Impact Summary: Protecting the public interest in Education Council decision-making

Section 1: General information

Purpose
The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing policy decisions to be taken by Cabinet on proposals to strengthen the government's ability to protect the public interest in the Education Council's decision-making.

Key Limitations or Constraints on Analysis
The options developed are a response to the changes that will be made to the governance of the Education Council by the Education (Teaching Council of Aotearoa) Amendment Bill, which is currently before Select Committee. This Bill introduces a new process under which the majority of members of the Board of the Education Council will be elected by the profession, rather than appointed by the Minister. Any options for changing the make-up of the Council's board are therefore out of scope. There is limited evidence about the extent of the issue created by the change in governance arrangements, as there are no comparable situations to analyse. Other similar professional bodies, including the Medical Council, the Nursing Council and the Social Workers' Registration Board either have boards that are entirely appointed by a Minister, or have a minority of elected members.

Responsible Manager (signature and date):
Andrea Schöllmann Deputy Secretary Education System Policy Ministry of Education A. Schöllmann 7/5/18

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

The Education Council of Aotearoa New Zealand (the Council) plays an important role in the New Zealand education system. Its purpose, as set out in s377 of the Education Act 1989 (the Act) is to ensure safe and high quality leadership, teaching and learning for children and young people in early childhood, primary and secondary schooling in English-medium and Māori-medium settings through raising the status of the [teaching] profession.

In order to fulfil its purpose, the Council has a number of functions, set out in s382 of the Act. These fall into seven broad categories:

- enhancing the status of teaching
- setting standards for initial teacher education (ITE) and approving ITE programmes
- setting criteria for and carrying out functions relating to teacher registration, including police vetting
- setting criteria for practice and monitoring adherence to them
- establishing, monitoring and enforcing standards of conduct
- undertaking disciplinary and competence functions
- providing professional leadership, including dissemination of best practice and fostering the continued development of the profession.

These functions mean that the Council has significant influence over the quality of teaching, the safety of children and young people in schools and early childhood centres, and the supply and diversity of the teaching workforce.

The breadth of the Council's role creates a substantial public interest in its work, which needs to be protected through some ability for government to influence the Council on behalf of all New Zealanders, and, in particular, children and young people.

Under current arrangements, the government has two key levers for influencing the Council:

a. the Minister's ability to appoint all 9 members of the Board
b. the requirements that the Council set out its strategic direction regularly (at least every three years), following consultation with teachers, the government and the public.

Of these two levers, the Minister's ability to appoint members of the Board is the stronger. It allows the Minister to assess the collective skills mix and ensure that the Board is a cohesive body and that all appointments meet competency standards.

The Education (Teaching Council of Aotearoa) Amendment Bill proposes changes to the composition and appointment process for the Council's Board by increasing the number of members to 13, with seven members elected by the profession and six appointed by the Minister of Education. The Bill gives the Minister the power to appoint one of the appointed or elected members as chairperson. The Bill is currently being considered by Select Committee.

In making changes to the process for appointing the Board, the Education (Teaching Council of Aotearoa) Amendment Bill will reduce government's ability to protect the public interest in the work of the Council through membership of the Board. This increases the risk that the

Council could exercise its functions in ways that do not align with government's policy directions for the wider education system. Given the breadth of the Council's functions, this could have implications for the safety of children and young people, teacher supply and diversity, the quality of teaching, and government's fiscal commitments.

Given the high government and public interest in the work of the Council, we need to consider alternative mechanisms to strengthen how the government can continue to express the public's interest in the Council's work.

2.2 Who is affected and how?

The purpose of the changes is to ensure that the Education Council takes into account the government's policy position in its decision-making processes. In an effective education system, the policies and processes that shape the teaching workforce align with the government's intentions for the wider system. While the proposed changes would not limit the Council's ultimate decision-making power, they would ensure that the Council considers the government's position.

2.3 Are there any constraints on the scope for decision making?

It is Government policy to change the governance arrangements for the Council by introducing a democratic process for electing the Board, and the Government is progressing a Bill that would achieve this change. Options for changing the structure of the board are therefore out of scope.

There is potential for the Council and the teaching profession to be affected by the wider reviews and strategies that are being undertaken as part of the Education Portfolio Work Programme. In particular, the terms of reference for the review of Tomorrow' Schools includes consideration of the roles of the organisations in the system that support schools, including the Council.

