MINISTRY OF EDUCATION
TE TĀHUHU O TE MĀTAURANGA

Education and Training Bill

The Education and Training Bill (the Bill) was introduced on 2 December 2019. The Bill incorporates and replaces the Education Acts of 1964 and 1989.

It also incorporates the Education (Pastoral Care) Amendment Bill and the Education (Vocational Education and Training Reform) Amendment Bill, both of which are currently going through Parliament.

The Bill is intended to make education legislation simpler and more user-friendly than the current framework.

Administrative changes

The Bill proposes to repeal and replace all major existing education and training legislation. The Bill is intended to be simpler, more user-friendly and less prescriptive than the current legislative framework.

Currently, the Education Act 1964, the Education Act 1989 and the Industry Training and Apprenticeships Act 1992 are the three main Acts that frame how our education system is run. These have been updated repeatedly over the last 55 years. This has made education legislation difficult to navigate, understand and apply.

The Bill

- introduces a new structure that is intended to follow the journey of students through education, starting with early learning, moving to schooling and then tertiary and vocational training.
- moves some prescriptive detail directly into regulations (so these provisions will not be found in the new Bill).
- moves other detailed provisions into Schedules at the end of the Bill, with "sunset clauses", meaning that they will expire after a set period of time and new regulations will need to be developed to replace them.
- retains large parts of the existing education legislation, which have been transferred into the new Bill unchanged. We've taken the opportunity to update some of the language throughout the Bill, where we can do so without changing the effect of the law itself.

A quick guide to the proposed policy changes in the Bill

In addition to being a consolidation and refresh of the education legislation, the Bill also implements a number of policy reforms. These are listed below:

ECE

New early learning licensing requirements	The Bill introduces additional requirements for new early learning service applications. The new requirements take into account the community's need, the applicant's character and licensing history, and the organisation's financial position into account when deciding whether to approve or decline an application. Applicants whose applications are declined can re-apply.
Police vetting	A clarification of the existing law makes it explicit that all adults who live in or are present in a home in which children are receiving ECE must be vetted.
Enabling the Education Review Office (ERO) to obtain information from early learning service parent entities	An early learning service provider can be either the organisation providing the service, or a company that is a subsidiary of a parent entity. Currently, however, ERO is only able to obtain information from service providers. The Bill enables ERO to enter and obtain governance and management information from parent entities where it relates to early learning services under their control.
ERO can enter a home where home-based early learning is being provided	The Bill enables ERO to enter homes where early learning is taking place to review and evaluate curriculum delivery and health and safety performance, as part of their wider review of the home-based service provider.

Schooling

Right to attend school fulltime	The Bill explicitly states the right of all enrolled students to attend school whenever the school is open. Some students and their parents and whānau have found that schools only allow them to attend part time. The Bill clarifies that all students, including students with learning support needs and disabilities, have the right to attend school for all of the hours that the school is open for instruction. The Bill also locates the different aspects of the right to a free State education together in Part 3 to make it easier to find and understand these rights.
Transition attendance plan to vary attendance hours where in a student's best interests	The Bill enables a student's parents to request and agree with the principal and the Secretary for Education to vary hours as part of a transition attendance plan where the particular needs of the student require this. The plan must be considered by all parties involved to be in the child's best interests.
New complaint and dispute resolution panels	There is a lack of a free and accessible disputes resolution process in the current schooling system. The Bill enables the establishment of new local complaint and dispute panels to hear serious school disputes where these cannot be resolved at the school level. The panels will have mediation, recommendation and decision-making functions, and will hear disputes relating to: • rights to education (including enrolment and attendance); • stand-downs, suspensions, exclusions and expulsions; • learning support, racism and other types of discrimination; • physical and emotional safety; and • physical force on a student by a teacher or other authorised employee.
Removing the requirement for the Teaching Council to audit teacher performance appraisals	The Government, PPTA and NZEI, along with the NZ School Trustees Association and the Teaching Council, have agreed to remove the requirement for teacher performance appraisals. Therefore the requirement for the appraisals to be audited by the Teaching Council is no longer needed.

Allowing teachers without satisfactory recent teaching experience to have their certificates renewed if they agree to a refresh process	Currently, teachers are unable to renew their practising certificates if they cannot demonstrate satisfactory teaching experience in the five years prior to their application. The Bill allows teachers to renew their practising certificates without meeting this criterion if they agree to a refresh process, such as a return to teaching plan or pathway approved by the Teaching Council, to ensure their knowledge and practice is up to date.
Renaming “special schools” to be “specialist schools”	Renaming “special schools” as “specialist schools” seeks to more accurately reflect the role and importance of these schools in our education system. This reflects the shift in focus from the school itself to the specialist nature of the services provided to support students with learning support needs and disabilities.
Updating the physical restraint framework	Teachers have raised concerns that the existing framework is confusing and makes them feel unable to intervene in potentially harmful situations. The changes make it clear that physical force can be used, as a last resort, to keep people safe from harm. Seclusion remains prohibited.
School principal appointment criteria	The Bill enables new eligibility criteria for appointment as a school principal to be set by the Minister of Education (or delegated authority). The criteria are to be in consultation with a range of relevant national bodies. The new criteria will assist in ensuring consistency in the skills, competencies, knowledge and expertise of principals.
Amending school board objectives	The Bill revises the objectives for school boards of trustees to: • ensure school governance is underpinned by Te Tiriti o Waitangi and relevant student rights • refocus boards on a wider range of objectives so that educational achievement is no longer the only primary objective. It is instead one of four primary objectives, alongside objectives for schools to ensure the physical and emotional safety of students and staff, that they are inclusive and cater for students with differing needs and that they give effect to Te Tiriti o Waitangi • make it clear what boards have to do to meet the revised objectives. These changes are intended to strengthen school governance and refocus schools on what matters most for learners and their whānau.

