

Replaces earlier signed version following discussion 7 May.



## Education Report: Omnibus Education Bill: Proposals for Cabinet Social Wellbeing Committee consideration

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	27 April 2018	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1105957
<b>Drafter:</b>	Rachel Voller	<b>DDI:</b>	s 9(2)(a)
<b>Key contact and number:</b>	Sheryl Chase s 9(2)(a)	<b>Round robin:</b>	No
<b>Messaging seen by Communications team:</b>	No		

### Purpose of report

- Attached is a draft Cabinet Social Wellbeing Committee (SWC) paper for your consideration and consultation with your colleagues. The draft paper sets out the proposals you intend to include in an education bill this year.
- A final version of the attached paper will be provided to your office on 9 May 2018 to enable it to be lodged with the Cabinet Office on 10 May 2018 for SWC's consideration on 16 May 2018.

### Summary

1. The 2018 Legislation Programme includes a place for an omnibus education Bill (referred to as the Education Legislation Bill) to progress a range of proposals. The attached draft SWC paper seeks approval to the content of an education bill and authorisation for drafting.
2. The draft SWC paper proposes the following issues be included in legislation:
  - a. ensuring the Education Council of Aotearoa New Zealand's decisions on matters relating to the teaching profession are made within the context of government policy;
  - b. including a new criterion for private schools' registration that they must provide a safe physical and emotional place for their students;
  - c. repealing provisions in the Education (Update) Amendment Act 2017 on communities of online learning; and
  - d. fixing a technical drafting matter through the State Sector Act 1988 on mergers and closures of State integrated schools.



3. The draft SWC paper also notes that:
  - a. you will report to SWC on cohort entry amendments after the Budget moratorium period ends on 17 May 2018;
  - b. following consultation on the following issues for inclusion in the bill, legislative amendments are not recommended at this time:
    - police vetting of contractors on educational premises, and raising the standard of safety checking of people who live where home-based ECE is provided, pending the proposed development of a new legislative framework for police vetting, and the police vetting service, by the New Zealand Police;
    - establishing the College of Educational Leadership, which requires further discussion with the education sector in the context of Tomorrow's Schools, and the establishment of the Education Advisory Service;
    - s 9(2)(f)(iv)
4. This report provides options for progressing these issues.
5. The attached SWC paper also seeks a change to the priority of the proposed bill on the 2018 Legislative Programme s 9(2)(f)(iv)

### Recommended Actions

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The Ministry of Education recommends you:

- a. **note** the attached draft Cabinet Social Wellbeing Committee (SWC) paper proposes legislative change to:
  - I. ensure the Education Council's decisions on matters relating to the teaching profession are made within the context of government policy;
  - II. include a new criterion for private schools' registration that they must provide a safe physical and emotional place for their students;
  - III. repeal provisions in the Education (Update) Amendment Act 2017 on communities of online learning; and
  - IV. fix a technical drafting matter through the State Sector Act 1988 on mergers and closures of State integrated schools

Noted

- b. **agree** not to proceed with legislation at this time on:
  - i. police vetting of contractors on educational premises, and raising the standard of safety checking of people who live where home-based ECE is provided, pending the proposed development of a new legislative framework for police vetting, and the police vetting service, by the New Zealand Police DISCUSS
  - ii. the establishment of the College of Educational Leadership, to enable further consideration of its placement, within the context of Tomorrow's Schools discussion and in relation to the Education Advisory Service Agreed ~~Agree / Disagree~~
  - iii. s 9(2)(f)(iv) ~~Agree / Disagree~~

Agree / Disagree

c. **note** that we will prepare a Cabinet paper on cohort entry for you to submit to SWC after the Budget moratorium period has ended on 17 May 2018

**Noted**

d. **note** that the draft SWC paper includes a recommendation to change the priority for the education bill (referred to as the Education Legislation Bill) on the 2018 Legislative Programme

*Why the change?*

s 9(2)(f)(iv)

s 9(2)(f)(iv)

**Noted**

e. **note** that you propose to consult your colleagues between 4 May and 8 May on the attached paper and that the Ministry will be consulting government agencies on the paper over the same period

**Noted**

f. **note** that, once the Ministry has received your feedback on your draft paper, we will provide you with another version of the SWC paper to enable it to be lodged with the Cabinet Office by 10am on Thursday 10 May 2018

**Noted**

g. **note** the timeframe for ensuring the bill is enacted in 2018 is tight, as set out in paragraphs 29-32 below.

**Noted**

### Proactive Release Recommendation

The Ministry of Education recommends you:

h. **agree** that this Education Report, and the SWC paper be proactively released once the proposed education bill is referred to a Select Committee.