The Education Workforce Strategy (the Strategy) will articulate a vision for a high-status education workforce with the skills and expertise to meet the needs of every learner. Given the important role the Council plays in relation to the teaching workforce, the Strategy may have implications for the Council. Both the review of Tomorrow's Schools and the Education Workforce Strategy are being undertaken in partnership with the sector, so the nature and extent of their impact are not known at this time.

Section 3: Options identification

3.1 What options have been considered?

We have identified four possible regulatory changes:

a. requiring the Council to consult with government when considering changes to training or registration requirements

b. giving the Minister of Education a power to direct the Council to have regard to government policy in relation to the exercise of its functions

c. establishing a power for the Minister of Education to direct the Council to have regard to a government policy that relates to a specific function or functions of the Council

d. converting the Council into a Crown entity, giving the Minister of Education a range of statutory and non-statutory levers over the Council's strategic direction.

We have assessed each option against three criteria:

i. *the strength of the lever* – how well the lever enables the government to protect the public and government interest in the Council's work across multiple areas

ii. *alignment with the current Government's wider position and policies regarding the Council* – in particular the change to the governance arrangements, which is designed to build trust with the profession

iii. *consistency with sector ownership of the Council* – the effect of the proposed change on the Council's ability to be a representative professional body. In order to be effective, the Council needs to retain the confidence of the sector.

a. Requiring the Council to consult with government when considering changes to training or registration requirements

This option would enhance the existing requirement in s385(1) of the Act for the Council to consult with government in setting its strategic direction for the next five years.

Through its powers to set standards for ITE, accredit ITE programmes and establish and maintain teacher registration requirements, the Council has the ability to significantly impact the supply and diversity of the teaching workforce, and drive significant costs for government. For example, if the Council were to make postgraduate qualifications a requirement for entry to the teaching profession, this would be likely to reduce the number of trainees, particularly among population groups who are already under-represented at university. It would also create significant additional costs for government, including through higher course costs, higher levels of student loans and higher salary expectations for graduates.

Strength of the lever

In practice, informal consultation generally already takes place between the Council and the government in relation to decisions of this type - this option seeks to formalise that arrangement and emphasise the importance of the government's role in relation to the specific areas identified.

While there is an existing requirement for the Council to consult government in setting its

strategic direction, the Council is only required to set out its strategic direction once every three years, and this may describe a high-level approach that does not clearly identify specific decisions. Government is also only one of a number of stakeholders who must be consulted on the strategic direction, alongside teachers and the public, so the Council may choose to ignore the government's input if it is out of line with feedback from others.

The proposed change would strengthen the government's voice in relation to changes to training and registration requirements by creating an explicit and distinctive role for government in relation to these issues. However, while the Council would need to consider the government's position, it would not be obliged to agree with and follow it. There would therefore remain a risk (albeit smaller) of lack of alignment between the government's intentions for the wider education system and the Council's activities.

Alignment with the current Government's wider position and policies regarding the Council

This option would not conflict with the Government's wider position and policies regarding the Council.

Consistency with sector ownership of the Council

In formalising practice that already generally happens, this option is unlikely to affect the sector's ownership of the Council.

b. Giving the Minister of Education a power to direct the Council to have regard to government policy in relation to the exercise of its functions

This option is based on the power set out in s104 of the Crown Entities Act 2004, which enables the responsible Minister of an autonomous Crown entity the power to direct the entity to have regard to government policy that relates to its functions and objectives. The power can be exercised either as a one-off response to a particular decision that the entity is proposing to take, or to make an enduring direction to have regard to government policy.

While the Council is an independent statutory body rather than a Crown entity, the Education Act 1989 could be amended to provide for a similar power.

Strength of the lever

The proposed power would require the Council to have regard to government policy, rather than to give effect to it.

In practice the power in s104 of the Crown Entities Act is rarely used, as its existence seems to encourage entities to have regard to government policy positions without needing to progress to the point of using the legislative power of direction.

Alignment with the current Government's wider position and policies regarding the Council

The Government's commitment to introduce a democratic process for electing the Board of the Council is part of wider Government policy to demonstrate high levels of trust in order to lift the status of the teaching profession. Giving the government a power to require the Council to have ongoing regard to government policy may be seen as being in conflict with this direction of travel.

