

Cabinet Paper material Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
Name of package Education Amendment Bill (No 2) – Supplementary Order Papers - SWC
Date considered 25 March 2019

These documents have been proactively released:

Education Amendment Bill (No 2) – Supplementary Order Papers

Date considered: 20 March 2019

Author: Ministry of Education

Social Wellbeing Committee Minute – SWC-19-MIN-0021

Date considered: 20 March 2019

Author: Cabinet Office

Cabinet Minute – CAB-19-MIN-0110

Date considered: 25 March 2019

Author: Cabinet Office

Material redacted

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.

In Confidence

Office of the Minister of Education
Chair, Cabinet Social Wellbeing Committee

Education Amendment Bill (No 2) – Supplementary Order Papers

Proposal

- 1 This paper seeks approval to issue drafting instructions for one or more Supplementary Order Papers (SOPs) to amend the Education Amendment Bill (No 2) (the Bill) which is currently before the House. The SOP will amend the Education (Update) Amendment Act 2017 (Update Act) to delay the commencement of the planning and reporting framework for school boards of trustees (including transitional provisions), will resolve a drafting error in the Bill, and will amend the process for changing the names of New Zealand universities.

Executive Summary

- 2 The Education Amendment Bill (No 2) is currently being considered by the Education and Workforce Committee, which is due to report the Bill back to the House on 27 March 2019. I am proposing to use this Bill as a vehicle to delay the commencement date for the new school board planning and reporting framework, and to change the process for changing the names of universities. I propose these changes be given effect through one or more SOPs.
- 3 The Education (Update) Amendment Act 2017 (Update Act) created a new planning and reporting framework for boards of State and State integrated schools, with a 1 January 2019 commencement date. This date was subsequently extended to 1 January 2020 through the Education Amendment Act 2018. Regulations are required to give full effect to the new framework.
- 4 I had intended that regulations would be made by September 2019 but I now consider there are risks with proceeding with those regulations, and giving effect to the new framework, while more fundamental change to the schooling system is being considered.
- 5 I therefore propose to extend the commencement of the planning and reporting provisions to 1 January 2023. The existing planning and reporting provisions in the Education Act 1989 will remain until that time, and regulations can be prepared and consulted on when future schooling structures are known. A commencement date of 1 January 2023 is my preferred start date to align with the school boards' election cycle.
- 6 As a consequence of changing the planning and reporting commencement date, I also propose a change to the relevant dates for transitional provisions and the commencement date for making planning and reporting regulations.
- 7 Clause 19 of the Bill specifies that three provisions in the Update Act (sections 22, 25 and 98) come into force on 1 January 2019; a now retrospective date. I propose that clause 19

be amended to provide that the relevant provisions come into force on the day after the Bill receives Royal assent.

- 8 There has been significant community concern about the robustness of the process for changing the name of a university, which was highlighted when Victoria University of Wellington sought to change its name. I too have been concerned about this process. I therefore propose amending the Education Act 1989 to require a university name change to be subject to approval by the House of Representatives.

Background

Education Amendment Bill (No 2)

- 9 The Education Amendment Bill (No 2) was introduced into the House on 13 September 2018. The Bill amends the Education Act 1989, the Education Act 1964, and the Education (Update) Amendment Act 2017. This Bill clarifies the functions, duties, and powers of specified education entities. The objectives of the Bill are to:
 - 9.1 ensure that Teaching Council of Aotearoa New Zealand's decisions on matters relating to the teaching profession are made within the context of Government policy;
 - 9.2 require private schools to be physically and emotionally safe places for students by adding a new criteria for the registration of private schools;
 - 9.3 remove provisions, due to come into force on 31 December 2019, that would enable communities of online learning (COOL) to be established while the future of online learning is considered in the context of wider education sector reviews; and
 - 9.4 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 five years and requires a cohort entry policy to specify that students may start on the first day of term or at a mid-term date specified by the Minister of Education.
- 10 The Bill is being considered by the Education and Workforce Committee. The Committee is due to report the Bill back to the House on 27 March 2019.

