

Impact Summary: Power for the Minister to identify sub-sector groupings of Private Training Establishments through Gazette notice

Section 1: General information

Purpose
<p>The Ministry of Education is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated.</p> <p>This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none">• <i>Key (or in-principle) policy decisions to be made by Cabinet/a named group of Ministers/a named Minister</i> <p>Final decisions to proceed with a policy change to be taken by or on behalf of Cabinet/a named group of Minister/a named Minister</p>
Key Limitations or Constraints on Analysis
<p>There are no limitations or constraints on the analysis.</p>
Responsible Manager (signature and date):
<p>Suzanne Townsend International Policy International Division, GAVC Ministry of Education</p>

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Ministry of Education
Quality Assurance Assessment:
Partially meets
Reviewer Comments and Recommendations:
The Ministry's quality assurance panel assessed this RIA on 2 April and assessed it as partially meets.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

At the moment, the Education Act 1989 (the Act) does not provide for the identification of sub-sectors of Private Training Providers (PTEs) beyond Community Providers of Tertiary Education (CTEP) (see CTEP provision in section 323 of the current Education and Training Bill, introduced in 2019 (<http://www.legislation.govt.nz/bill/government/2019/0193/latest/LMS202421.html>)). This is an unnecessary constraint on the government's flexibility to identify legislative sub-categories of PTE as each time the Minister of Education wants to identify a legislative sub-category, he or she must seek to change the primary legislation. This requirement is cumbersome, and involves a time-consuming process to make administrative changes that is not justified by the changes being sought or by their impact on providers, the Tertiary sector, students and the wider public. We would like, therefore, to amend the Act to introduce a more straightforward process that enables the Minister of Education to recognise new PTE sub-categories by Gazette Notice for regulatory purposes. This would strike a more appropriate balance between the regulatory process and the nature of the changes being introduced.

This issue has arisen in the context of proposals to recognise English Language Schools as a distinct PTE sub-category. Under the current legislative process, this requires the amendment of the primary legislation. The proposed new power would simplify and smooth that process in future.

The provision for CTEPs already requires that the sub-category be defined by Gazette Notice. The new power simply takes the specific identification of the sub-group out of legislation and replaces it with a general power. It leaves intact the requirement to define the sub-category by Gazette notice, following due process including consultation. While there are currently no proposals to define other sub-categories, it is quite possible that others will arise in the future (for example flight schools have asked to be regulated differently from other PTEs and a new sub-category could be beneficial if this was pursued).

2.2 Who is affected and how?

The establishment of a broader power to recognise sub-groups would remove the need for consideration by the House of proposals that can be advanced by the Minister of Education, thereby avoiding taking unnecessary time in the legislative programme.

Any sub-groups identified would be treated the same regardless of the route taken to sub-group identification (that is, whether they are identified in legislation *specifically* as is now required, or whether that recognition sits in a Gazette Notice). If we were not seeking a general power to recognise sub-groups, we would be seeking a power to recognise English language schools. We believe the expertise to determine whether or not sub-categories should be established sits in the education sector, including drawing on stakeholders themselves through consultation.

English language schools would be the first PTE sub-sector group recognised through the new power. They would not be directly impacted until a definition of the English language school sub-sector was established through Gazette notice, and then used for regulatory purposes. The English language subsector is unique in many ways (for example, most of their courses are not on the New Zealand Qualifications Framework (NZQF), and most of

them have their own quality assurance processes that are already recognised by NZQA), so it would enable regulation to recognise their uniqueness and tailor regulatory tools.

English New Zealand, the English language school peak body, has requested the status of a discrete legislative category. They would like that recognition to lead to tailored regulation. They also feel that a discrete sub-category will disassociate them from the negative reputational aspects of the PTE sector, so they see benefit in the separate label itself, even before it is used for regulatory purposes. There are some English language schools that are not members of English New Zealand. Their views would be canvassed during consultation before notice was placed in the Gazette.

Ultimately, any sub-group identified through Gazette Notice as authorised through the proposed general provision could have tailored regulatory tools and processes developed. While these unique processes are not necessarily or inherently a benefit to the defined sub-sector, the impacted PTEs would be involved through consultation in the initial definition of the sub-sector, and again when it was used to develop sub-sector-specific regulation. They would not face any greater burden than they would through general one-size-fits-all regulation and are more likely to benefit from recognition.

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

The change would facilitate the Minister's identification of PTE sub-sector groupings. There are both administrative and time benefits that give the Minister flexibility.