School boards to give effect to te Tiriti o Waitangi	One of the primary objectives for boards will be to give effect to Te Tiriti o Waitangi by: • working to ensure that their plans, policies and local curriculum reflect local tikanga, mātauranga Māori and te ao Māori; • taking all reasonable steps to make instruction available in tikanga and te reo Māori; and • by achieving equitable outcomes for Māori students. It is proposed that this objective take effect on 1 January 2021 rather than on the day after the Bill receives Royal assent. This will provide schools with more time to prepare for the changes and give effect to them.
Code of conduct for School Board of Trustees members	The Bill enables the Minister of Education to issue a mandatory national code of conduct for board members. This would set minimum standards of behaviour, address concerns of self-interest and bring boards into line with other education sector governing bodies.
Requiring boards to consult on rules/bylaws	The Bill provides that boards must consult their students (where appropriate), staff and school community when making rules (bylaws). This is to ensure that a school's rules are appropriate for, and supported by, its community.
Updating school board of trustees elections	The Bill provides the Minister of Education with the option of directing the Secretary for Education to appoint a commissioner, when a board of trustee election is declared invalid (to govern the school until a new board takes office). This is in addition to the Minister's current power to reinstate the previous board in the same circumstances. It also removes the requirement that casual vacancies be advertised in a local newspaper. Instead, the Bill provides that a board must notify its school community and any other affected parties in the wider local community of the vacancy.
Religious instruction to become opt-in	The Bill provides that if the board of a State primary or intermediate school chooses to close their school for religious instruction to take place, they must have students "opt-in" and ensure that the other conditions currently in the Education Act 1964 are met. This change ensures that children are only attending religious instruction with their parent or caregiver's consent. Currently, parents and caregivers need to write to the principal if they do not wish their child to attend religious instruction.

Development and consultation of school enrolment schemes	The Ministry of Education will take over the development of, and consultation on, enrolment schemes. It will administer each school's enrolment scheme from a regional perspective, based on community need. The Ministry will be required to consult schools boards when developing an enrolment scheme and must take all reasonable steps to consult the relevant school community and affected parties in the wider local community on the developed enrolment scheme.

Tertiary and International

Increased period for laying charges against institutions and private training establishments for certain student loan and allowances offences	The Bill extends the limitation period for offences relating to student loan and allowance offences to up to 12 months after MSD becomes aware of offending. This is to ensure consistency with the limitation period for prosecuting other student loans and allowances offences, and to allow sufficient time for offences to be detected, investigated and prosecuted. These offences relate to the failure, by institutions and private training establishments, to provide information or who are providing false or misleading information in response to requests.
Student loan and allowance information	The Bill allows MSD to hold social housing information in the same database as student loan and allowances information and social security benefit information.

Other changes

Te Tiriti o Waitangi – National level commitments	The Bill makes it easier for those in the education sector to understand their rights and obligations under Te Tiriti by locating in one place the key provisions in the Bill that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi. The Bill also enables the Ministers of Education and Māori-Crown relations: Te Arawhiti, after consultation with Māori, to jointly issue a statement specifying what education agencies must do to give effect to Te Tiriti o Waitangi expectations in the Public Service Legislation Bill.
Prohibiting offshore National Certificate of Education Achievement (NCEA) provision	To ensure the integrity of NCEA, the Bill proposes to prohibit the awarding of NCEA offshore, except in certain circumstances, and makes it an offence to breach the prohibition.
Te Aho o Te Kura Pounamu, the Correspondence School, (Te Kura) Governance Arrangements	The Bill requires the Minister of Education to appoint a staff member to be a representative on the Board of Te Kura.
Teaching Council's Governance Arrangements	The Bill enables the Minister of Education to appoint a deputy chair to the Teaching Council.

Early childhood education (ECE) services me ngā Kōhanga reo

Introducing additional licensing requirements for early childhood education services including Kōhanga reo

Currently, section 315 of the 1989 Act requires early childhood education and care centres to be licenced before they can operate. The licensing and management of such centres are set by regulations.

If the applicant meets the licensing criteria, they must be granted a licence, irrespective of whether the new service is necessary or desirable to the network of service providers. The Government and some parts of the ECE sector are concerned that the ease of entry into the market has resulted in too many ECE providers in some areas, while in other areas there may be an undersupply of ECE services, impacting children and their whānau.

To provide a more active network management approach for the licensing framework, part 2 of the Bill introduces an additional application stage to the licensing process.