Amendments proposed by Supplementary Order Paper (SOP)

- 11 The following amendments are proposed to the Bill by SOP:
 - 11.1 delaying the commencement date in the Education (Update) Amendment Act 2017 (Update Act) relating to school boards' planning and reporting. This also requires consequential changes to the current transitional provisions, and the date that regulation-making provisions come into force;
 - 11.2 amending clause 19 of the Bill to replace an expired commencement date for sections 22, 25 and 98 of the Update Act, to ensure that they commence on the day after the Bill receives Royal assent;
 - 11.3 amending the process for changing a university's name under section 162(5) of the Education Act 1989 to make the change subject to resolution by the House of Representatives.

Delaying the commencement of the new planning and reporting framework

- 12 I propose that the commencement date for the new planning and reporting framework be changed from 1 January 2020 to 1 January 2023. This will require amendments to the Bill by SOP to change the commencement date and, as a consequence, to change transitional provisions in line with the new date.

Changes to the school board planning and reporting framework

- 13 A new planning and reporting framework became law in the Education (Update) Amendment Act 2017. This new framework is due to come into effect on 1 January 2020.
- 14 Under the new framework, school boards will need to prepare: a three-year strategic plan; an annual implementation plan giving effect to the strategic plan, and an annual report to the Ministry and Auditor-General.
- 15 To give full effect to the new framework, regulations are required to specify the detail of when the new strategic plans, annual implementation plans and annual reports need to be prepared, what information they must contain and the process to be used by boards for producing them.

Risks with proceeding with the new planning and reporting framework

- 16 I had originally intended that regulations would be made by September 2019. This timing would ensure schools have certainty about the new requirements before the new framework was due to commence on 1 January 2020. To develop any new regulations on planning and reporting, consultation would be required with school boards, other school leaders, students and parents, education peak bodies and school communities. Boards would need to develop their strategic and annual plans in 2020, consult their communities, and have them approved in December 2020 in time for them to take effect from 1 January 2021.
- 17 I am concerned that proceeding with planning and reporting regulations at this time, and maintaining a 1 January 2020 commencement date for the new framework to take effect, may give rise to questions from the schooling sector as to why we are making changes to the planning and reporting framework while more fundamental change to the schooling system is being considered. For example, the Tomorrow School's Taskforce recommended wide-ranging changes to schools' governance, including school boards' function, form and composition. The extent of the Taskforce recommendations on school governance was not known when the date for planning and reporting, was introduced and considered by the House.
- 18 There are also potential risks associated with adding an additional consultation process on proposed regulations on to the list of matters we already need to consult on this year, including the National Certificate of Educational Achievement Review and the Tomorrow's Schools review. Further consultation on planning and reporting regulations will impose additional administrative costs on schools and their boards if they chose to participate. They may also perceive an additional compliance burden if new regulations were made

because some changes to how boards develop their plans and engage with their communities would be required.

- 19 I have considered proceeding with light-handed regulations with targeted consultation this year. In addition to the consultation burden, I am concerned that this approach may also make it more difficult in the future to get sector buy-in if we were to develop and implement more detailed regulations to achieve a step-change in planning and reporting, once the Government's response to the review of Tomorrow's Schools is determined.
- 20 The proposal to change the commencement date for the planning and reporting provisions from 1 January 2020 to 1 January 2023 will provide time for boards to operate on a business as usual basis during a period of change. A commencement date of 2023 will also align with the school board electoral cycle.
- 21 A change in the commencement date will require consequential changes to the current transitional provisions in the Update Act to align with the new date. I also propose a change to the date that regulation-making powers come into force from 1 January 2020 to the day after the Bill receives its Royal assent. I do not consider that there is good reason to delay the commencement of this provision.

Proposal relating to commencement of the planning and reporting framework

- 22 To achieve the proposed changes, I propose an SOP that amends:
 - 22.1 Section 2(5) of the Update Act to change the commencement date for sections [41\(2\) and \(5\)](#), [43](#), [60](#), [68](#), and [158\(2\)](#) from 1 January 2020 to 1 January 2023 or such earlier date as appointed by the Governor-General by Order in Council;
 - 22.2 Clauses 7(2A) and 7(2B) of Schedule 2 of the Update Act so that boards' 2022 charters have the effect of being their first strategic plan; and
 - 22.3 Section 2(5) of the Update Act to provide that the regulation-making powers inserted by section 95 of that Act come into force on the day after the Education Amendment Bill (No 2) receives its Royal assent.

