

# Impact Summary: Amendment to ERO's information seeking powers

## Section 1: General information

### Purpose

The Ministry of Education (the Ministry) is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated.

Cabinet has made decisions relating to the Education and Training Bill (the Bill) including decisions relating to the power of the Chief Review Officer to request information from education organisations or services for the purposes of performing all of the functions of the Chief Review Officer under the Act [CBC-19-MIN-0046 and SWC-20-MIN-0015 refer].

In order to meet the timeframe to enable the proposed amendments to be considered by select committee along with the rest of the Bill, the Ministry was unable to complete the required regulatory analysis prior to the decisions being made. At the time Cabinet made the policy decision, the Ministry undertook to complete the regulatory analysis and report back to Cabinet.

### Key Limitations or Constraints on Analysis

ERO does not have data on the number of instances when a failure to provide information to ERO has been raised as an issue or the number of times a request has been refused. However ERO has indicated that a clear legal power to seek or request information outside of their onsite reviews is desirable to provide greater certainty and support their functions.

### Responsible Manager (signature and date):



Dr Andrea Schöllmann

Deputy Secretary

Education System Policy

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## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

Section 325 of the Education Act 1989 (the 1989 Act) sets out functions of the Chief Review Officer including that the Chief Review Officer can administer reviews, either general or relating to particular matters, of the performance of education services and give the Minister any other assistance and advice on the performance of the education services as required.

Section 327 of the 1989 Act provides that, for the purposes of enabling any functions of the Chief Review Officer to be performed, any review officer may (having given reasonable notice) enter any place (other than a dwelling house) and require any person to produce documents or information relating to an educational service that the organisation provides; or people to whom such a service is (or has been) provided.

The legislation does not currently expressly provide for ERO to request information before or outside of their on-site inspections or reviews. ERO has developed a practice of requesting information prior to on-site visits to enable better coordination, planning and desk analysis. ERO has advised that the focus in the legislation on ERO's ability to obtain information during on-site inspections and reviews has the potential to restrict ERO's ability to perform the functions of the Chief Review Officer, as providers may refuse to respond to ERO's requests. ERO does currently request information prior to and outside of onsite reviews. There is no current evidence that providers are refusing to comply with these requests for information despite there being no requirement for them to do so. However, ERO are concerned that there is potential that providers will refuse to comply with ERO requests in the future. ERO have also commented that it would be helpful to know that the legislation supports their current practice of requesting information outside of onsite reviews.

Clarifying ERO's power to request information prior to or in between on-site reviews should also help providers plan and prepare, and reduce the amount of information that providers must give ERO during on-site reviews.

ERO also noted that the Secretary for Education has powers to require information for the proper administration of the Act under section 144A of the 1989 Act, and expressed that it follows that the Chief Review Officer should also have comparable powers to discharge the statutory functions outside on-site reviews.

### 2.2 Who is affected and how?

ERO is seeking to clarify its statutory powers in relation to applicable education services, particularly its ability to request and obtain information needed to discharge the statutory functions of the Chief Review Officer. Section 325 of the 1989 Act provides that the Chief Review Officer can administer reviews, either general or relating to particular matters, of the performance of applicable organisations in relation to the applicable services they provide, and administer the preparation of reports to the Minister on the

undertaking and results of the reviews; and give the Minister any other assistance and advice on the performance of applicable organisations as required.

Clarifying ERO's power to request information outside of on-site reviews, for the avoidance of doubt, will impact education services that are reviewed by ERO, which includes Early Childhood Education providers, and State or State-integrated primary schools and secondary schools. Providers may have to spend more time outside the on-site review process locating and providing information to fulfil requests, however, the impact of this is likely to be minimal as most education services will already be providing this information as a matter of routine during on-site reviews, and most education services will already be complying with ERO requests to provide information outside of on-site reviews. There may also be an offsetting reduction in the time providers need to prepare information for onsite reviews, as less information may be required during the review period. Providers may also be able to prepare more efficiently, as they may have a better idea of the areas ERO will be focusing on during the reviews. Clarifying ERO's ability to request information outside of the onsite review period may also improve planning and administrative processes, and lead to more efficient reviews for providers by enabling them to plan and prepare, and coordinate with ERO for reviews ahead of the visit.

