

Cabinet Paper material Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
Name of package Education and Training Bill: First Tranche of Policy Approvals
Date considered 8 April 2019

These documents have been proactively released:

Cabinet Paper: Education and Training Bill – first tranche of policy approvals

Date considered: 8 April 2019

Author: Ministry of Education

Social Wellbeing Committee Minute – SWC-19-MIN 0029

Date considered: 3 April 2019

Author: Cabinet Office

Cabinet Minute – CAB-19-MIN-0139

Date considered: 8 April 2019

Author: Cabinet Office

Material redacted

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In Confidence

Office of the Minister of Education

Chair, Cabinet Social Wellbeing Committee

Education and Training Bill – first tranche of policy approvals

Proposal

- 1 This paper seeks approval to issue the first tranche of drafting instructions for an Education and Training Bill.

Executive Summary

- 2 The Education and Training Bill (the Bill) holds a **s 9(2)(f)(iv)** in the 2019 Legislation Programme.
- 3 The Bill will implement the proposed reforms identified through the education work programme. It will also consolidate, restructure and update material from the Education Acts 1989 and 1964 and include amendments from the Vocational Education Legislation Bill (currently in development) which will replace the Industry Training and Apprenticeships Act 1992. This will result in a new Education and Training Act that will replace the existing education and training legislation.
- 4 The Bill's primary focus will be to implement the proposed reforms identified through the education work programme. The secondary focus will be to consolidate, restructure and update the material from existing education legislation that is not subject to policy change arising out of the education work programme.
- 5 This first tranche of policy proposals for the Education and Training Bill supports the Bill's secondary focus and provides for those aspects of the legislation, that remain fit for purpose and that do not require policy changes, to be updated and incorporated into the new Act.
- 6 The policy changes that are proposed in this paper are largely technical and include:
 - 6.1 replacing references to forms and classes with references to year levels (with certain exceptions);
 - 6.2 replacing the continuing education provisions with new provisions that are more consistent with current practice;
 - 6.3 repealing spent and redundant provisions;
 - 6.4 clarifying the scope and purpose of provisions related to police vetting and powers of entry in relation to home-based Early Childhood Education and Care.
- 7 Later this year I will be seeking approval for more significant policy changes.

Background

- 8 The Education and Training Bill holds a s 9(2)(f)(iv) in the 2019 Legislation Programme. The Bill will implement the proposed reforms in the education work programme. It will also replace the Education Act 1989 and the Education Act 1964 (the 1989 and 1964 Acts) with a new Education and Training Act. It will include amendments in the Vocational Education Legislation Bill which will also replace the Industry Training and Apprenticeships Act 1992. Ultimately my intention is for the Education and Training Bill to replace all former education and training legislation.
- 9 The Education and Training Bill's primary focus will be the implementation of proposed reforms identified through the education work programme (for example, the review undertaken by the Tomorrow's Schools Independent Taskforce).
- 10 The secondary focus of the Education and Training Bill will be to consolidate, restructure and update the material from the 1989 and 1964 Acts, subject to policy changes resulting from the implementation of the education work programme and other policy changes arising out of the updating process. This will include significant restructuring of material and updating of language and provisions to improve accessibility and workability.
- 11 I intend to submit at least two more tranches of proposals to SWC for policy approval before seeking approval to introduce the Education and Training Bill later this year.
- 12 The second tranche of proposals require public consultation because the potential policy changes are more significant than those in this paper, and they have not been canvassed in previous public engagement. I will be seeking approval next week to release consultation material and expect to be seeking related policy approvals at the end of June.
- 13 The third tranche of proposals will include the legislative response to the final report from the Tomorrow's School's Independent Taskforce. I expect to seek those decisions in the second half of this year

Comment

- 14 This first tranche of policy proposals for the Education and Training Bill supports the Bill's secondary focus of consolidating, restructuring and updating material from the Acts. The types of changes will include updating language, restructuring provisions to a smaller number of Parts with a more coherent structure, and making improvements to improve accessibility and workability. Later this year I will be seeking approval for more significant policy changes.
- 15 Aspects of the existing legislation that I propose to carry over to the replacement Act largely unchanged include: Statement of National Education and Learning Priorities, rights to primary and secondary education, enrolment and attendance of students, teacher registration, employment and payment of salaries, the Teaching Council of Aotearoa New Zealand, tertiary students fees and loans, and Private Training Establishments.
- 16 Proposals for specific changes are outlined below.

