This will provide further time to consider the future of online learning in New Zealand, in the context of wider education sector reviews.

Cohort entry for children over 5 years old

Before 2017, State schools were legally obliged, under the Education Act 1989, to enable children to start school, on the prerogative of parents and legal guardians, on a date on or after their fifth birthday. This is referred to as continuous entry. The Education (Update) Amendment Act 2017 enabled schools to adopt a cohort entry policy starting from term 1 in 2018. The first eligible starting date for children subject to a cohort entry policy is the first day of term closest to their fifth birthday. As a consequence, some children can currently start school with a cohort up to 2 months before their fifth birthday.

The Bill enables schools to get the benefits of cohort entry (eg, students developing beneficial relationships with other students and an improved transition into school, improved administrative continuity for schools), while at the same time ensuring that students under 5 cannot attend school. Under the proposed changes, if a school adopts a new cohort entry policy, children over 5 will be able to start school on the first day of term, or at a mid-point during a term, after they have turned 5. Having 2 starting dates per term, rather than 1, will mean –

- parents will have more flexibility about when their child starts school (8 entry points per year rather than 4):
- the Government, and parents, will not have to pay as much in fees to keep children in early childhood education while they wait for the first eligible cohort start date:
- schools in areas of high enrolment numbers will potentially have more manageable cohort sizes:
- less adjustment will be required to the supply of places in early childhood education, as providers are not retaining children in their centres as long as they would need to with 1 cohort entry point per term (4 in total per year).

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><i>Report of the Advisory Group on Early Learning</i>, Ministry of Education, 30 June 2016 recommends legislative change to introduce cohort entry for children who are at least five years old.</p> <p>https://www.education.govt.nz/assets/Documents/Ministry/consultations/Report-of-the-Advisory-Group-on-Early-Learning.pdf</p>	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory impact statements (RISs) have been developed on:</p> <ul style="list-style-type: none">• Protecting the public interest in Education Council Decision-making; Ministry of Education; 7 May 2018• Repealing communities of online learning legislation; Ministry of Education; 8 May 2018• New registration criteria for private schools requiring those schools to be a safe physical and emotional environment; Ministry of Education; 8 May 2018• Cohort entry for children aged five years and over; Ministry of Education; 22 May 2018 <p>Each of the RISs will be available at: http://www.education.govt.nz/ministry-of-education/regulatory-impact-statements/education-amendment-bill-2018-no-2</p> <p>This link will be updated to include these statements prior to the Introduction of the Bill.</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 RISs, because the RISs did not meet the threshold for assessment. Treasury allowed the Ministry of Education to use the Ministry's RIA Panel for the quality assurance of the RISs.</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
<p>In the Education Council RIS, the amendment establishing a power for the Minister of Education to direct the Council to have regard to a Government policy direction, required the direction to be presented to the House of Representatives to ensure transparency. Following further discussions after the RIS was signed off, this was amended so that rather than presenting the direction to the House, it will be published in the Gazette, which is a more straight forward process while still ensuring transparency.</p> <p>Clauses 13 and 14, which relate to Education Council decision-making, are intended to come into force on a date specified by Order in Council. This is to ensure that they come into force at the same time as amendments to the Education Act 1989 currently before the House in the Education (Teaching Council of Aotearoa) Amendment Bill.</p> <p>In respect of private school registration criteria, transitional provisions have been included in the bill to ensure that administrative processes started but not completed before the bill is enacted will not be affected by the new provisions.</p>	

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

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
<p>Non-monetarised costs and benefits relating to Education Council decision-making, private school registration, and communities of online learning amendments are discussed in the RISs. The RIS on cohort entry amendments provides information on monetarised costs and benefits.</p>	

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>As discussed in the RIS relating to Private schools, the Ministry of Education expects that most private schools already provide a safe physical and emotional environment for their students.</p>	

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?

The policies to be given effect by the Education Amendment Bill do not affect New Zealand's international obligations.

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?

Te Puni Kōkiri was consulted throughout the process of identifying the necessary amendments. Consultation on the policy proposals included information being sent to 16 Māori organisations including wānanga, other Māori education providers, the Māori Principals Association, and Te Kōhanga Reo National Trust. The policies to be given effect to by the Education Legislation Bill do not affect Māori rights or interests protected by the Treaty of Waitangi.

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

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

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

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?

NO

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>The following government departments and public bodies were consulted in the development of policy proposals: the Department of the Prime Minister and Cabinet, the Treasury, State Services Commission, Education Review Office, Ministry of Social Development, Office of Disability Issues, Ministry for Women, Te Puni Kokiri, Ministry for Pacific Peoples, Oranga Tamariki - the Ministry for Children, Ministry of Justice, Ministry of Business, Innovation and Employment, New Zealand Police, Tertiary Education Commission, New Zealand Qualifications Authority, and the Education Council.</p> <p>In March and April 2018, Targeted consultation was undertaken through discussion documents with education peak bodies, early learning centres, schools, teachers' unions, tertiary education providers and other relevant stakeholders on the following issues: Education Council decision-making, private school registration criteria, repeal of COOL provisions, ITO skills leadership. Peak education groups consulted included: the Education Council of Aotearoa New Zealand; New Zealand School Trustees Association, NZEI Te Riu Roa, Post Primary Teachers Association, Early Childhood Council, NZ Kindergartens Incorporated, Playcentre Federation of New Zealand, Te Aho o Te Kura Pounamu; New Zealand Principals' Federation, New Zealand Institutes of Technology and Polytechnics and the Industry Training Federation. Bulletins with internet links to consultation material were sent to all schools and early learning centres.</p> <p>The public had the opportunity to provide feedback on the discussion documents through the Ministry of Education website and email. Ninety-nine submissions were received across these issues.</p> <p>Separate public and sector consultation was undertaken on cohort entry reflecting the wider public interest in this issue. The Ministry of Education received 136 submissions on this issue.</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?	YES
<p>The Ministry of Social Development has been consulted on drafts of the Bill to ensure the cohort entry changes will work with their systems. Other government departments and public bodies listed above in 3.6 have been provided with an early draft of the Bill for comment over a three day period.</p>	

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
Under the Bill, the Minister has the power to issue a Government policy direction relating to the Education Council's functions, which the Council must have regard to in the performance of those functions. The Bill clarifies that the Government policy direction is neither a legislative instrument nor a disallowable instrument.	

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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