

In Confidence

Office of the Minister of Education

Chair, Cabinet Legislation Committee

Education Amendment Bill: Approval for Introduction

Proposal

1. I propose that the Education Amendment 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. An appropriate place for the Bill will be sought on the 2018 Legislation Programme.
3. The majority of amendments in the Bill result from Labour, New Zealand First, and the Green parties' manifesto commitments for education. The Bill also makes technical changes to the Education Act 1989, and resolves errors and omissions in the Education Act 1989 and the Education (Update) Amendment Act 2017.
4. The Bill should be introduced when the House of Representatives resumes in 2018, and enacted as soon as possible after the Education and Workforce Committee has reported back to the House of Representatives.

Policy

5. Cabinet agreement to the policies to be implemented by the Bill has been obtained (refer CBC-17-SUB-0092). The Bill to be introduced covers three substantive policy issues that were proposed by all three parties involved in the Government during the election campaign, and for which I consider there is widespread sector agreement. These are:
 - 5.1 removing the provisions for national standards;
 - 5.2 removing the provisions for partnership schools kura hourua (commonly referred to as charter schools) from the Act, and adding necessary transitional provisions;
 - 5.3 restoring guaranteed places for staff and students on councils of tertiary education institutions, and increasing the size of polytechnic councils.
6. Similarly, the Bill makes a change to support our recently introduced policy of fees-free tertiary education. The Bill introduces a new offence; that of making a false representation in relation to an application for fees-free tertiary education.

7. The Bill also makes technical changes to the Education Act 1989 and the Education (Update) Amendment Act 2017, and corrects errors and omissions, including :
 - 7.1 changing the timeframe for school boards of trustees to develop their new strategic plans from every four years to every three years, and enabling the Secretary for Education to agree different time periods for strategic plans;
 - 7.2 correcting errors and omissions in both the Education Act 1989 and the Education (Update) Amendment Act 2017, such as the correction of cross-references and the reinstatement of omitted provisions from the Crown Entities Act 2004 relating to Annual Reports prepared by school boards of trustees.
8. The policy to restore guaranteed places for staff and students on councils of tertiary education institutions, and increasing the size of polytechnic councils may be contentious, especially in light of the lack of formal consultation with the tertiary education sector outside of the election process.
9. I have now written to the Chair of each tertiary education institution council, informing them of the changes I wish to make and seeking their feedback. I have also asked senior officials to meet with the wānanga sector, as the institutions most affected by the policy to discuss the proposed changes with them and get their feedback. This will inform us of sector views and if appropriate, propose any further refinements to the Bill during the legislative process.
10. The Ministry of Education will provide information about the policies within the Bill and their rationale via its website, upon introduction of the Bill. The sector will have an opportunity to provide their views on the policies through the Select Committee.
11. Legislative action is required, because in order for the policies set out in paragraphs 5-7 above to have legal effect, changes must be made to the Education Act 1989 and related Acts.
12. An appropriate place for the Bill will be sought on the 2018 Legislation Programme.

Changes to Cabinet policy approvals

13. During the drafting of the Bill, it became clear that changes would be required to Cabinet policy approvals. These are set out below.
14. On 20 December 2017, Cabinet Business Committee, having been authorised by Cabinet to have power to act, agreed to an amendment to Part 33, "State integrated schools", to enable State integrated schools to use accrual accounting as an alternative to cash accounting [CBC-17-MIN-0092 refers]. This amendment was proposed in response to a submission on the Education (Update) Amendment Act 2017 during the select committee process. However, this change is not necessary as the existing provisions already provide the flexibility for State integrated schools to use accrual accounting. I have asked the Ministry to make sure this is clear to the sector, and the Ministry will issue

guidance to clarify that State integrated schools can use accrual accounting within the existing legislation.

15. Cabinet Business Committee also agreed to an amendment to alter revised section 87, "Annual reports", to clarify that the required content of annual reports, in particular financial statements, can be set out in regulations [CBC-17-MIN-0092 refers]. However, during the drafting process it was decided that this clarification would be more effectively achieved by an amendment to new section 118A to ensure that the regulations include "the form and contents of annual reports including financial statements".
16. Cabinet Business Committee also agreed to an amendment to section 146 to enable those partnership schools kura hourua that apply to become a designated character school to have an alternative constitution from the date of opening [CBC-17-MIN-0092 refers]. During the drafting process, it was suggested that making this a power of general application would avoid continuing use of the terms associated with partnership schools kura hourua in the substantive provisions of the Education Act 1989. Broadening the application of the power also enables it to be used for other types of schools being established. Currently, this is not an option available under the Act.