The first stage of this process will be an application to the Minister for preliminary approval to establish an ECE service. The Minister will assess the application against the following criteria:

- the capacity of the network in the surrounding community to meet demographic and community needs, including the provision of different service types, such as Māori medium;
- the suitability of the applicant. Each person involved in the governance of the service provider will need to meet a fit and proper person test, and to satisfy any other relevant background checks, such as Police vetting;
- the financial position of the organisation to ensure it is financially sound; and
- the licensing history of any existing services owned, operated or connected to or by the applicant.

The Minister will have the ability to decline licence applications if an applicant does not meet the licensing criteria. An applicant who is declined an application will be able to resubmit their application.

In the second stage of the licensing process, applications would go through the current licensing process as set out in the existing regulations.

Changing the structure of the penalty for ECE services operating without a licence

The offence for ECE centres operating without a licence is currently set at a rate of $200 per day of operation. This is a very low level of fine and is unlikely to be a deterrent.

To create sufficient deterrent, the Bill proposes changing the structure of the penalty and increasing the level to a maximum $50,000. The offence provision is set out in clause 27 of the Bill.

Police vetting is required for all adults who live in a home where home-based early childhood education and care is being provided

The Education Act 1989 requires a Police vet of every adult who lives in a home where early childhood education and care is being provided.

The current wording is unclear as to whether or not adults living in a house where a service is provided, need to obtain a Police vet even though they are not normally present when the service is being provided.

This wording has meant that in some cases, vets are not being obtained for adults living in the home but who are not in it, for whatever reason, when the children are present.

Clause 24 of the Education and Training Bill provides that Police vets must be obtained. Schedule 4 sets out all Police vetting requirements, including that vetting is required for every adult who lives in a home where ECE is being provided.

Enabling the Education Review Office (ERO) to obtain information from early learning service parent entities

The 1989 Act enables the Education Review Office (ERO) to require early childhood education (ECE) service providers to supply evidence of their governance, management and accountability practices. This is a way to assess the quality and effectiveness of these services.

When the 1989 Act was enacted, ECE service providers were generally the same as the organisation providing the service. Today, an ECE service provider may hold multiple licences and run a number of services across a network. Service providers can be the organisation providing the service, or a subsidiary of a parent entity. Changes in the sector have led to some parent entities having responsibility for personnel, health and safety monitoring, and curriculum management.

The Bill provides ERO with the power to obtain from parent entities any relevant information relating to the ECE service provider.

Enabling the Education Review Office (ERO) to enter a home where home-based early learning is being provided

To ensure ECE services are high quality, ERO must be able to conduct reviews of curriculum delivery and health and safety performance. Currently, it has limited oversight over the quality of home-based ECE services.

The 1989 Act grants ERO the power to enter and inspect centre-based ECE services without a warrant, to conduct a review of the service.

Part 6, subpart 6 of the Bill gives ERO power to enter a home where home-based ECE is being provided. This is to ensure consistency in ERO’s reviews of different types of service providers.

Home entry is intended to be as minimally intrusive as possible, while still ensuring the necessary checks are conducted.

Schooling

All students have the right to attend school fulltime

Clause 32 of the Education and Training Bill explicitly includes the right of all students to attend the school in which they are enrolled whenever the school is open. Clause 33 of the Bill makes a corresponding change by clarifying that students with special education needs have the same rights to attend school whenever the school is open as those who do not.

These legislative amendments make it clear that all students, including those with learning support needs, have the right to attend school whenever the school is open.

The changes are being made to respond to the increasing concern among New Zealanders that the current aspects of the right to education do not go far enough to ensure an individual's right to education.

During public consultation on this proposed change (from 14 May 2019 to 14 June 2019), many parents and organisations representing those with disabilities and learning support needs told the Ministry that they supported the proposal to expand the current right to education to more explicitly include the right to attendance.

With the proposed legislative changes, New Zealand is taking an important step towards meeting its international obligations in the United Nations Conventions on the Rights of the Child and the Rights of Persons with Disabilities (UNCROC and UNCRPD).

During the Ministry of Education's public consultation on the proposal to clarify the right to attend in our legislation, submitters indicated that they supported the proposal and also wanted the law to reference the UN conventions directly, to ensure the right to attend is enforceable by the Ministry, and that schools need to be resourced and supported to provide for students to attend fulltime.

The UN Conventions include a right to access an inclusive, quality education on an equal basis with others and where required, to receive effective, individualised support to participate in education. Some of these key concepts are already included in our education legislation. For example, the right to an inclusive education is reflected in the obligation on boards to ensure that their school is inclusive of and caters for students with differing needs.

The Bill makes it clear that those with additional needs have the right to attend school whenever the school is open (clause 33) and locates the rights to education and related obligations together so that it is clear that schools are required to provide inclusive education to their students. These changes take us closer to meeting our UNCROC and UNCRPD obligations.

The Ministry of Education will make use of its current statutory intervention powers to assist schools to meet their obligations and to help parents to ensure that their children can realise the right to attend. The Ministry will work with schools to support them through the Education and Training Bill changes.

Allowing a transition attendance plan to vary attendance hours when this is in a student's best interests

The right to attend school whenever the school is open is not intended to prevent students from being able to attend for reduced attendance hours where their special circumstances require this. During consultation in May and June this year, some parents were concerned that the right to attend school fulltime could disadvantage students with disabilities or additional learning needs whose families consider that their needs are best met by attending for fewer hours.