Providers may be concerned that, with the added certainty provided by the legislative change, there may be an increase in requests from ERO for information, beyond what they currently provide as part of the onsite review processes, increasing time and resourcing devoted to responding to ERO. We note that ERO already requests information from providers as a matter of routine. Providers do not need to provide information upon request from ERO if it is administratively burdensome because it is not compulsory to do so.

ERO has indicated that an amendment clarifying its ability to request information outside of onsite reviews, and for any of their functions, will support the administrative efficiency of its operations. For example, it will enable ERO to prepare for reviews ahead of the review visit, and determine how best to conduct their onsite review when they do visit. It will enable ERO to determine whether onsite reviews are needed in the first place, and to conduct desk analysis. Focusing reviews, and supporting ERO in accessing all the information they require to review services may increase the effectiveness and quality of ERO's reviews.

In addition, ERO has indicated that receiving information outside of on-site reviews will facilitate its current practice of undertaking surveys into particular aspects of practice across a representative sample of services, and enable ERO to undertake desk analysis prior to or in between on-site reviews, or as part of investigations into particular issues.

Facilitating more and efficient reviews and supporting ERO's practice of undertaking surveys should also benefit parents and students by strengthening the quality of reviews. Better quality reviews will help identify areas of the system where greater support is needed, inform policy decisions that will enhance the provision of education and educational outcomes for students.

### 2.3 What are the objectives sought in relation to the identified problem?

The key objective to be sought in relation to this issue is that the quality of provider reviews is enhanced, providing better information for students, parents, and policymakers, enhancing the provision of education and student outcomes.

Related objectives are to ensure that:

- ERO can effectively perform the functions of the Chief Review Officer; and
- the legislation is clear and accessible for providers and ERO regarding ERO's authority to request and obtain information.

## Section 3: Options identification

### 3.1 What options have been considered?

- *List the options and the decision criteria you used to assess them. Briefly describe their pros and cons.*

#### Decision Criteria

The options were considered in terms of the following criteria:

- Their potential to address the lack of clarity in the legislation that ERO can request information from education entities in relation to their functions under the Act at any time, and not only when they are actually onsite for a review or inspection.
- Clarity and accessibility of the law
- The time and cost impact on ERO
- The time and cost impact on education services
- The proportionality of the response to the problem identified
- Whether the option enables ERO to perform its functions in the Act effectively
- The consistency of the option with ERO's responsibilities and functions
- The ease of implementation
- The impact of the option on the performance of the review system and understanding of the quality of providers

**Option One:** the status quo: The current settings of section 327 of the 1989 Act are carried over into the Bill, which means the legislation is not clear that ERO can request information at any time, and arguably suggests that information can only be sought at the time of an onsite review process occurring. ERO will continue to request information from services outside of on-site reviews for purposes like scoping reviews, desk analysis prior or between reviews, and undertaking evaluations of particular aspects of practice across a representative sample of services, but the legislation would not explicitly support them to do so. Under the status quo, ERO is not impeded from requesting information from providers prior to or after on-site reviews. However, a disadvantage of this option is that it lacks clarity for both education services and ERO around ERO's authority to request and obtain this information. Under this option, ERO would not have the express authority it requires to undertake the functions of the Chief Review Officer.

**Option two:** Introduce a new clear provision in the legislation that expressly provides that information can be requested from service providers at any time to enable the Chief Review Officer to perform his or her functions, as long as the information requested relates to the Chief Review Officer's functions under the Act. This option would clarify that the Chief Review Officer has the authority to request any relevant information needed to enable him or her to perform his or her functions from education services at any time, including prior to or in between on-site reviews, for undertaking surveys of particular elements of education service providers. This would enable the Chief Review Officer to better perform his or her functions. The impact on education services is minimal because they are, for the most part, already complying with information requests, but they will now have certainty that ERO can request such information. This option will arguably save time and cost for both ERO and education services, as the actual onsite review time and process will be minimised. Although this power to request information would not be supported by an offence provision for failure to comply, the

incentive to provide information continues to exist, and thus is proportional to the problem this power seeks to address.

**Option three:** Give ERO the power to *require* information from education services to enable the Chief Review Officer to perform his or her functions, with a supporting offence or penalty provision for non-compliance. This is a strong option that would ensure the Chief Review Officer could obtain all the information he or she would require to perform their functions. A disadvantage of this option is that it would not be a proportionate response to the problem identified. There is no current evidence of failures to comply with information requests. Rather all that is needed to address the problem is clarity in the legislation. Education providers are already incentivised to comply with requests to provide information, and a mandatory regime could impact on the high trust relationship ERO has with education service providers, potentially creating resistance from the sector. In addition, the main group impacted by a penalty on an education service would be the children enrolled in those services.