Power to act

17. Cabinet authorised the Minister of Education to make decisions on any issues of detail that arose during the drafting process without further reference to Cabinet.
18. The Ministry of Education consulted with the Ministry of Justice regarding the introduction of a new offence relating to false representations made by students applying for fees-free tertiary education. The penalty for the offence is proposed to be up to \$10,000. The Ministry of Justice thought that if the offence was characterised as 'without reasonable excuse' and did not require proof of knowledge/intention to mislead, then a \$5,000 penalty, in addition to the fee being recovered from the student, was a more appropriate level.

Impact analysis

19. A Regulatory Impact Statement (RIS) has previously been considered by Cabinet on improving planning and reporting for schools (CAB-16-MIN 0210). The changes to strategic planning and reporting made in the Bill relate directly to concepts discussed within this RIS.
20. The Regulatory Impact Analysis requirements apply to the following policies and related amendments as described in this paper:
 - removing the provisions for national standards
 - removing the provisions for partnership schools kura hourua
 - the introduction of an offence provision to support fee-free declarations.
21. A RIS on introducing an offence provision to support fees-free declarations was prepared by the Ministry of Education and accompanies this paper. The Regulatory Impact Analysis Panel considered the RIS partially met the quality assurance criteria because there had been no consultation on the creation of the new offence, it involves a significant regulatory change (a new offence),

and the new offence was not in itself a manifesto commitment. However, the Panel finds the arguments for the offence convincing.

22. RISs were prepared for repealing the provisions for national standards and partnership schools kura hourua. These accompany this paper. The Regulatory Impact Analysis Panel considered the RISs met the quality assurance criteria. While there has been no specific consultation on the amendments, they are explicit party manifesto commitments and the public's views on them are well-known.
23. Other changes made by the Bill are of a minor and technical nature and, accordingly, the regulatory impact analysis requirements do not have to be met because an exemption applies.

Changes to Cabinet policy approvals and decisions taken under power to act

24. The Ministry does not consider that an amended RIS is required for the change to Cabinet policy approvals relating to accrual accounting for state schools, annual reports, and alternative constitutions on establishment [refer to paragraphs 14 to 16 above]. The changes are of a minor and technical nature and, accordingly, the regulatory impact analysis requirements do not have to be met because an exemption applies.

Compliance

25. The Bill complies with the following:
 - 25.1 the disclosure statement requirements;
 - 25.2 the principles and guidelines set out in the Privacy Act 1993;
 - 25.3 relevant international standards and obligations; and
 - 25.4 the LAC *Guidelines on the Process and Content of Legislation* (2014 edition).
26. A disclosure statement has been prepared for the Bill.
27. The Ministry of Education has consulted with the Office of the Privacy Commissioner regarding the Bill's clarification of the scope of the search and seizure power used in the ECE sector, the Office of the Privacy Commissioner has no concerns about the clarification.
28. 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 amendments restoring staff and students to tertiary education institution councils.
29. As mentioned above, wānanga were not initially consulted on the legislative policy to require staff and students on tertiary education institution councils. The changes proposed may weaken current arrangements for the active protection of mātauranga Māori. It is possible that requiring staff and students to be on a wānanga council will result in one or more wānanga removing existing iwi representative from the council due to council size restrictions. Iwi

representation is critical to the principle of active protection of mātauranga Māori.

30. In December 2017, the Ministry of Education wrote to the wānanga informing them of the proposed changes and offering to meet with the wānanga and discuss the proposed changes. The Ministry intends to work with the wānanga to identify any issues or concerns and, if appropriate, address these during the legislative process.
31. 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 at the Committee meeting.

Consultation

32. Consultation with the Labour, New Zealand First, and Green party caucuses will occur prior to the introduction of the Bill into the House of Representatives. I have been in regular contact with representatives of New Zealand First and the Greens, as these proposals have been developed.

The Bill

33. The Treasury, the State Services Commission, the Ministry of Justice, the Tertiary Education Commission, and the Education Review Office were consulted on the draft Bill.
34. The Department of the Prime Minister and Cabinet was informed of the draft Bill.
35. The key elements of the proposed bill were widely discussed by Labour, New Zealand First and the Greens during the 2017 General Election Campaign. There will be further opportunities for public and sector consultation during the select committee process.