In general, students are required under section 25 of the Education Act 1989 to attend school for at least four hours every day that the school is open for instruction. In general it is preferable to support schools, students and their families to enable all students to attend fulltime. However, there are circumstances where it is appropriate for a student to attend for reduced hours on a temporary basis as part of a plan that will support the student to transition to fulltime attendance.

Clause 41 enables a student's parents, their principal and the Secretary for Education to agree to vary hours as part of a transition attendance plan when the particular needs of the student require this. The plan must be requested by the parents only. It must be considered by all parties involved to be in the child's best interests, and evidence will be required from a medical professional. The plan can be for no more than six months duration and is not renewable.

Establishing a new disputes resolution panel to hear complaints about school board decisions

Currently, if a domestic primary or secondary school student and their whānau are unhappy with a board decision, they can seek a review by the Ombudsman or a judicial review in the High Court. These pathways can be intimidating and expensive, do not always provide a speedy remedy, and do not provide a certain outcome (the most common judicial review remedy is requiring the original decision maker to make the decision again, using a better process).

Early childhood education, international students and tertiary students all have their own specific dispute resolution processes. In the compulsory schooling sector students and their whānau do not have the same voice to raise concerns about decisions that affect them. Unresolved issues, or issues that are not resolved in a timely manner, may lead to increased alienation from education and a failure to support the right to education.

The Independent Taskforce that reviewed Tomorrow's Schools recommended that local panels be established to resolve disputes between students and their school. You can read more about the Taskforce's recommendation here: https://education.govt.nz/news/tomorrows-schools-report-released/

As part of the Government's response to the Independent Taskforce's final report, Part 3, subpart 9 of the Bill establishes a dispute resolution scheme for resolving serious disputes that students and their whānau have been unable to resolve with the school. Serious disputes are disputes about:

- rights to education under the Bill, including enrolment and attendance;
- learning support;
- stand-downs, suspensions, exclusions and expulsions;
- racism and other types of discrimination;
- physical and emotional safety; and
- physical force on a student by a teacher or other authorised staff member.

The scheme consists of local dispute resolution panels overseen and administered by a Chief Referee appointed by the Minister. Panels will have a mix of local members and expert members from a central list. Panel members will be appointed by the Chief Referee.

Panels will be focussed on resolving disputes through mediation. This involves a mediator working with both parties to help them reach an agreement to settle the dispute. In these cases, the remedy is whatever the parties agree to in the mediated settlement.

If mediation is unsuccessful or not appropriate given the circumstances of a particular dispute, the panel can, with the agreement of the student and their whānau, determine the dispute i.e. make its own decision about how to resolve the dispute.

There are several remedies available. The panel can issue a declaration that the school has breached the student's rights. It can also recommend that the school take certain actions including reversing or modifying decisions in relation to the student, apologising to the student and reviewing any related rules/bylaws or policies. These recommendations are not binding. The panel can also, with the prior agreement of both parties, make binding decisions to uphold, reverse or modify the school's decision, and make related orders to give effect to those decisions.

Mediated settlements and orders made through determination can be enforced by the parties through the courts.

The panels, once established, will provide a dispute resolution process that is accessible for all students and their whānau, free, flexible, uses restorative and culturally appropriate processes and procedures, and provides timely resolution to disputes.

Removing the requirement for the Teaching Council to audit teacher performance appraisals

Currently, section 382(i) of the Education Act 1989 provides that a function of the Teaching Council is to audit and moderate teachers' appraisals. Recently, however the Government, PPTA and NZEI, along with the NZ School Trustees Association and the Teaching Council, have agreed to remove the requirement for teacher performance appraisals. The requirement for the Teaching Council to audit and moderate the appraisals is therefore redundant.

Allowing teachers without satisfactory recent teaching experience to have their certificates renewed if they agree to a refresh process

Currently, under section 361(6) of the Education Act 1989 a teacher needs to be able to demonstrate satisfactory recent teaching experience to have their practising certificate renewed by the Teaching Council.

Satisfactory recent teaching experience is usually defined as a 2-year uninterrupted period in a teaching position or equivalent, within the 5 years before the application, though it can be less than 2 years with the Council's approval.

Some registered teachers, however, are unable to renew their practising certificates because of this 2-year uninterrupted requirement, including those who have been raising a family or travelling overseas.

To enable these teachers to return to teaching, clause 10 of schedule 3 of the Bill allows the Teaching Council to renew practising certificates for teachers who cannot demonstrate satisfactory teaching experience in the five years prior to their application, if the applicant agrees to a refresh process.

The refresh process may take the form of a "return to teaching plan" including mentoring support and supervision by a fully certificated teacher in the school the applicant intends to work in, or an initial teacher education refresh where the applicant has not taught for a considerable length of time.

The requirements for the refresh process will be in rules made by the Teaching Council and will be published in the Council's new registration policy. The other requirements for renewing a practicing certificate under section 361(6) of the 1989 Act will still apply.

Renaming "special schools" as "specialist schools"

The term "special school" is used in both the Education Act 1964 and Education Act 1989 to refer to the residential and day schools that support students with high needs, and to the regional health schools that provide teachers for children who are unwell.

The 1964 Act's special schools establishment and disestablishment provisions are included in the Education and Training Bill, with the redundant terms "special class" and "special clinic" removed.