Section 3: Options identification

3.1 What options have been considered?

Option 1 (Status quo): continued recognition of PTE sub-groupings by the Minister of Education through changes to legislation (as with CTEPs in section 323 of the Education and Training Bill). This is cumbersome and is a time consuming legislative change process for administrative changes with no or very little benefit from House oversight and Cabinet authorisation.

This would lead to the establishment of English Language Schools as a sub-sector through a legislation change in future parallel to section 323 of the Education and Training Bill. Any subsequent sub-categories recognised would then be required to go through the same legislation change process.

Option 2 (**preferred**): The proposed option to establish a more general power for the Minister to recognise PTE sub-sector groupings through Gazette Notice removes any future requirement for legislation change for the Minister of Education to establish PTE sub-groups. This option is more efficient than option 1 and is consistent with the government's desire to have enabling legislation that puts the detail into other regulatory instruments. In impact, it is a minor technical change.

3.2 Which of these options is the proposed approach?

The proposed, preferred option (Option 2) gives the necessary flexibility and reduces burden on House time by not requiring its involvement in minor legislative change in future.

We expect that this general power would not be exercised frequently, but when the Minister of Education does wish to recognise sub-categories of PTEs, the proposed option will make that process as efficient and low-cost as possible.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Summarise the expected costs and the benefits in the form below. Add more rows if necessary.

Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie, costs or benefits additional to what would happen if no actions were taken. Note that “wider government” may include local government as well as other agencies and non-departmental Crown entities.

See <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis> for further guidance

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts
Additional costs of proposed approach, compared to taking no action		
Regulated parties	If and when regulation is changed in relation to any identified sub-categories of PTEs, thorough consultation would ensure they had input into the changes. We do not anticipate any wholesale large regulatory shifts. The sub-categories would enable subtle differentiation.	low
Regulators	In theory, there could be increased costs to regulators due to the need for tailored regulation, but they might equally face slightly reduced work load for some sub-categories.	low
Wider government		
Other parties		
Total Monetised Cost		
Non-monetised costs		low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	We know from the experience with CTEPs and English language schools that they <i>perceive</i> this recognition as a benefit in itself, before any distinct regulatory measures are identified. They then expect beneficial regulatory concessions which may or may not accrue (decisions would only be made following requisite analysis and consultation).	medium
Regulators		
Wider government	Possible savings in future in relation to avoiding the need for legislative change to establish sub-sector categories.	Low
Other parties		
Total Monetised Benefit		
Non-monetised benefits		Low
4.2 What other impacts is this approach likely to have?		
None		

Section 5: Stakeholder views

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

We have not considered stakeholder views beyond the English language sector (and the CTEP sector in the work leading to section 323). These groups have strongly supported being recognised by the Minister of Education as a PTE sub-category, and have in fact driven the process leading to their own recognition. We would engage with other sub-sectors proposed for recognition through Gazette Notice at the appropriate time, obviously before notice occurs.

English New Zealand, the peak body for English language schools, has been discussing with the Minister of Education for a number of years the need to have English language schools recognised in legislation as a discrete sub-sector. They believe it will disassociate them from some of the lower-reputational aspects of the PTE sector, particularly as it relates to international students. They also want to see separate regulatory settings for things like the Export Education Levy and the Quality Assurance processes carried out by the New Zealand Qualifications Authority.

There are some English language schools that are not members of English New Zealand. They have not been consulted. We would consult with these schools when setting a definition for English language schools and when considering any changes to regulation that would impact them.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The proposals will be implemented through the Education and Training Bill. Once the power is established in legislation, the Minister would exercise the power through Gazette Notice, and then use the defined sub-category, if and as appropriate, to adjust rules and regulations. No regulatory changes enabled by the requested new power would be introduced without consultation with the members of any proposed PTE sub-category (as is current due process).

Section 7: Monitoring, evaluation and review

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

As discussed above, we consider the requested legislative change to be a “tidy-up” of what could become unnecessarily cluttered legislation as new PTEs sub-categories are identified. We do not anticipate extensive usage of the power, so monitoring and evaluation would be minimal and the need for review infrequent. It will have been an effective change if the power is exercised. We do not at the moment anticipate any issues. It may be difficult at times to define a PTE sub-category for Gazette Notice due to conflicting stakeholder interests, but that is the case under status quo as well.

More substantive monitoring, evaluation and review would occur in relation to any regulatory changes introduced through the new sub-categories created through the exercise of the new power.

7.2 When and how will the new arrangements be reviewed?

There is no current plan for specific review, but review of the new provision would be included in the required review of all Ministry legislation under the Ministry of Education Regulatory Stewardship Strategy, which is currently in development.