Consistency with sector ownership of the Council

Creating a Ministerial power of direction may be seen by the sector as reducing the sector's ownership over its professional body.

The Council was explicitly established as an independent statutory body rather than as a Crown entity. Giving the Minister of Education a power modelled on one in the Crown Entities Act may blur this distinction and create an impression in the sector that the government is seeking to limit the Council's independence.

c. Establishing a power for the Minister of Education to direct the Council to have regard to a government policy that relates to a specific function or functions of the Council

This option would amend the Act to add a provision enabling the Minister of Education to direct the Council to have regard to a government policy that relates to a specific function or functions of the Council. The effect of the direction would be limited to the particular function or functions of the Council to which the policy relates.

This amendment would also require the government to consult with the Council before making such a direction, to balance increased government influence with the ability for the Council's voice to be heard. To ensure transparency, the amendment would also require the Minister to present the final government policy to the House of Representatives.

Strength of the lever

This option would have a similar impact as option b. While the requirement would be for the Council to have regard to a government policy rather than give effect to it, in practice it would be likely that the Council would take greater account of the government's position. A requirement to consult with the Council before issuing the government policy would also make it more likely that it would act in a way that is consistent with the policy.

Alignment with the current Government's wider position and policies regarding the Council

This option carries the same risk as option b, that it could be seen as being in conflict with the Government's wider policy position regarding a high-trust profession. However, this power is narrower than option b, as it is not intended to be used to make directions to have ongoing regard to government policy. It would also be mitigated by the proposal to establish a process that explicitly requires government to consult with the Council before issuing a direction.

Consistency with sector ownership of the Council

As with option b, creating a Ministerial power of direction may be seen by the sector as limiting the Council's independence. However, this would be mitigated by the requirement for government to consult with the Council.

d. Converting the Council into a Crown entity

The Council's forerunner, the Teachers' Council of New Zealand, was a Crown entity. When the Council was created, however, it was set up as an independent statutory body. This was

considered important in order to address some of the issues identified with the Teachers' Council, including lack of sector engagement and respect. However, converting the Education Council back into a Crown entity would give the Minister a range of statutory and non-statutory levers over the Council, so we have considered this option.

Strength of the lever

The type and strength of the levers would depend on the type of Crown entity chosen. The Teachers' Council was an Autonomous Crown Entity (ACE). Ministerial powers in relation to an ACE include participating in the process of setting and monitoring the entity's strategic direction and annual expectations through the Letter of Intention and the Statement of Intent, and the power to give statutory directions, including the power to direct the entity to have regard to government policy, request information and review the entity's operations and performance. This would give the Minister much stronger levers of influence than are currently available.

Alignment with the current Government's wider position and policies regarding the Council

This option contradicts the intent of the changes outlined in the Education (Teaching Council of Aotearoa) Amendment Bill, which are designed to demonstrate government trust in the profession by giving teachers more say in their own professional body. Converting the Council back into a Crown entity limits the Council's independence, which could be seen as signalling less trust in the Council and the profession.

Consistency with sector ownership of the Council

The Education Council was deliberately established as an independent statutory body, rather than a Crown entity. The Review of the New Zealand Teachers' Council: A Teaching Profession for the 21st Century in 2012 found that the Teachers' Council, which was an ACE was seen as a vehicle for government policy and lacked a distinctive brand for an effective public voice. Converting the Education Council back into a Crown entity would undermine sector confidence and engagement in the Council's work.

3.2 Which of these options is the proposed approach?

We propose amending the Education Act 1989 to reflect options a) and c) above:

- requiring the Council to consult with government when considering changes to training or registration requirements
- establishing a power for the Minister of Education to direct the Council to have regard to a government policy that relates to a specific function or functions of the Council. The amendment will include a requirement for the government to consult with the Council before making such a direction, and for the Minister of Education to present the final government policy to the House of Representatives.

Together, these changes will formalise existing consultation practice as well as strengthening the government's ability to influence the Council's work, while also recognising the importance of the Council remaining an independent body with strong sector backing.