Adult and Community Education

- 17 Adult and Community Education (ACE) has replaced what was formerly known under the 1964 Act as continuing education. ACE is now an aspect of tertiary education, and is administered within the regulatory framework in the 1989 Act. School boards of trustees are one of a range of ACE providers.
- 18 Because they are covered by the 1964 Act, school boards' authority to provide ACE and charge related fees is less clear than the authorities relating to other providers in the 1989 Act. The 1964 Act continuing education provisions are also out of date.
- 19 For the avoidance of doubt, the Bill should remove redundant continuing education provisions and give school boards of trustees express authority to be Adult and Community Education providers and to charge related fees.

References to forms and classes in the Education Act 1989

- 20 The Education Act 1989 still retains references to "forms" and "classes". This wording is outdated and will need to be updated in the Bill. Many of these references can easily be replaced with year levels. For example, section 77 of the 1989 Act obliges principals to take reasonable steps to ensure that students in form 1 and above are provided with career education and guidance. There is no problem with replacing these references with the appropriate year level reference.
- 21 However, year level references don't work in relation to the following tests, which allow students to move through, or leave, the schooling system:
 - 21.1 section 5 provides that a student must not be enrolled at a primary school if they turned 14 in a previous year or have completed the work of form 2 (or its equivalent) in the opinion of the Secretary;
 - 21.2 section 6 prevents students being enrolled at secondary school if they have not completed the work of form 2 (or its equivalent) in the opinion of the Secretary, unless the student turned 13 before 1 April in the previous year;
 - 21.3 section 9¹ provides a similar discretion for the Secretary where a student is in need of special education. This section allows the Secretary and student's parents to agree that a student can remain enrolled at primary school (despite section 5) or can enrol at a secondary school;
 - 21.4 section 22 which forbids the Secretary for Education from issuing an early leaving exemption to a student who has neither completed the work of, nor enrolled for, a class above form 2.
- 22 Year level references will not be an appropriate replacement for "the work of form 2" (i.e. the work tests) in these sections, because the modern curriculum describes levels of learning that don't necessarily align with year levels and does not prescribe a syllabus for what is to be taught at each year level.

¹ The primary policy rationale for section 9 is to provide for flexibility where the family or whānau, the school and the Ministry agree that it would benefit a student with learning support needs to stay longer at the primary or secondary school where they are enrolled.

- 23 The problem can be addressed by replacing the year level work tests in sections 5, 6, 9 and 22 with work tests related to curriculum level progress (or its equivalent). In all other aspects, the tests would remain the same i.e. the age tests would be retained and the Secretary would retain the discretion to allow a student to move, or to prevent a student from moving, through the schooling system.

Spent and redundant provisions

- 24 The Bill will repeal a number of spent and redundant provisions from the 1964 Act including the following:
- 24.1 bulk funding of early childhood education institutions - these provisions have been replaced by section 311 of the 1989 Act;
 - 24.2 regulation making power for composite schools - other regulation making powers to be carried over from the 1989 Act cover composite schools so there is unlikely to be a future need for regulations limited to composite schools
 - 24.3 teachers to take oath of allegiance – these provisions (dating back to 1914 legislation) do not appear to have been used for several decades. The repeal of the oath of allegiance for teachers was included in a Ministry of Justice bill of 2005 that addressed reform of a number of oaths. Submissions at Select Committee supported the repeal. The Bill was reported back to the House but was not carried over in 2010 and was therefore discharged.