Technical amendment to clause 19 of the Bill specifying a new commencement date

- 23 Clause 19 of the Bill specifies that sections 22, 25 and 98 of the Update Act come into force on 1 January 2019. I propose to amend clause 19 of the Bill to replace the now retrospective date, with sections 22, 25 and 98 to commence on the day after the Bill receives Royal assent.

Amending the process for changing a university's name under the Education Act 1989

- 24 I am concerned about the process by which the names of New Zealand universities can be changed. This concern was precipitated with the process undertaken by the Victoria University of Wellington council when it sought a name change in 2018.
- 25 At present the name change process for an institution is set out in section 162(5) of the Education Act 1989 as follows:

"The Minister [of Education] may, on the recommendation of the council of the institution concerned, change the name of an institution by notice published in the *Gazette*."

- 26 In my view, it is appropriate to make the process for a university name change more robust by giving the decision-making authority to the House of Representatives, rather than the Minister. This will align the process for a university name change with the higher bar required for the disestablishment of universities compared to other tertiary education institutions (TEIs) in section 164 of the Education Act 1989. I consider that the current name change process in section 162(5) of the Act is sufficient for TEIs other than universities.
- 27 I propose that the Education Act 1989 be amended as follows:
- 27.1 to ensure that section 162(5) of the Education Act 1989 no longer applies to changing the name of New Zealand universities but only to other institutions;
 - 27.2 add a new subsection which applies only to universities, which sets out a new process. If a university wishes to change its name, it must notify the Minister in writing of its proposal;
 - 27.3 the Minister must present the proposal by way of resolution to the House of Representatives;
 - 27.4 the House of Representatives approves or declines the proposed name change by resolution of the House; and
 - 27.5 if the House passes a resolution approving the name change, the Minister issues a Gazette notice to that effect.

Next steps

- 28 Should Cabinet agree, I will arrange for the issue of drafting instructions to amend the Education Amendment Bill (No 2). I intend to seek the Cabinet Legislation Committee's agreement in April 2019 to the SOPs and for me tabling them in the House in time for them to be considered by the Committee of the whole House.

Consultation

- 29 The Treasury, 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, Department of Corrections, New Zealand Police, Education Review Office, Tertiary Education Commission, New Zealand Qualifications Authority and the Teaching Council of Aotearoa New Zealand, were consulted on this paper. The State Services Commission and Department of the Prime Minister and Cabinet were informed.

Financial Implications

- 30 There are no financial implications associated with these proposals.

Human Rights

- 31 There are no human rights implications associated with this paper.

Legislative Implications

- 32 One or more SOPs will be required to implement the proposals in this paper. I anticipate that the SOPs will be considered by the Committee of the whole House when it considers the Education Amendment Bill (No 2).

Impact Analysis

- 33 The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this Cabinet paper relating to:
- 33.1 Extending the school board planning and reporting date and other proposed amendments are exempt from the requirement to provide a Regulatory Impact Assessment (RIA) on technical grounds because they provide solely for the commencement of existing legislation or legislative provisions; and
 - 33.2 The process to change university names are exempt from the requirement to provide an RIA as they have no or minor impacts on businesses, individuals or not for profit entities.

Gender Implications

- 34 There are no gender implications associated with this paper.

Disability Perspective

- 35 The disability community has not been consulted on these proposals because they are largely technical and do not change the status quo in relation to the ability to access education.

Proactive Release

- 36 I intend to proactively release this Cabinet paper subject to redaction as appropriate under the Official Information Act 1982.

Publicity

- 37 I intend to announce these proposals after Cabinet approves the drafting of the SOPs.

