

Departmental Disclosure Statement

The Regulatory Systems (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.

8 March 2023

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Part One: General Policy Statement

The Regulatory Systems (Education) Amendment Bill is an omnibus Bill. It contains amendments to legislation administered by the Ministry of Education and the Ministry of Business, Innovation and Employment. The policy objective of the Bill is to maintain the effectiveness and efficiency of the regulatory systems established in the principal Acts that it amends.

The amendments contained within this Bill will achieve this by—

- clarifying and updating statutory provisions to give effect to the intended purposes of the Acts and their provisions, and to keep the regulatory system up to date and relevant;
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation;
- removing unnecessary compliance costs.

The education legislative framework is a complex arrangement of multiple Acts and regulations. Over time, amendments to education legislation have introduced errors and inconsistencies into the regulatory system. In addition, the regulatory system should be flexible to reflect the changing demography of our education system and communities.

The Bill is an opportunity for minor and technical amendments to be implemented across the education legislative regime. The Bill includes the following amendments:

Changes to the Pacific Education Foundation Act 1972 (PEF Act) that will enable the Pacific Education Foundation (the Foundation) to better support Pacific learners and their families. These amendments will:

- update the definition of a Pacific person who can benefit from the Foundation, so that it continues to be representative of Pacific people in New Zealand. This includes expanding the list of Pacific countries and people that are eligible for support from the Foundation to also include people of indigenous Pacific heritage and culture from: American Samoa, Federated States Micronesia, French Polynesia, Hawai'i, Nauru, Papua New Guinea, Pitcairn Island, Rabi, Rotuma, Solomon Islands, Vanuatu, and Wallis and Futuna. It also includes moving the list of Pacific countries and people from the interpretation part of the PEF Act into a schedule that can be updated from time to time by Order in Council made by the Governor General, on the recommendation of the Minister of Education. This will ensure that the list of Pacific countries can be updated more easily to reflect the diversity of Pacific peoples in Aotearoa New Zealand.
- update the purpose, makeup and constitution of the PEF Board to enable it to function more effectively and provide advice to the Minister and Ministry of Education;
- recognise the unique relationship the Crown has with New Zealand Realm Countries and the Treaty of Friendship with Samoa; and
- update the authorised expenditure of the Pacific Education Foundation;

Changes to the Ngarimu VC and 28th (Māori) Battalion Memorial Scholarship Fund Act 1945 (Ngarimu Act) to:

- Modify the functions of the Ngarimu VC and 28th (Māori) Battalion Memorial Scholarship Fund Board to recognise it as the successor of the 28th Māori Battalion (NZ) Association, for the purposes of authorising the use of words and

emblems relating to the 28th Māori Battalion and the Association under the Flags, Emblems and Names Protection Act 1981;

- Continue the legacy of the 28th (Māori) Battalion by creating a new national Māori representative position on the Ngarimu VC and 28th (Māori Battalion) Memorial Scholarship Fund Board. This position would be held by a person of Māori descent who has served or is currently serving in the New Zealand Defence Force. The intention of this amendment is to continue the mana and legacy of the 28th (Māori) Battalion by ensuring that there is a new national Māori veteran representative position on the Board.

Changes to the following regulations:

- Amending the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 to ensure that Police vetts for workers at limited attendance childcare centres are obtained before the person begins work, and that employers consider the Police vet once it is received to assess any risks to the safety of children before the worker has unsupervised access to children. This will create consistency with the Police vetting provisions in the Education and Training Act 2020 and the safety checking requirements in the Children's Act 2014.
- Amending the Children's (Requirements for Safety Checks of Children's Workers) Regulations 2015 to include an additional reference to the Kiwi Access Card to reflect the name change of the 18+ card.

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?	No
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	No
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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?	No
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	No
The Treasury's Regulatory Impact Analysis team has determined that the regulatory proposals in this Bill are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, or not-for-profit entities.	