**Agree/Disagree**



Dr Andrea Schöllmann  
Deputy Secretary, Education System Policy

27/04/2018



Hon Chris Hipkins  
Minister of Education

3/5/18

## Background

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1. You have an omnibus education bill (referred to as the Education Legislation Bill) on the 2018 Legislation Programme with s 9(2)(f)(iv) s 9(2)(f)(iv)
2. On 12 March 2018, the Cabinet Business Committee (CBC) noted your intention to consult key education and other stakeholders on a range of issues that could be addressed through the bill (CBC-18-MIN-0036 refers). CBC had previously approved the Ministry consulting on cohort entry for 5 year olds (CBC-18-MIN-0009 refers).
3. Consultation was open to the public between 22 March and 13 April 2018, and targeted peak education groups, early learning centres, primary, secondary and private schools, teachers' unions, tertiary education providers, industry training organisations (ITOs), and other education, training and business stakeholders specifically. Emails with links to consultation material were sent to almost 300 organisations. In addition, bulletins with links to consultation material were sent to all schools and early learning centres. Information with links to consultation material was sent to 16 Māori organisations including wānanga, other Māori education providers, the Māori Principals Association, and Te Kōhanga Reo National Trust, and the Federation of Māori Authorities.
4. Ninety-nine submissions were received across the six issues on which consultation was conducted with 120 separate comments made across the six issues.

## Matters proposed for inclusion in the education bill

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5. The attached draft SWC paper proposes legislative change on the following issues. The detail of submissions is included in the draft Cabinet paper and not repeated below.

### ***Protecting the public interest in the Education Council's decision-making***

6. The proposed legislative changes set out in the SWC paper are consistent with your proposed approach set out in your advice to CBC on 12 March: require the Council to consult with the Minister of Education when considering changes to teacher registration and training requirements, and enabling the Minister to issue a Government Policy Statement (GPS) to which the Council would have to have regard. The proposals are consistent with the views of most submitters, including those of the Education Council.

### ***Private schools' registration criteria to include providing a safe environment for students***

7. The SWC paper proposes amending the registration criteria for private schools to enable the Secretary for Education to consider whether or not a private school can provide a safe physical and emotional environment for students, when decisions about registration are being made. This amendment is to ensure that private schools provide the same level of safety for students as State and State integrated schools. The proposed amendment would not affect the registration status of existing private schools.

### ***Communities of online learning***

8. The SWC paper proposes the repeal of provisions in the Education (Update) Amendment Act 2017 on communities of online learning. It notes that the repeal is intended to provide time for consultation with the education sector in the context of your work on the 30 year strategic vision for education and other strategic discussions. This approach was supported by the majority of submitters.

### **Technical amendment to the State Sector Act 1988**

9. The SWC paper proposes amending the State Sector Act 1988 relating to mergers and closures of State integrated schools to address a technical error in the Education (Update) Amendment Act 2017 (the Update Act).

### **Cohort entry proposals subject to Budget Moratorium**

10. We have completed consultation on the proposal to amend the Act to ensure that cohort entry could only apply to children five years of age and older. Seventy-five percent of submitters supported the proposed law change.
11. Implementing a change to cohort entry is likely to have fiscal implications. Cabinet Office Circular (CO (15) 4) specifies that no Budget decisions may be made by Cabinet until the end of the Budget moratorium period on 17 May 2018. We will prepare a paper on cohort entry for SWC's consideration once the Budget moratorium period has ended. A timetable for how this will occur is included at paragraph 38.

### **Matters proposed not to be included in the education bill**

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12. We recommend that the following three matters do not proceed in the ELB at this time. The current draft SWC paper reflects this position. We have included discussion on the submissions in respect of the issues below.

### **Establishing a College of Educational Leadership**

#### *Submissions on the College of Educational Leadership proposals*

13. Twenty-six submissions were received on this matter, 18 of which expressed a view on whether the College should be part of the Education Council. Of those 18 submissions, 13 submissions explicitly expressed the view that the College should be included within the Council. This included COMET Auckland<sup>1</sup>, Victoria University Faculty of Education, Te Rito Maioha<sup>2</sup>, Barnardos and New Zealand Kindergartens, the New Zealand Principal's Federation and the Education Council. The Education Council considers the College should be established within the Council because education leadership is already a Council function.
14. The Post Primary Teachers Association (PPTA) stated that the College and proposed Education Advisory Service should be connected. The PPTA believes that, given the Tomorrow's Schools review, it was too early to tell where a combined College and Service should sit. The PPTA did not however support placing a combined College and Service in the Council stating that the Council should not have responsibility for providing Professional Learning and Development to potentially all teachers in the country.
15. The New Zealand Educational Institute (NZEI) stated that it was yet to develop a firm position on where the College should be established. It cautioned that much more consultation with teachers and leaders should occur before any final decision is made. NZEI, like the PPTA, also recommended that the College and the Service should be linked in some way.

#### *Proposal for the College of Educational Leadership*

16. Given that there are a range of views with key stakeholders on where the College of Educational Leadership should sit, we think that this issue needs further discussion in the context of the wider discussion with the sector on Tomorrow's Schools, and future location of the proposed Education Advisory Service.

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<sup>1</sup> COMET is an independent charitable trust and Auckland council controlled organisation focused on education, skills and lifelong learning across Auckland.