Cabinet Paper – Policy Proposals for Updating the Education Act 1989

36. The following government departments were consulted on the policy proposals for updating the Act: the Treasury and the Department of the Prime Minister and Cabinet.
37. The State Services Commission and the Ministry of Justice were informed of the policy proposals for updating the Act.

Binding on the Crown

38. The amendments in the Bill will not be binding on the Crown. This is consistent with the position regarding the Education Act 1989, which is not binding on the Crown.

Creating new agencies or amending law relating to existing agencies

39. The Bill makes a consequential amendment to the Ombudsmen Act 1975, which is required as a result of the repeal of the provisions establishing partnership schools kura hourua. The Bill also makes a consequential amendment to the Official Information Act 1982, which corrects a cross-reference. As these are consequential amendments, the Office of the Ombudsman has not been consulted on either amendment.

Allocation of decision making powers

40. Non applicable.

Associated regulations

41. Under the Education (Update) Amendment Act 2017, the Governor-General may make regulations relating to the strategic planning and reporting framework for school boards of trustees. The Bill provides for new regulation making powers, enabling the Governor-General also to make regulations for the expiry and amendment of strategic plans and the content of annual reports.
42. Given that the Bill postpones the commencement date for the new strategic planning and reporting framework (see paragraphs 46 and 47 below), the regulations, including any required in relation to the expiry and amendment of strategic plans and the content of annual reports, are not expected to be in place until mid 2019. The likely content and the size of the drafting task will be assessed as work progresses with the sector on the implementation of the new framework.

Other instruments

43. Non applicable.

Definition of Minister/department

44. Non applicable.

Commencement of legislation

45. The Bill will come into force on the day after the date of Royal Assent.
46. Part 2 of the Bill amends the delayed commencement date for the provisions in the Education (Update) Amendment Act 2017 establishing a new strategic planning and reporting framework for school boards of trustees. Under section 2 of the Act, the provisions are to come into force no later than 1 January 2019.
47. To enable a smooth transition to the new framework, including the development of associated regulations, Part 2 of the Bill postpones the commencement date to no later than 1 January 2020. The Explanatory Note sets out the reason for the postponement.

Parliamentary stages

48. The Bill should be introduced into the House of Representatives when the House resumes in 2018 and enacted as soon as possible after it is reported back to the House.
49. The Bill should be referred to the Education and Workforce Committee.

Recommendations

50. The Minister of Education recommends that the Committee:
 1. **note** that an appropriate place on the 2018 Legislation Programme is being sought for the Education Amendment Bill;
 2. **note** that the main purpose of the Bill is to update the Education Act 1989 and the Education (Update) Amendment Act 2017 in order to:
 - 2.1 remove the provisions relating to both national standards and partnership schools kura hourua schools;
 - 2.2 restore guaranteed places for staff and students on councils of tertiary education institutions, and increasing the size of polytechnic councils;
 - 2.3 introduce a new offence relating to false representations by students seeking fees-free tertiary education;
 - 2.4 change the timeframe for school boards to develop their strategic plans from every four to three years, and enable the Secretary for Education to agree to different time periods for any school strategic plan;
 - 2.5 make a number of other minor corrections and updates.
 3. **agree** to rescind the decision recorded in CBC-17-MIN-0092, to amend Part 33, "State integrated schools", to enable State integrated schools to use accrual accounting as an alternative to cash accounting;
 4. **agree** to rescind the decision recorded in CBC-17-MIN-0092, to amend revised section 87, "Annual reports", to clarify that the required content of annual reports, in particular financial statements, can be set out in regulations;
 5. **agree** to revise the decision recorded in CBC-17-MIN-0092 to amend section 146 to enable partnership schools kura hourua that apply to become a designated character school to have an alternative constitution from the date of opening, to enable any new school established by the Minister to have an alternative constitution from the date of opening;
 6. **approve** the Education Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

7. **note** that the Education Amendment Bill is approved subject to Parliamentary Counsel making minor drafting changes prior to introduction that do not change the effect of any provision;
8. **agree** that the Bill be introduced when the House of Representatives resumes in 2018;
9. **agree** that the government propose that the Bill be:
 - 9.1 referred to the Education and Workforce committee for consideration; and
 - 9.2 enacted as soon as possible after it is reported back to the House of Representatives.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education