The Bill updates the name "special schools" to be "specialist schools". The new name is intended to better reflect the wider role that these schools now have in supporting inclusive education within our schooling system. It also reflects the shift in focus from the school itself to the specialist nature of the services provided to support students with disabilities and additional learning support needs.

The Ministry consulted on the change of name to "specialist schools" in May 2019. Some concern was expressed by submitters that they would need to re-brand or re-name their schools. The Bill does not require schools to re-name themselves. Rather, "specialist schools" is the name that will be collectively given to these schools in the legislation.

Updating the physical restraint framework

The education sector has raised a number of concerns about the framework regulating physical restraint in schools, including a lack of clarity about what “physical restraint” is, when and how it can be used and what types of other physical contact with students are acceptable.

Part 3, subpart 3 of the Education and Training Bill includes several changes to the physical restraint framework to make it clearer that teachers and authorised staff members can physically intervene when there is no other option to keep anyone in their school safe from harm. These changes will apply only to the schooling sector as the early childhood sector has a separate framework regulating similar conduct in early childhood settings. The Bill maintains the current ban on seclusion.

The Bill specifies the requirement that “physical force” be used only when there is no other option. Currently, the 1989 Act does not specifically state that use of restrictive force should be only when there is no other option. The addition of this requirement recognises that exercising physical force against a student can risk injury to the student and/or to the staff member. It aligns with the expectation that the use of physical force in schools should be minimised.

The Bill also updates the expressions “physical restraint” and “physically restrain” to “physical force”. “Physical force” better reflects the language used by teachers in their day to day work.

Currently, section 139AC of the 1989 Act restricts the use of physical restraint to situations where safety is at serious and imminent risk and the restraint is considered reasonable and proportionate. Clause 95 changes the language around the authorisation for use of physical force from its current preventative wording to permissive wording. This change will make it easier for teachers to understand when they may use force and better reflect this Government’s intention to build a high trust environment for the teaching profession.

Section 139AC of the 1989 Act specifies that a teacher or authorised staff member must not physically restrain a student unless the teacher or staff member reasonably believes that “the safety of the student or of any other person is at serious and imminent risk”. There are conflicting views whether “safety” extends to a student being safe from emotional harm. The intent of these provisions is to protect students, including from emotional harm.

Clause 95 alters the threshold for the use of force from when “safety” is “at serious and imminent risk” to when it is reasonably believed necessary to prevent imminent harm. This brings the language of the Bill into line with the language in the code of conduct for the teaching profession (*Our Code Our Standards*). Intervening to prevent harm can include harm to the health, safety or wellbeing of the student or any other person, including harm caused by significant emotional distress.

The Education Act 1989 provides the Secretary for Education with the power to make rules prescribing practice and procedure relating to the use of physical restraint. The Bill carries across the Secretary’s rule making powers and has been amended to specify that the rules must include a definition of physical force. The new definition will have to be set out in the rules within six months of the Bill being enacted.

School principal appointment criteria

The principal role is demanding, complex and critical to the success of a school and the educational outcomes of the learners/ākonga within that school. Despite this, there is no mandatory requirement for any particular skills, knowledge, attitudes or experience to be considered that could support a Board's appointment of a principal. The only legal requirement for appointment as a principal is being a registered teacher who holds a current practicing certificate.

The Independent Taskforce that reviewed Tomorrow's Schools recommended that national eligibility criteria and guidelines for principal appointment and performance review be developed. You can read more about the Taskforce's recommendation here: https://education.govt.nz/news/tomorrows-schools-report-released/

Clause 584 of the Bill requires the Minister to issue minimum eligibility criteria for new school principal appointments. The criteria are intended to:

- ensure the consistency of skills, competencies, knowledge and expertise of applicants;
- support better understanding of the background and experience needed for school leadership among persons aspiring to the role of a principal as part of their future career;
- provide confidence to boards in making appointments; and
- signal the importance of the role of principals across the wider school system.

Schools are able to develop additional criteria relating to the appointment of principals, as long as these are consistent with the criteria issued by the Minister. During development of any additional criteria, the Board must consult its school community.

Before issuing any criteria, the Minister must make reasonable efforts to consult with a range of relevant national bodies, such as teachers, parents and Māori education organisations, as well as national bodies with a particular role in respect of the character of character schools.

The new criteria will be applied to all principal appointments made once the Bill comes into force. The criteria will not be applied to current principals who remain in their current role. Current principals will, over time, be offered opportunities to upskill and develop to meet the same criteria as those appointed under the new eligibility criteria.

The Government has agreed to create a Leadership Centre for principals, as well as new Leadership Advisor roles, in its response to the Tomorrow's Schools report. The Centre would help build the status and capability of principals. Leadership Advisors would provide principals with ongoing support and mentoring, and give guidance to boards when appointing a new principal.

Amending school board objectives

Currently, a school board's primary objective in governing the school is to ensure that every student at its school is able to attain their highest possible standard in educational achievement.