Home-based early childhood education and care

- 25 In response to the review of home-based early childhood education and care (home-based ECE), the Cabinet Business Committee agreed on 29 January 2019 to amend the Education Act 1989 to clarify that Police vetting is required for all adults who live and/or are present in a home, and to give the Education Review Office (ERO) power to enter a home where home-based ECE is being provided (CBC-15-MIN-0002 confirmed by CAB-19-MIN-0016).
- 26 For drafting purposes, I want to clarify the purpose and scope of the above powers. The Police vetting proposal is intended to clarify that all adults living in the home need to be vetted even if they are not usually present when the ECE is being provided, i.e. it is not targeting visitors. This will fix a loophole in relation to the 1989 Act where, in some cases, vets are not being obtained for adults living in the home who are at work when the children are present. This is potentially problematic when those adults are at home for sickness or other reasons when the children are present.
- 27 The proposed power of entry for ERO will enable warrantless entry and inspection of homes where home-based ECE is being provided. The purpose of warrantless entry will be to review and evaluate curriculum delivery and health and safety performance in the home as part of conducting a wider review of the home-based ECE service provider. This will align with ERO's reviews of centre-based ECE services where ERO currently have the power under the 1989 Act to enter and inspect without a warrant.
- 28 Home-based ECE services differ from centre-based ECE services because educators work on their own, in their home, or in the home of the child. With that in mind, the focus of ERO's reviews will be to ensure that the learning environment is safe and to review and evaluate the educator's delivery of education and care. Because the power of entry

relates to a home rather than commercial premises, it will be designed to be as minimally intrusive as possible.

Next steps

- 29 I intend to submit at least two more tranches of proposals to SWC for policy approval before seeking approval to introduce the Education and Training Bill later this year.
- 30 The second tranche of proposals requires public consultation because the potential policy changes are significant and they have not been canvassed in previous public engagement. I will be seeking approval next week to release consultation material and expect to be seeking related policy approvals at the end of June 2019.
- 31 The third tranche of proposals will include the legislative response to the final report from the Tomorrow's School's Independent Taskforce. I expect to seek those decisions later this year.

Consultation

- 32 The Treasury, Ministry of Social Development, Office for Disability Issues, Ministry for Women, Te Puni Kōkiri, Ministry for Pacific Peoples, Oranga Tamariki - the Ministry for Children, Ministry of Justice, Ministry of Business Innovation and Employment, New Zealand Police, Education Review Office, Tertiary Education Commission, and New Zealand Qualifications Authority were consulted on this paper.
- 33 The State Services Commission and Department of the Prime Minister and Cabinet were informed.

Financial Implications

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

Human Rights

- 35 The proposal for ERO to enter homes to monitor home-based ECE curriculum delivery and health and safety potentially engages the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
- 36 My officials are working with the Ministry of Justice to ensure that legislative amendments giving effect to the proposals approved by Cabinet on 29 January 2019 are a proportional response to the problem of ERO not being able to effectively review and evaluate the performance of home-based ECE services in relation to the services they provide and do not unjustifiably limit any right or freedom. A final determination as to the consistency of the proposals with the New Zealand Bill of Rights Act will only be possible once the legislation has been drafted.

Legislative Implications

- 37 Legislation will be required to implement the proposal. The Education and Training Bill holds s 9(2)(f)(iv) in the 2019 Legislation Programme.
- 38 I will also be introducing a bill to implement policies reforming New Zealand's vocational education and training regime, which is to be passed this year. The amendments to the

Education Act 1989 arising from the Vocational Education Legislation Bill will be incorporated within the Education and Training Bill.

39 The Act would bind the Crown.

Impact Analysis

40 The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this Cabinet paper are exempt from the requirement to provide a Regulatory Impact Assessment as they have no or minor impacts on businesses, individuals or not for profit entities.

41 In relation to the home-based ECE proposal for a new power of entry for ERO, a regulatory impact statement accompanied the earlier Cabinet policy approvals (CBC-15-MIN-0002 confirmed by CAB-19-MIN-0016).

Gender Implications

42 There are no gender implications in relation to these largely technical amendments.

Disability Perspective

43 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.

44 Some of the more significant policy changes I expect to seek Cabinet approval for later this year may have implications for students with disabilities. The Ministry will consult the Office for Disability Issues and seek their advice on wider consultation when developing such proposals.

Proactive Release

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

Publicity

46 I intend to announce these proposals together with those from tranches 2 and 3 after Cabinet approves the introduction of the Bill.