### 3.2 Which of these options is the proposed approach?

We consider option two (clarifying ERO's power to request information at any time to enable the Chief Review Officer to perform his or her functions) to be the best option. This option best meets the criteria of addressing the lack of clarity in the legislation (that ERO can request information from education entities in relation to their functions under the Act at any time), without the disadvantages of an offence provision (ie providers don't have to supply information if it's an unreasonable burden) model as outlined in option 3.

This option addresses the problems outlined in section 2.1 above, that the legislation does not currently expressly provide for ERO to request information that is required to perform the functions of the Chief Review Officer, outside of the onsite review process. It also supports ERO's practice of requesting information prior to on-site visits to enable better coordination, planning and desk analysis to enable the performance of the functions of the Chief Review Officer. Ensuring ERO has access to the information required may result in ERO reviews being more comprehensive and efficient, giving a better understanding of the quality of education service providers.

Under this option, ERO's current practice of requesting information related to on-site visits will be recognised in legislation, enabling ERO and providers to have greater clarity regarding ERO's ability to request information relevant to performing the functions of the Chief Review Officer at any time. The time and cost impact on ERO and education services should be minimal, as this option clarifies ERO's existing ability to request information, no time is required for implementation, or a transitional plan. The option is consistent with ERO's responsibilities and functions in the Act.

## Section 4: Impact Analysis (Proposed approach)

### 4.1 Summary table of costs and benefits

Affected parties ( <i>identify</i> )	<b>Comment:</b> nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>
<b>Additional costs of proposed approach, compared to taking no action</b>		
Regulated parties - Education services	None – because it's not a compulsory change	Low
Regulators - ERO	None	Low
Wider government	N/A	
Other parties	N/A	
<b>Total Monetised Cost</b>	-	
<b>Non-monetised costs</b>	-	
<b>Expected benefits of proposed approach, compared to taking no action</b>		
Regulated parties – Education services	Ongoing – Clarifying that the Chief Review Officer can request information may help services understand ERO's authority, may reduce burden on providers of providing all information during on-site reviews, and may help providers plan.	Low
Regulators - ERO	Ongoing – This will clarify that the Chief Review Officer is able to access the information they require to perform their functions, outside of the on-site review process.	Low
Wider government	Ongoing – ERO reviews may be more comprehensive and efficient, giving a better understanding of the quality of education service providers.	Low
Other parties	Ongoing – ERO reviews may be more comprehensive and efficient, giving a better understanding of the quality of education service providers and enabling families to make informed and better decisions.	
<b>Total Monetised Benefit</b>	-	
<b>Non-monetised benefits</b>	-	Low

#### 4.2 What other impacts is this approach likely to have?

As the proposed approach is to clarify an existing power to request information, we do not anticipate that there will be other significant impacts.

There may be some resistance from education services if they perceive this as an extension of ERO's functions, but this can be mitigated through effective communications.

## Section 5: Stakeholder views

### 5.1 What do stakeholders think about the problem and the proposed solution?

Consultation took place on the initial proposal to clarify the power of the Chief Review Officer to request information relating to on-site reviews prior to or between reviews through the Select Committee submissions process for the Bill. However, no submitters focused on the provisions relating to this proposal.

No consultation on the extended proposal to clarify that the Chief Review Officer may request information to perform his or her functions has been undertaken due to time constraints.

ERO has inputted to the process.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements be given effect?

This approach will be given effect through an amendment to section 437 of the Bill, giving the Chief Review Officer a new power to request information required for the purposes of performing the Chief Review Officer's functions.

The new power to request information does not introduce a new requirement that must be enforced, and does not require time for implementation or a transitional plan.

## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

ERO will design and undertake a process of ongoing monitoring, review and evaluation of the impact of clarification of the legislation and, in consultation with stakeholders, address any issues that arise as part of its ongoing programme of methodology development

### 7.2 When and how will the new arrangements be reviewed?

All ERO methodologies, tools and approaches are subject to a regular cycle of review and improvement. ERO has embedded processes for stakeholders to respond and comment on its review processes. Any concerns raised either about the intent or delivery of its reviews are seriously considered and addressed.