**Education Report:** Education Council’s concerns regarding the Education (Teaching Council of Aotearoa) Amendment Bill

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<th>To:</th>
<th>Hon Chris Hipkins, Minister of Education</th>
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<td>4 September 2018</td>
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<td>Security Level:</td>
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<td>Messaging seen by</td>
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<td>Communications team:</td>
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**Purpose of report**

This report outlines the concerns raised by the Education Council of Aotearoa New Zealand about the transitional provisions in the Education (Teaching Council of Aotearoa) Amendment Bill (the Bill), and sets out options to address these concerns. We are seeking your decision on whether or not to address the Education Council’s concerns through a Supplementary Order Paper.

**Summary**

1. The Education Council of Aotearoa New Zealand (the Education Council) has raised concerns with the changes proposed by the Education (Teaching Council of Aotearoa) Amendment Bill.

2. The issues raised by the Council are:
   a. Timing of the first election after the Bill commences;
   b. Absence of an express power for the Minister to make interim appointments in the event that any current members resign in 2019; and
   c. Rebranding having to be done by the Education Council as part of the name change to the Teaching Council.

3. The Bill provides for a period of up to twelve months for transitioning from the existing Council board structure to the new Council board structure. We developed this transition timeframe with Parliamentary Counsel Office (PCO) to provide plenty of time for the transition to take place.

4. The Education Council would prefer to complete the transition process by 30th June 2019, to coincide with the expiration of the terms of some of the current board members. To enable this, the Council has requested that the bill be amended to clarify the requirements for the timing of the first elections.
5. The Bill provides for the name change of the Education Council of Aotearoa New Zealand to the Teaching Council of Aotearoa New Zealand to come into effect the day after the date on which the Bill receives Royal assent. The Council wishes to defer the name change and associated rebranding until the new Teaching Council members take office.

6. PCO have advised that, because references to the Teaching Council of Aotearoa New Zealand are spread throughout the Bill, delaying the renaming of the Council would be a significant change. Working through the issues involved in making this change would delay the passage of the Bill.

7. If you wish to amend the Bill in relation to the issues raised by the Council, this could be achieved through a Supplementary Order Paper.

Recommended Actions

The Ministry of Education recommends you:

a. note that the Education Council of Aotearoa New Zealand recently provided you with a briefing outlining its concerns with the Education (Teaching Council of Aotearoa) Amendment Bill
   Noted

b. agree that a technical amendment should be made to the Bill through a Supplementary Order Paper to provide that, for the avoidance of doubt, new section 380(4) not apply to the first election of the Teaching Council
   Agree / Disagree

c. note that delaying the name change of the Council would be a significant change that would require changes to most clauses in the Bill, and is therefore not recommended by the Ministry
   Noted

d. indicate whether a technical amendment should be made to the Bill through a Supplementary Order Paper to delay the name change of the Education Council of Aotearoa New Zealand to the Teaching Council of Aotearoa New Zealand until the date on which the members of the Teaching Council take office
   Yes / No

Proactive Release Recommendation

e. agree that this Briefing will be proactively released as a part of the next release of education papers.
   Agree / Disagree

Dr Andrea Schöllmann  
Deputy Secretary  
Education System Policy

Hon Chris Hipkins  
Minister of Education

04/09/2018  
5/9/18
Concerns raised by the Education Council in relation to the Education (Teaching Council of Aotearoa) Amendment Bill

1. On 9 August 2018, the Education and Workforce Committee reported the Education (Teaching Council of Aotearoa) Amendment Bill (the Bill) back to the House of Representatives. The Education Council has raised three issues in relation to the changes proposed by the Bill:

   a. The timing of the first election after the Bill commences;
   b. The absence of an express power for the Minister to make interim appointments in the event that any current members resign in 2019; and
   c. The rebranding having to be done by the Education Council as part of the name change to the Teaching Council.