In line with the Tomorrow School's recommendations, clause 122 of the Bill refocuses boards on a wider range of objectives, with educational achievement sitting alongside three other, equally as important, primary objectives. These are for schools to ensure that:

- every student is able to attain their highest possible standard in educational achievement;
- the school is a physically and emotionally safe place for all students and staff, and gives effect to relevant student rights and takes all reasonable steps to eliminate racism, stigma, bullying, and discrimination within the school;
- the school is inclusive of caters for students with differing needs;
- the school gives effect to Te Tiriti o Waitangi by:
    - working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori and te ao Māori

- taking all reasonable steps to make instruction available in te reo Māori and tikanga Māori; and
- achieving equitable outcomes for Māori students.

The new objective relating to Te Tiriti will

- emphasise the importance of local history and practices;
- challenge boards to improve the teaching of te reo Māori and tikanga Māori;
- contribute to meeting the Crown's duty to actively protect tino rangatiratanga rights; and
- make a significant contribution to achieving the Crown's *Strategy for Māori Language Revitalisation 2018 – 2023 – Maihi Karauna*.

It is proposed that the objective relating to Te Tiriti will come into force on 1 January 2021. This will provide schools with more time to become familiar with the changes required under this objective and prepare to give effect to them. It is proposed that the rest of the objectives come into force on the day after the Bill receives Royal assent.

A code of conduct for members of school boards

School boards have a unique range of membership with differing levels of experience and skills, and a strong emphasis on voluntary, representative members (such as student and parent representatives).

In the education sector, school boards of trustees are the only Crown entity governing body for which the individual and collective duties of members are not set out in either the 1989 Act or the Crown Entities Act 2004. The only guidance as to the responsibilities of board members is the New Zealand School Trustees Association's Voluntary Code of Behaviour.

During its consultations, the Independent Taskforce reviewing Tomorrow's Schools identified concerns relating to the behaviour of individual trustees, such as members seeking to progress their own interests rather than those of the board. It recommended the creation of a mandatory national code of conduct for boards. You can read more about the Taskforce's recommendation here https://education.govt.nz/news/tomorrows-schools-report-released

Clause 153 allows the Minister to issue a code of conduct for school boards of trustees that sets out the minimum standards of conduct that each member is required to meet. Individual school boards can decide to expand the minimum standards to reflect local expectations.

There are penalties for failing to comply with the code of conduct. Under clause 156, the board may censure a board member, and the Minister may remove a member for a significant or persistent breach of the code. These sanctions do not apply to a principal, because principals are required on the board as part of their employment obligations. Any issues about the behaviour of the principal can be dealt with as an employment matter.

The code of conduct will give board members a common basis to work from, encourage the development of good practice over time, and provide for more transparent accountability.

Boards to consult on rules/bylaws

Under the Education Act 1989, boards can make rules (also known as bylaws) to govern its school. These rules are given the status of law. However, there is no requirement on boards to consult before rules are made. This is inconsistent with the obligation to consult placed on other entities with the ability to make rules.

Clause 121 introduces a requirement for boards to consult their students (as appropriate), staff and school when making rules. As well as bringing boards into line with other entities empowered to make bylaws, it will also enable greater staff, student, and community engagement with key governance decisions that may significantly impact them. This change is consistent with the broad intentions of the Taskforce relating to the need for greater student, staff and community engagement in their schools.

Electing school boards of trustees

Section 101D of the Education Act 1989 enables the Minister to declare an election invalid and reinstate the previous board until a new election is held and the new board takes office.

It is, however, sometimes impractical to reinstate the previous board, which could have been out of office for almost two months, or problematic where school communities have had issues with the previous board or some of its members.

Clause 157 of the Bill enables the Minister to direct the Secretary for Education to appoint a commissioner when an election has been declared invalid. This is in addition to the Minister's current ability to reinstate the previous board.

Section 105 (5) of the Education Act 1989 requires board vacancies to be notified through a local newspaper. However, providing notice through a local newspaper is an outdated practice that is no longer reflective of modern communications preferences and may no longer represent the best way of reaching the school community and other relevant parties.

Clause 13 of schedule 22 of the Bill removes this requirement and instead provides that a board must give notice of the vacancy to its school community and any other affected parties in the wider local community. This enables schools to decide, in this context, the most appropriate means of notification.

Section 118(1)(b) of the Education Act 1989 empowers the Governor-General to make regulations prescribing how returning officers are appointed for board elections. The Bill removes this regulation making power as it is over prescriptive and regulations made under clause 603 are broad enough to cover the appointment of returning officers.

Requiring State primary school boards who choose to close for religious instruction to use an "opt-in" process.

Clause 56 in the Bill requires boards that want to close their school to allow religious instruction to have signed consent before placing a child in religious instruction.

Currently, section 79 of the Education Act 1964 requires any parent or guardian of the pupil to make his or her wishes known in writing to the principal of the school if they do not wish to take part in religious instruction or observance. This is what is known as an "opt-out" process.

The NZBORA and the Human Rights Act 1993 give all people in New Zealand the right to be free from discrimination based on their religious or non-religious beliefs. Boards will still need to comply with both of these Acts when offering religious instruction.

Development and consultation of school enrolment schemes

Under the Education Act 1989, boards are responsible for designing and consulting on enrolment schemes. The 1989 Act sets out a number of compliance requirements for enrolment schemes. The scheme must then be approved by the Secretary.