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
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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
<p>The majority of the proposals in this Bill will have only minor impacts.</p> <p>The Amendments to the Pacific Education Foundation Act will have additional, positive benefits for Aotearoa Pacific learners and families in New Zealand.</p> <p>The updated purpose of the Pacific Education Foundation Board is expected to improve educational outcomes for Pacific learners over time as the Board provides an independent perspective on the education of Pacific peoples to the Minister and Ministry of Education and other Crown education agencies. The new annual reporting requirement will support this function of the Board.</p> <p>The update to the definition of Aotearoa Pacific peoples means that a wider cohort will be eligible for scholarships and other supports from the Foundation. Increased access to these supports and opportunities will contribute to increased positive educational outcomes. There is a risk that the wider definition may not include all intended Aotearoa Pacific peoples as Pacific communities in New Zealand change over time. This risk is mitigated by the ability to update the definition through Order in Council.</p> <p>Changes to the authorised expenditure of the Pacific Education Foundation will result in the maximum annual value that the PEF foundation can use for matters not listed in the PEF Act from \$500 to \$10,000. This would enable more flexibility for the Pacific Education Foundation in how it uses its funding to benefit Pacific learners in the future and enables the Foundation to deliver funding through other grants, as the Foundation can accept income from sources other than the Crown.</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

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?

Officials have determined that the policies to be given effect by this Bill are consistent with New Zealand's international obligations.

The proposals to update the Ngarimu VC and 28th (Māori) Battalion Memorial Scholarship Fund Act 1945 (Ngarimu Act) is consistent with articles 3 and 4 of the United Nations Declaration of the Rights of Indigenous People, by vesting the Ngarimu VC and 28th (Māori) Battalion Memorial Scholarship Fund Board increased agency and authority over the use of words and emblems relation to the 28th Māori Battalion and Association. Proposals also support Article 11 by enabling Māori to maintain and protect significant symbols of Māori history.

The proposal to require employers to obtain and assess police vets for non-teaching and unregistered employees at limited attendance childcare centres before they begin work gives effect to our obligations under Article 3 of the United Nations Convention on the Rights of the Child, which states actions concerning children should have the best interests of the child has a primary consideration. Proposals also ensures when an adverse police record is seen, action can be taken before any risk to children's safety arises.

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?

Officials have considered the impact of policies in this Bill on the rights and interests of iwi/Māori, and the Crown's obligations under the Treaty of Waitangi/Te Tiriti o Waitangi. Proposals were assessed against the three articles of the Treaty/Tiriti and its principles: Kāwanatanga/government, rangatiratanga/chieftainship, and Oritetanga/equity.

- Tranche One: The Education and Miscellaneous Matters Amendment Bill – policy approvals (tranche one). Paragraph 28 (SWC-22-MIN-0138 refers).
- Tranche Two: The Education and Miscellaneous Matter Amendment Bill – policy approvals (tranche two). Paragraphs 35-36 (SWC-22-MIN-0169 refers).
- Tranche Three: 'Changes to Education Legislation: a new framework for Wānanga and improving governance and administration of the education system – policy approvals. Appendix 4 (SWC-22-MIN-0247 refers).

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

The bill was provided to the Ministry of Justice Bill of Rights Act vetting team.

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

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

3.4.1. Was the Ministry of Justice consulted about these provisions?	Yes
<p>The Ministry of Justice has been consulted on the majority of the proposals in this Bill prior to policy approvals in 2022.</p> <p>The Ministry of Justice was then consulted on the final list of proposals in the Bill during the departmental consultation period from 24 February until 3 March. Ministry of Justice officials had no comments on the proposals included in this Bill.</p> <p>The Ministry of Justice Bill of Rights Act (BORA) team has also been consulted on these proposals.</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>This Bill will amend the requirement in the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 for limited attendance childcare centres to obtain Police vets for non-teaching and unregistered employees so that they must do so before the employee begins work. Employers will also be required to consider the Police vet once it is received to assess any risks to the safety of children before the employee has unsupervised access to children. The amendments will create consistency with the Police vetting provisions in Schedule 4 of the Education and Training Act 2020 and the safety checking requirements in the Children's Act 2014.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	Yes
<p>The Privacy Commissioner was consulted regarding the proposal to amend the Ngarimu Act to modify the functions of the Ngarimu VC and 28th (Māori) Battalion Memorial Scholarship Fund Board (the Board) to recognise it as the successor of the 28th Māori Battalion (NZ) Association (the Association). The Privacy Commissioner did not provide comments.</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?	No
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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?	Yes
<p>The changes to the Pacific Education Foundation Act includes a proposal to move the list of Pacific places which inform who is a Pacific person for the purpose of the PEF Act, from the interpretation part of the PEF Act into a Schedule. This Schedule can be updated from time to time through an Order in Council by the Governor General, on recommendation of the Minister of Education. This creates a power for the Governor General to amend the definition of Aotearoa Pacific Person in the PEF Act through an Order in Council.</p> <p>This will ensure that the list of Pacific places can be updated more easily to reflect the diversity of Pacific peoples in Aotearoa New Zealand.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	No
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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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