2. We have discussed these issues with the Education Council as a part of preparing this advice.

First election

3. The Bill provides separately for transitional and ongoing arrangements. It allows for a maximum 12 month transition period starting from the day after the Bill receives Royal assent. Clause 11H(1) of new Part 5B, provides that the Education Council continues, and its members continue in office, until the members of the Teaching Council first take office. The transitional arrangements also provide that the Council must hold the first elections as soon as reasonably practicable, but no later than nine months after the commencement of the Bill.

4. We developed this transition process with PCO to ensure that there is plenty of time for the steps in the transition to occur. Under the existing provisions, if the Bill is passed in late September, the Council will have until June 2019 at the latest to hold elections, with the new board (including Ministerial appointees) coming into office in September 2019.

5. The majority of the current members’ terms were due to expire on 30 June 2019. The effect of clause 11H(1) means that this will not occur. If members of the Education Council do not wish to continue in office after 30 June 2019, they will need to resign from their positions.

6. The Council considers that existing board members may not wish to continue in office beyond 30 June 2019. The Council would therefore prefer to complete the transition process by this date. This is not an obligation imposed by the Bill.

7. The ongoing provisions in the Bill require the Council to hold future elections at least four months before the new members of the Teaching Council take office. The drafting intention is that this four month requirement does not apply to the first elections, which are covered by the transitional provisions. However, the Education Council would prefer this to be made clearer in the Bill.

8. The Council has requested that the four month requirement be removed from the Bill or that it be amended to specify that the first elections must be held at least three months before members take office. This would mean that elections would need to be held by 31 March for the new board to take office on 1 July.
9. If you wish to address the Council's concerns regarding the timing of the first elections, an avoidance of doubt provision could be added to the transition arrangements in the Bill. This would clarify that the four month requirement does not apply to the first elections.

Express power for the Minister to make interim appointments

10. The Education Council is concerned that the Bill does not contain an express power for the Minister to make interim appointments. As the Council considers that existing board members may not wish to continue in office beyond 30 June 2019, they are concerned that the lack of an express power for the Minister to make interim appointments risks creating a gap in membership during the transition phase.

11. The extraordinary vacancy provisions in the Bill come into effect the day after Royal assent, and give the Minister the power to make interim appointments if required. The Ministry therefore does not consider that an amendment is required.

12. In the event that some members of the Education Council resign and the Minister does not make interim appointments, the Education Act 1989 provides that the Council's powers are not affected by a vacancy in membership. In addition, as the Council is able to regulate its own board procedures, the remaining members may set a quorum or amend an existing quorum to take account of the temporarily reduced board membership.

Rebranding

13. The Bill's change to rename the Education Council to the Teaching Council will come into effect the day after the date on which the Bill receives Royal assent. This has been the case since the Bill was introduced, and was not raised in submissions to the Select Committee on the Bill.

14. The Education Council has noted that the current board would need to prepare the name change and the rebranding in order to operate as the Teaching Council. The Education Council does not think it is appropriate for the current Council to be doing the rebranding, as branding is an important part of the Council's identity, and it conveys the vision and strategy of the regulatory body for the teaching profession.

15. The Council has therefore suggested that the Bill be amended to provide that the name change will take effect when the new Teaching Council members take office, rather than the day after the date on which the Bill receives Royal assent.

16. While the name change will come into force the day after the date on which the Bill receives Royal assent, there is no requirement in the Bill that a formal rebranding must be done as soon as possible after the Bill receives Royal assent, or that it must be done by the current Education Council board.

17. The Ministry has suggested that the current board of the Council could update relevant documents by including a reference to the name change. The Council has advised that this would be administratively difficult given the large volume of documentation that is publicly available.

18. If you wish to change the date of the renaming of the Council to align with the new board taking office, this could be done through a Supplementary Order Paper.

19. However, PCO have advised us that delaying the renaming of the Council is a significant change. The name change is central to the Bill, as it affects the majority of the Bill's
clauses. For example, all of the provisions relating to elections refer to the Teaching Council rather than the Education Council, so these would need changing for the first election (prior to the name change), but not subsequent elections. Any change to the commencement date for the name change would therefore delay the passage of the Bill.

20. On balance, the Ministry does not recommend a change to the commencement date for the renaming of the Council.