Under the current framework, it is possible for schools to develop a zone based on areas from which they most wish to take students. For example, they can design zones that include high socio-economic neighbourhoods and exclude closer, more disadvantaged, neighbourhoods. This can detrimentally affect students that are already at a disadvantage.

Schedule 19 of the Bill transfers the responsibility for developing and consulting on enrolment schemes to the Secretary for Education.

The Secretary must develop an enrolment scheme if overcrowding occurs or is likely to occur at a State school. The Secretary must consult with the school board while developing an enrolment scheme. Boards must take reasonable steps to consult with key stakeholders during this design phase.

Once an enrolment scheme is developed, the Secretary must consult key stakeholders before it is finalised. Boards must implement the finalised scheme. Enrolment schemes can be amended, and remain in place until the Secretary decides that it is no longer necessary to have an enrolment scheme in place to manage overcrowding in that school.

Tertiary and International

Increase time limitation period for laying charges for certain student loan and allowances offences

The Ministry of Social Development (MSD) administers part 25 (and related provisions) of the Education Act 1989, which provides for the administration of student loans and allowances.

Under the 1989 Act, it is an offence for institutions and private training establishments to fail to provide information, or to provide false or misleading information, in response to information requests.

However, the 1989 Act does not specify the time period in which charges must be laid, which means the Criminal Procedure Act 2011 applies by default. Under this Act, charges for these offences must be laid within six months of the date that the offence was committed.

A six month time period for laying charges is problematic. These investigations can be complex and therefore challenging to complete within that time. The six month period is also inconsistent with similar offences under both the 1989 Act and the Social Security Act 2018. Both of these Acts allow charges to be laid up to 12 months after MSD becomes aware of the offence.

Clause 374 of the Bill provides that prosecutions relating to information requests must be commenced within 12 months of the date on which MSD becomes aware of the offence. This is consistent with other similar offences, and provides a reasonable time for these offences to be detected, investigated and prosecuted to enable effective enforcement.

Allowing student loan and allowance information to be kept with social housing information

Under the Education Act 1989, the Ministry of Social Development (MSD) can hold client information collected for the purposes of administering social security benefits and student loans and allowances in one place and use it for the different client assessments and related activities that are undertaken by MSD, including prosecuting offences and imposing penalties.

Under the 1989 Act, MSD cannot hold and use client information relating to social housing together with client information it holds for administering benefits and student loans and allowances. This is because the responsibility for social housing assessments was transferred to MSD after the relevant provisions in the 1989 Act were enacted.

This means that the original intention to provide authority to store and use client information collected for different purposes together cannot be realised. This is inefficient for MSD and inconvenient for clients, as MSD has to ask for client information again, even though it already holds this information for another purpose.

Clause 5 of Schedule 9 of the Bill allows MSD to hold client information relating to benefits, beneficiaries, social housing and student loans and allowances on the same system or systems, and about the same person on one file. This will enable MSD to use this information to assess entitlement to support, recovering debt, prosecuting offences and imposing penalties. This amendment will close the gap that currently exists in relation to social housing information.

Reform of Vocational Education (ROVE)

The Education (Vocational Education and Training Reform) Amendment Bill was introduced on 26 August 2019 and is currently being considered by the Education and Workforce Committee. The Bill

establishes a new regulatory framework to create a unified and cohesive vocational education and training system. The Bill institutes the new framework by amending the Education Act 1989 and revoking the Industry Training and Apprenticeships Act 1992.

More information on this Bill can be found here: http://www.education.govt.nz/our-work/legislation/vocational-education-reform-bill/.

More information about the ROVE reforms can be found here:

https://conversation.education.govt.nz/conversations/reform-of-vocational-education/

The Education and Training Bill will be aligned with the Education (Vocational Education and Training Reform) Amendment Bill (including any changes made to the Vocational Education Bill during the parliamentary process) as both bills progress through the House.

The Education (Pastoral Care) Amendment Bill

The Education (Pastoral Care) Amendment Bill was introduced on 14 October 2019 and was referred to the Education and Workforce Committee. The Committee reported back to the House on 26 November 2019. The Bill amends the Education Act 1989 and enables the Minister of Education to issue a code of practice for the pastoral care of domestic tertiary students.

The text of the Bill can be found here:
http://legislation.govt.nz/bill/government/2019/0184/latest/LMS265142.html

Additional information on the amendment Bill can be found here:
https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_92648/education-pastoral-care-amendment-bill

The Education and Training Bill will be aligned with the Education (Pastoral Care) Amendment Bill (including any changes made to the Pastoral Care Bill during the parliamentary process) as both bills progress through the House.

Other changes

Giving better effect to the Treaty of Waitangi at the national level

Te Tiriti clause in the Education and Training Bill

As a partner to Te Tiriti, the Crown has a duty to actively promote and protect Tiriti rights and to develop education settings in a way that reflects Māori-Crown relationships.

The Bill includes a new clause that sets out the key Tiriti-related provisions in one place. Clause 9 is intended to identify, and increase the accessibility of, the key provisions in the Bill that recognise and respect the Crown's responsibility to give effect to Te Tiriti. Currently, there is no Tiriti clause in the Education Act 1989.

Statement of expectations

To address education agencies' obligations under Te Tiriti o Waitangi, clause 6 enables the Ministers of Education and Māori-Crown relations: Te Arawhiti, after consultation with Māori, to issue a statement specifying what education agencies must do to give effect to the Public Service Bill expectations that relate to Te Tiriti.