Recommendations

- 38 The Minister of Education recommends that the Committee:

- 1 **note** that the Education Amendment Bill (No 2) is currently being considered by the Education and Workforce Committee, and is due to be reported back to the House on 27 March 2019

Extending the commencement of the new planning and reporting framework

- 2 **note** that the Education (Update) Amendment Act 2017 creates a new planning and reporting framework for school boards, which has a current commencement date of 1 January 2020

- 3 **note** that, to give effect to the new framework, regulations are required to specify the detail of when the new strategic plans, annual implementation plans and annual reports need to be prepared, what information they must contain and the process to be used by school boards for producing them
- 4 **note** that I had originally intended that regulations would be made by September 2019 but I now consider there are risks with proceeding with planning and reporting regulations while more fundamental change to the schooling system is being considered by the Government
- 5 **note** that I propose, through a supplementary order paper (SOP) to the Education Amendment Bill (No 2), a change to the commencement date for the new planning and reporting framework from 1 January 2020 to 1 January 2023 and consequential changes to the current transitional provisions and the commencement date for regulation-making powers
- 6 **agree** to the issue of drafting instructions for an SOP to amend:
- 6.1 Section 2(5) of the Education (Update) Amendment Act 2017 to change the commencement date for sections [41\(2\) and \(5\)](#), [43](#), [60](#), [68](#), and [158\(2\)](#) from 1 January 2020 to 1 January 2023 or such earlier date as appointed by the Governor-General by Order in Council;
- 6.2 Clauses 7(2A) and 7(2B) of Schedule 2 of the Education (Update) Amendment Act 2017 to provide transitional arrangements consequential to the change in the commencement date discussed in 6.1 above; and
- 6.3 Section 2(5) of the Education (Update) Amendment Act 2017 to provide that the regulation-making powers, inserted by section 95 of that Act, come into force on the day after the date that the Education Amendment Bill (No 2) receives its Royal assent

Technical amendment to clause 19 of the Bill specifying a new commencement date

- 7 **note** that clause 19 of the Education Amendment Bill (No 2) provides that sections 22, 25 and 98 of the Education (Update) Amendment Act 2017 come into force on 1 January 2019
- 8 **agree** to the issue of drafting instructions for an SOP to change the commencement date for sections 22, 25 and 98 of the Education (Update) Amendment Act 2017 so that they come into force on the day after the date that the Education Amendment Bill (No 2) receives Royal assent

Amending the process for changing a university's name under the Education Act 1989

- 9 **note** that I am concerned about the process for changing the name of New Zealand universities
- 10 **agree** to the issue of drafting instructions for an SOP to amend the Education Act 1989, as follows:
- 10.1 To ensure that section 162(5) of the Education Act 1989 no longer applies to changing the name of New Zealand universities but only to other institutions;

- 10.2 Add a new subsection which applies only to universities, which sets out a new process. If a university wishes to change its name, it must notify the Minister in writing of its proposal;
- 10.3 The Minister must present the proposal by way of resolution to the House of Representatives;
- 10.4 The House of Representatives approves or declines the proposed name change by resolution of the House; and
- 10.5 If the House passes a resolution approving the name change, the Minister issues a Gazette notice to that effect

Drafting

- 11 **agree** that the Parliamentary Counsel Office have discretion to draft one or more SOPs to give effect to the above recommendations, as it considers appropriate

Proactive Release

- 12 **note** that I intend to proactively release this Cabinet paper subject to redaction as appropriate under the Official Information Act 1982

Publicity

- 13 **note** that I intend to announce these proposals once Cabinet approves the drafting of the SOPs.