<sup>2</sup> Te Rito Maioha is a membership organisation representing early childhood education services and teachers.

### ***Safety checking unsupervised workers on educational premises***

17. We have consulted on police vetting and safety checking requirements under the Education Act 1989. The different approaches mean that:
  - a. contractors working unsupervised in schools and early learning centres are required to be police vetted each time they enter a new education setting. This duplicative process creates an administrative cost for schools and early learning centres; and
  - b. people who live where home-based early learning is provided, are subject to a police vet only, despite the potential of these people to be alone with children. This could include spouses of children's workers, who are subject to a higher standard of checking under the Vulnerable Children's Act 2014.

#### *Submissions on safety checking*

18. On the issue affecting contractors, school boards of trustees and early childhood education providers and sector groups indicated this is an administratively burdensome process. The Ministry received 23 submissions on this issue. Almost all submitters (21) supported the streamlining of vetting requirements for contractors and other tradespeople.
19. Submitters on the safety checking of people living in homes where home-based early learning is provided were more divided. Of the 20 submissions received, 11 favoured a higher standard of safety checking than is currently required, while nine were opposed. Many submitters considered that safety checking in home-based early learning facilities provided should be considered as part of the wider review of home-based early childhood education.

#### *Proposed approach to addressing safety checking issues*

20. During consultation, the New Zealand Police advised of its intention to consult on proposals to develop a new legislative framework for police vetting. If the proposals proceed, they would significantly streamline police vetting processes.
21. The Police proposals would enable better alignment of the purpose of a vet with licensing regimes, such as that required for early childhood education (ECE). Home-based ECE providers could be required to make decisions, based on the information disclosed through a police vet, about whether to continue to enable a person to live where home-based ECE is provided (because the purpose of a vet would be clearly set out in statute). Even if we were to increase the level of safety checking on people living in places where home-based ECE is provided, in the short-term, substantive changes to the law would be required to give providers a power to act on the information disclosed.
22. The SWC paper reflects the Ministry's view that it is preferable to consider whether it is necessary to amend the Act to streamline vetting processes, and to raise the level of safety checking for people living where home-based early learning is provided in the context of the new Police vetting legislative framework, and the wider review of home-based early childhood education.

### ***Restoring skills leadership as a role for industry training organisations***

23. In 2014, the skills leadership role for industry training organisations (ITOs) was removed from the Industry Training and Apprenticeships Act 1992 (ITAA). Restoring this role to ITOs was a manifesto commitment.
24. The previous ITO skills leadership provisions in the ITAA did not lead to a consistent level of good performance in this role. ITOs were often criticised for consulting infrequently, not incorporating consultation feedback into their work, being captured by providers or being overly 'government facing', or only engaging with dominant

participants in their sector(s). Any new requirements should address the concerns raised about the previous approach and support good practice.

*Submissions on skills leadership for ITOs*

25. We received 29 submissions on the proposal to restore ITOs' statutory skills leadership role. Of these, 21 supported the proposal, two were opposed. The remaining submissions were open to ITOs exercising a leadership skills role but wanted either more information or specific conditions to be placed on the role. Many submissions indicated that further consideration needed to be given to this issue.

s 9(2)(f)(iv)

26. s 9(2)(f)(iv)

27.

28.

Timetable for the Bill's introduction in July 2018

29. To enable the bill to be enacted this year, the draft SWC paper seeks approval for the Education Legislation Bill s 9(2)(f)(iv)

30. The timetable to ensure that the education bill is enacted this year is tight. Prior to SWC consideration, the following must occur:

- a. cross-party consultation starts on Thursday 3 May, with feedback provided to us on 8 May, to enable the paper to be finalised and returned to your office on 9 May; and
- b. The SWC paper must be lodged with the Cabinet Office at 10am on 10 May 2018.

31. It is intended that a draft SWC report on cohort entry will be provided to you in the week of 8 May to enable you to consult your colleagues and to lodge the paper on 17 May – at the end of the Budget moratorium.

32. The timetable for proceeding with the Bill is set out in the following table:

*Proposed timetable for the education bill and cohort entry policy advice*

<b>Date</b>	<b>Education Bill timing</b>	<b>Cohort Entry timing</b>
<b>10 May</b>	Lodged	
<b>11 – 15 May</b>		
<b>16 May</b>	SWC	
<b>17 May</b> ( <i>end of Budget moratorium</i> )		Lodged
<b>18 – 20 May</b>		
<b>21 May</b>	Cabinet	
<b>22 May</b>	Issue drafting instructions	
<b>23 May</b>	PCO drafting	SWC
<b>24 – 27 May</b>	PCO drafting	
<b>28 May</b>	PCO drafting	Cabinet
<b>29 May</b>	PCO drafting	Issue drafting instructions
<b>30 May – 27 June</b>	PCO drafting	PCO drafting
<b>28 June</b>		Lodge LEG paper
<b>November 2018</b>	Select Committee 4 months 2 days - the minimum permissible period	
<b>Nov – 13 Dec 2018</b>	Remaining stages in the House – Royal assent	