The intention of the statement is to provide greater specificity around what those agencies must do to be Treaty compliant.

There is currently a legislative gap in the duty of education agencies to comply with Te Tiriti. There is no statutory specificity on how the Ministry, New Zealand Qualifications Authority, Education Review Office, or Tertiary Education Commission must give effect to Te Tiriti, nor is there any specification of what 'giving effect' might look like. This is likely to change as the Public Service Bill will include a

prominent clause that affirms the role of the public service in supporting Māori-Crown relations. More information about the Public Service Bill can be found here: https://ssc.govt.nz/our-work/reforms/.

Prohibiting the provision of NCEA offshore

NCEA was developed for New Zealand students or those living in New Zealand. It was not intended to be an international qualification. The assessment of achievement standards requires understanding of the National Curriculum and competence in delivering the learning outcomes. This cannot be guaranteed in an offshore setting.

The widespread awarding of NCEA offshore would present logistical difficulties for the NZQA in moderating and quality assuring the assessment standards. This would also create significant risks to the international reputation and credibility of NCEA qualifications.

Clause 426 prohibits the provision of NCEA offshore. There are two exceptions to this prohibition:

- to allow for the continued awarding of NCEA to domestic students through correspondence or distance school enrolment gateways; and
- to allow for NCEA qualifications to continue to be awarded in countries, such as the Cook Islands and Niue, where the Government has enabled this through government-to-government agreements.

This proposal will still allow tertiary education providers (TEPs) to provide unit standards offshore that will lead to qualifications other than NCEA, and which can also contribute to NCEA, where this provision is not aimed at NCEA.

The prohibition addresses a legislative inconsistency that prevents State schools, apart from correspondence or distance schools, from providing NCEA offshore, while allowing private schools and TEPs to do so. Allowing State schools to offer NCEA offshore would only exacerbate the problems identified above.

Clause 509A of the Bill makes it an offence to breach the prohibition, with a maximum penalty of $10,000. This penalty is consistent with existing penalties for similar offences under the Education Act 1989. NZQA would enforce compliance, with the offence and penalty provisions designed to complement the NZQA's existing monitoring and enforcement powers.

Strengthening Te Kura's Governance Arrangements

Currently, the Te Kura board is comprised of a chairperson and up to six members appointed by the Minister of Education by Gazette notice. There is no requirement for a staff member to be on the Te Kura board.

Under clause 118 of the Bill, the Minister must appoint a staff member to the Te Kura board.

Including a staff member on the Te Kura board would:

- Recognise that staff have an important interest in the board's decision-making;
- Ensure that there are opportunities for staff to bring their particular expertise in decisions around the implementation of board decisions; and
- Provide a stronger connection for staff with the school because they will have a voice in the school's governance.

It will be up to the Minister to determine whether the staff member is elected, co-opted by the board or appointed by the Minister.

Strengthening the Teaching Council's Governance Arrangements

Currently, section 380 of the 1989 Act provides that the Teaching Council comprises 13 members, with 6 members appointed by the Minister of Education and seven elected members.

Although the Minister of Education appoints the chairperson of the Teaching Council, the Minister has no ability to appoint a deputy chairperson. Clause 7 of schedule 18 of the Bill enables the Minister to appoint a deputy chairperson. The deputy chairperson will be able to perform all of the functions and duties of the chairperson, when the chairperson is unable to do so, including exercising a casting vote.

Streamlining education legislation

New regulations

The Bill consolidates, restructures and updates material from the current education statutes. The new Act will replace the Education Act 1964 and Education Act 1989. The Bill will also incorporate the two education bills currently before parliament: the Education (Vocational Education and Training Reform) Amendment Bill and the Education (Pastoral Care) Amendment Bill.

As part of the work to streamline the Bill, some of the provisions relating to the operation of school boards of Trustees, international education, and the pastoral care of international and domestic tertiary students have been moved out of the Bill, and will instead become regulations on enactment. This will help shorten and streamline the Bill.

No changes are proposed to the content of these provisions, other than minor language updates. It is intended that these new regulations will come into force at the same time as the Bill.

Regulations are made through a different process to Acts. A Bill (which becomes an Act) goes through the House and is debated and voted upon by members of parliament. Regulations are made by the Executive branch of government to supplement and support Acts. While regulations are made through a different process to Acts, they still have legal force.

Some provisions have been moved to new schedules in the Bill with sunset clauses

As part of the streamlining process, other provisions currently in force have been identified as more suitable for regulations than the Act. However, these provisions require updating before they can be converted to regulations.

The Bill establishes a process for converting these provisions to regulations. Provisions relating to Board of Trustee elections (schedule 22), enrolment schemes (Schedule 19), national student numbers (Schedule 23) and when schools must be open (Schedule 20) have been moved into schedules with a date set for their expiry. This is known as 'sun-setting'. There is no substantial change to these provisions, other than minor language updates.

The Ministry has a period of up to 24 months to review, consult and update these schedules and convert them to regulations as required. The Ministry will consult publicly during this process. The new regulations must be passed before the schedules expire. The sunset schedules are listed in clause 621 of the Bill.