Authorised for lodgement
Hon Chris Hipkins
Minister of Education



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Education Amendment Bill (No 2): Supplementary Order Papers

Portfolio **Education**

On 20 March 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that the Education Amendment Bill (No 2) is currently being considered by the Education and Workforce Committee, and is due to be reported back to the House on 27 March 2019;

Extending the commencement of the new planning and reporting framework

- 2 **noted** that the Education (Update) Amendment Act 2017 creates a new planning and reporting framework for school boards, which has a current commencement date of 1 January 2020;
- 3 **noted** that, to give effect to the new framework, regulations are required to specify the detail of when the new strategic plans, annual implementation plans, and annual reports need to be prepared, what information they must contain, and the process to be used by school boards for producing them;
- 4 **noted** that the Minister of Education had originally intended that regulations would be made by September 2019, but now considers that there are risks with proceeding with planning and reporting regulations while more fundamental change to the schooling system is being considered by the government;
- 5 **noted** that the Minister of Education proposes, through a supplementary order paper (SOP) to the Education Amendment Bill (No 2), a change to the commencement date for the new planning and reporting framework from 1 January 2020 to 1 January 2023 and consequential changes to the current transitional provisions and the commencement date for regulation-making powers;
- 6 **agreed** to the issue of drafting instructions for an SOP to amend:
 - 6.1 Section 2(5) of the Education (Update) Amendment Act 2017 to change the commencement date for sections [41\(2\) and \(5\)](#), [43](#), [60](#), [68](#), and [158\(2\)](#) from 1 January 2020 to 1 January 2023 or such earlier date as appointed by the Governor-General by Order in Council;
 - 6.2 Clauses 7(2A) and 7(2B) of Schedule 2 of the Education (Update) Amendment Act 2017 to provide transitional arrangements consequential to the change in the commencement date discussed in 6.1 above; and

- 6.3 Section 2(5) of the Education (Update) Amendment Act 2017 to provide that the regulation-making powers, inserted by section 95 of that Act, come into force on the day after the date that the Education Amendment Bill (No 2) receives its Royal assent;

Technical amendment to clause 19 of the Bill specifying a new commencement date

- 7 **noted** that clause 19 of the Education Amendment Bill (No 2) provides that sections 22, 25 and 98 of the Education (Update) Amendment Act 2017 come into force on 1 January 2019;
- 8 **agreed** to the issue of drafting instructions for an SOP to change the commencement date for sections 22, 25 and 98 of the Education (Update) Amendment Act 2017 so that they come into force on the day after the date that the Education Amendment Bill (No 2) receives Royal assent;

Amending the process for changing a university's name under the Education Act 1989

- 9 **noted** that the Minister of Education is concerned about the process for changing the name of New Zealand universities;
- 10 **agreed** to the issue of drafting instructions for an SOP to amend the Education Act 1989, as follows:
- 10.1 to ensure that section 162(5) of the Education Act 1989 no longer applies to changing the name of New Zealand universities but only to other institutions;
- 10.2 add a new subsection, which applies only to universities, which sets out a new process that if a university wishes to change its name, it must notify the Minister in writing of its proposal;
- 10.3 the Minister must present the proposal by way of resolution to the House of Representatives;
- 10.4 the House of Representatives approves or declines the proposed name change by resolution of the House;
- 10.5 if the House passes a resolution approving the name change, the Minister issues a Gazette notice to that effect;

Drafting

- 11 **agreed** that the Parliamentary Counsel Office have discretion to draft one or more SOPs to give effect to the above decisions, as it considers appropriate;

Publicity

- 12 **noted** that the Minister of Education intends to announce these decisions once Cabinet approves the drafting of the SOPs.

Jenny Vickers
Committee Secretary

Hard-copy distribution: (see over)

Present:

Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Chris Hipkins
Hon Andrew Little
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O'Connor
Hon Tracey Martin (Chair)
Hon Peeni Henare
Hon Willie Jackson
Hon Aupito William Sio
Hon Julie Anne Genter

Hard-copy distribution:

Minister of Education

Officials present from:

Department of the Prime Minister and Cabinet
Office of the Chair of SWC
Officials committee for SWC

Proactively Released by the Minister of Education



Cabinet

Minute of Decision

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Report of the Cabinet Social Wellbeing Committee: Period Ended 22 March 2019

On 25 March 2019, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 22 March 2019:

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| SWC-19-MIN-0021 | Education Amendment Bill (No 2): Supplementary Order Papers Portfolio: Education | CONFIRMED |
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Redactions made as content out of scope of Minister's portfolio responsibility

Michael Webster
Secretary of the Cabinet

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Cabinet Social Wellbeing Committee