Recommendations

47 The Minister of Education recommends that the Committee:

- 1 **note** that the Education and Training Bill (the Bill) holds s 9(2)(f)(iv) s 9(2)(f)(iv) on the 2019 Legislation Programme approved by Cabinet on 25 February 2019 (CAB-19-MIN-0049);
- 2 **note** that the Bill will replace the Education Acts 1989 and 1964 with an Education and Training Act that will implement reforms identified through the education work programme and restructure and update (including modernised language and technical changes) all the content from the 1989 and 1964 Acts;

- 3 **agree** that the restructuring and updating of the content from the 1989 and 1964 Acts will include:
 - 3.1 replacing references to forms and classes with references to year levels except in relation to sections 5, 6, 9 and 22 of the 1989 Act where the year level work tests should be replaced with tests related to curriculum level progress (or its equivalent);
 - 3.2 replacing redundant continuing education provisions with new provisions giving school boards of trustees express authority to be Adult and Community Education providers and to charge related fees;
 - 3.3 repealing spent and redundant provisions including those relating to bulk funding of early childhood education institutions, regulation making power for composite schools, and the requirement for teachers to take an oath of allegiance;
- 4 **note** in relation to home-based early childhood education and care, that the Cabinet Business Committee agreed on 29 January 2019 to amend the Education Act 1989 to clarify that Police vetting is required for all adults who live and/or are present in a home, and to give ERO power to enter a home where home-based childhood education and care is being provided (CBC-15-MIN-0002 confirmed by CAB-19-MIN-0016);
- 5 **agree** that the Bill will limit the scope of the proposed vetting change to clarifying that all adults living in the home need to be vetted, even if they are not usually present when the children are receiving early childhood education and care, and that visitors do not need to be vetted;
- 6 **agree** that the Bill will provide that the purposes of the power of entry proposed for the Education Review Office are to review and evaluate curriculum delivery and health and safety performance in the home as part of conducting a wider review of the home-based ECE service provider;
- 7 **note** that the Minister of Education will be seeking further Cabinet policy approvals for the Bill in July;
- 8 **invite** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office for an Education and Training Bill;
- 9 **authorise** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in this paper;
- 10 **note** that the recommendations with drafting implications are subject to Parliamentary Counsel's discretion concerning how best to express these in legislation.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Proactively Released by the 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 and Training Bill: First Tranche of Policy Approvals

Portfolio Education

On 3 April 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that the Education and Training Bill (the Bill) holds s 9(2)(f)(iv) on the 2019 Legislation Programme;
- 2 **noted** that the Bill will replace the Education Acts 1989 and 1964 with an Education and Training Act that will implement reforms identified through the education work programme and restructure and update (including modernised language and technical changes) all the content from the 1989 and 1964 Acts;
- 3 **agreed** that the restructuring and updating of the content from the 1989 and 1964 Acts will include:
 - 3.1 replacing references to forms and classes with references to year levels except in relation to sections 5, 6, 9 and 22 of the 1989 Act where the year level work tests should be replaced with tests related to curriculum level progress (or its equivalent);
 - 3.2 replacing redundant continuing education provisions with new provisions giving school boards of trustees express authority to be Adult and Community Education providers and to charge related fees;
 - 3.3 repealing spent and redundant provisions, including those relating to bulk funding of early childhood education institutions, regulation-making power for composite schools, and the requirement for teachers to take an oath of allegiance;
- 4 **noted** that in relation to home-based early childhood education and care, the Cabinet Business Committee agreed in January 2019 to amend the Education Act 1989 to clarify that Police vetting is required for all adults who live and/or are present in a home, and to give Education Review Office power to enter a home where home-based childhood education and care is being provided [CBC-19-MIN-0002];
- 5 **agreed** that the Bill will limit the scope of the proposed vetting change to clarify that all adults living in the home need to be vetted, even if they are not usually present when the children are receiving early childhood education and care, and that visitors do not need to be vetted;

- 6 **agreed** that the Bill will provide that the purposes of the power of entry proposed for the Education Review Office are to review and evaluate curriculum delivery and health and safety performance in the home as part of conducting a wider review of the home-based Early Childhood Education service provider;
- 7 **noted** that the Minister of Education will be seeking further Cabinet policy approvals for the Bill in July 2019;
- 8 **invited** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office for an Education and Training Bill;
- 9 **authorised** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with those in the paper under SWC-19-SUB-0029;
- 10 **noted** that the recommendations with drafting implications are subject to Parliamentary Counsel's discretion concerning how best to express these in legislation.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O'Connor
Hon Tracey Martin
Hon Aupito William Sio
Hon Julie Anne Genter
Jan Logie, MP

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Minister of Education

Officials present from:

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