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/x/x-guide-oct15.pdf and 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, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties Education Council	The requirement to consult with government on matters relating to teacher training and registration may create a small cost for the Council, although as this is formalising an activity that already often happens in practice, the additional cost will be minimal. There may also be a small additional cost in staff resourcing for the Council associated with consultation before the giving of a direction to have regard to a government policy.	Low Low
Regulators Ministry of Education	There will be some costs for government associated with the process of giving a direction to have regard to a government policy, relating to consultation with the Council.	Low
Wider government		
Other parties		
Total Monetised Cost		
Non-monetised costs		Low
Expected benefits of proposed approach, compared to taking no action		
Regulated parties	The requirement for the government to consult the Council before giving a	Low

Education Council	direction to have regard to a government policy will provide a new formal opportunity for dialogue between the Council and the government on that policy.	
Regulators *Ministry of Education*	The two proposed amendments will strengthen the government's ability to influence the decision-making of the Education Council in order to protect the public and government interest in its work. This will help to ensure that the Council's policies and processes, which help shape the teaching workforce, align with the government's intentions for the wider system, and give the government the ability to influence Council decisions that could have fiscal implications. The amendments would not fetter the Council's ultimate decision-making independence, so there remains a reduced risk of lack of alignment between government policy and Council activity.	Medium
Wider government		
Other parties	The two proposed amendments are designed to enable the Government to protect the public interest in the work of the Education Council and its impact on the safety of children, the quality of teaching and the supply and diversity of the teaching workforce.	Medium
Total Monetised Benefit		
Non-monetised benefits		Medium

4.2 What other impacts is this approach likely to have?

N/A

Section 5: Stakeholder views

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

Our analysis was undertaken in partnership with the State Services Commission, which has responsibility for machinery of government advice across the public sector.

The Ministry consulted on this issue as part of the engagement with the sector on possible legislative issues that closed on 13 April 2018. As part of this process, the consultation material was highlighted in the School Bulletin, and sent to all ITE providers as well as to peak bodies and the Education Council.

We received 22 submissions, which included responses from the Education Council itself, teachers, school board members, charitable trusts, NGOs, early childhood organisations and the unions. The majority of submitters supported the two proposed amendments. A common theme was the benefit of promoting policy alignment across the education sector.

The Education Council was supportive of the proposed amendments, regarding them as appropriately balancing the Council's independent status with the need to protect the public interest.

A minority of submitters felt that the proposed changes would undermine the Council's independence from government, and would be contrary to this Government's wider position and policies regarding the Council, such as the change to the governance arrangements, which are designed to demonstrate trust in the profession. We considered these issues as part of the options analysis, so have not modified the proposed approach as a result of this feedback.

Submitters not in favour of the proposals included NZEI Te Riu Roa. The PPTA was ambivalent about the proposed requirement for the Council to consult with government on decisions relating to teacher education and registration, but did not support a Ministerial power to direct the Council to have regard to government policy.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The amendments will be made through the forthcoming Education Legislation Bill, which is due to be introduced in mid-2018. We anticipate that the amendments will come into force as soon as the Bill receives Royal Assent.

We do not anticipate that a significant amount of preparation time will be needed to implement the provisions. The Council already consults with the Ministry frequently on an informal basis, so the capability and processes to implement the first amendment already exists.

The processes associated with the second proposed amendment are similar to existing Ministry processes, so we anticipate that the capability to implement the second amendment also exists.

Section 7: Monitoring, evaluation and review

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

We will know whether the amendments are achieving their purpose by monitoring alignment between the Council's activities and the government's policy positions on matters relating to the teaching workforce.

The Minister has powers under s384 of the Education Act 1989 to commission an independent audit of the conduct of the Council's functions and to require the Council to provide any financial, statistical or other information, including information relating to the performance of the Council's functions. We have not identified a requirement for monitoring or new data collection beyond that already available.

7.2 When and how will the new arrangements be reviewed?

The arrangements will be reviewed if it becomes apparent that there is a significant lack of alignment between the Council and the Ministry which creates unacceptable risks to the public and government interest in the work of the Council. This could include Council decisions that do not adequately protect the safety and wellbeing of children in schools or early childhood centres, or that drive significant cost increases for government. If these situations eventuate, we will need to consider further legislative change to create additional, stronger mechanisms for influencing the Council.