

## Cabinet Paper material Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education  
Name of package Education Amendment Bill (No 2) – Supplementary Order Papers - LEG  
Date considered 30 April 2019

### These documents have been proactively released:

#### **Education Amendment Bill (No 2) – Supplementary Order Papers**

Date considered: 30 April 2019

Author: Ministry of Education

### Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister of Education

Chair, Cabinet Legislation Committee

## **Education Amendment Bill (No 2) – Supplementary Order Papers: Approval for Release**

### **Proposal**

- 1** I propose that two Supplementary Order Papers (SOPs) to amend the Education Amendment Bill (No 2) (the Bill) are approved for release.
- 2** The first SOP will amend clause 19 of the Bill, and add a new clause 43A to amend the Education (Update) Amendment Act 2017 (Update Act) to delay the commencement of the planning and reporting framework for school boards of trustees (including transitional provisions). It also makes a technical amendment to clause 19 of the Bill.
- 3** The second SOP inserts clause 11A to the Bill to amend the process for changing the names of New Zealand universities.

### **Policy**

#### ***Delaying the commencement of the new planning and reporting framework***

- 4** The Update Act created a new planning and reporting framework for school boards of trustees at State and State integrated schools. This new framework originally had a commencement date of 1 January 2019. The Education Amendment Act 2018 delayed the commencement of the new framework to 1 January 2020.
- 5** On 20 March 2019, the Cabinet Social Wellbeing Committee (SWC) agreed to the issuing of drafting instructions for an SOP to delay the commencement of the new planning and reporting framework for school boards of trustees introduced by the Update Act to 1 January 2023 (SWC-19-MIN-0021). Cabinet confirmed the SWC decisions (CAB-19-MIN-0110).
- 6** SWC agreed to consequential changes from the delay of the new planning and reporting framework. This included express agreement to amending clauses 7(2A) and 7(2B) of the new Schedule 6 to the Education Act 1989 that section 158(2) of the Education (Update) Amendment Act 2017 inserts. Drafting instructions to the Parliamentary Counsel Office (PCO) also included consequential amendments to clauses 7(2C), 7(2D), and 9B(2), in order to change the references to 2019 in those clauses to 2022, in line with the delayed commencement agreed to by SWC.
- 7** If the first SOP is agreed by the Committee of the Whole and the Bill is passed, all current planning and reporting settings will remain the same until 1 January 2023.

#### ***Technical amendment to clause 19 of the Bill specifying a new commencement date***

- 8 Clause 19 of the Bill specifies that sections 22, 25 and 98 of the Update Act come into force on 1 January 2019.
- 9 On 20 March 2019, SWC agreed to the issuing of drafting instructions for an SOP to amend clause 19 of the Bill to replace the now retrospective date, so that sections 22, 25 and 98 of the Update Act commence on the day after the date the Bill receives the Royal assent (SWC-19-MIN-0021). Cabinet confirmed the SWC decisions (CAB-19-MIN-0110).

***Amending the process for changing a university's name under the Education Act 1989***

- 10 On 20 March 2019, SWC agreed to the issuing of drafting instructions for an SOP to amend the process for changing the names of New Zealand universities (SWC-19-MIN-0021). Cabinet confirmed the SWC decisions (CAB-19-MIN-0110).
- 11 The new process will require that if a university wishes to change its name:
  - 11.1 it must notify the Minister in writing of its proposal;
  - 11.2 the Minister must present the proposal by way of resolution to the House of Representatives (House);
  - 11.3 the House approves or declines the proposed name change by resolution of the House; and
  - 11.4 if the House passes a resolution approving the name change, the Minister issues a *Gazette* notice to that effect.
- 12 This process will only apply to universities, not to other tertiary education institutions.

***The proposed legislative amendments***

- 13 The delay to the commencement of the new planning and reporting framework and the technical amendment to clause 19 are unlikely to be contentious as the changes are minor or technical in nature.
- 14 It is appropriate to make the process for a university name change more robust by giving the decision-making authority to the House, rather than the Minister. This will align the process for a university name change with the higher bar required for the disestablishment of universities compared to other Tertiary Education Institutions (TEIs) in section 164 of the Education Act 1989. I consider that the current name change process in section 162(5) of the Act is sufficient for TEIs other than universities.
- 15 Legislative action is required because, in order for policies set out above to have legal effect, changes must be made to their respective Acts.

## Impact analysis

- 16** The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this Cabinet paper relating to:
- 16.1 extending the school board planning and reporting date and other proposed amendments are exempt from the requirement to provide a Regulatory Impact Assessment (RIA) on technical grounds because they provide solely for the commencement of existing legislation or legislative provisions; and
  - 16.2 the process to change university names are exempt from the requirement to provide an RIA as they have no or minor impacts on businesses, individuals, or not for profit entities.

## Compliance

- 17** The SOPs proposed for release comply with the following:
- 17.1 the principles of the Treaty of Waitangi;
  - 17.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 17.3 the disclosure statement requirements;
  - 17.4 the principles and guidelines set out in the Privacy Act 1993;
  - 17.5 relevant international standards and obligations; and
  - 17.6 the *Legislation Guidelines* (2018 edition).
- 18** A disclosure statement has been prepared for the two SOPs (see Appendix 1).

## Consultation

- 19** The following government departments and public bodies were consulted in the development of policy proposals: the Treasury, Ministry of Social Development, Office for Disability Issues, Ministry for Women, Te Puni Kōkiri, Ministry for Pacific Peoples, Oranga Tamariki – the Ministry for Children, Ministry of Justice, Department of Corrections, New Zealand Police, Education Review Office, Tertiary Education Commission, New Zealand Qualifications Authority and the Teaching Council of Aotearoa New Zealand. The State Services Commission and Department of Prime Minister and Cabinet were informed.
- 20** The draft SOP was referred to the Tertiary Education Commission.

## Binding on the Crown

- 21** The SOPs will not be binding on the Crown. This is consistent with the rest of the Bill, as well as with the Education Act 1989<sup>1</sup> and the Education (Update) Amendment Act 2017.

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<sup>1</sup> With the exception of Part 33 “State integrated schools”.

## **Allocation of decision making powers**

- 22** The second SOP, which amends the process for changing universities' names, allocates a power currently held by the executive (the Minister of Education) to the legislature. Currently, the Minister has the power to change the name of a university under section 162(5) of the Education Act 1989. The SOP allocates this power to the House.

## **Associated regulations**

- 23** No new regulations are needed to bring the SOPs into operation.
- 24** However, the new planning and reporting framework that is being postponed by the first SOP requires regulations to be made. Regulation-making powers for the framework are set out in section 95 of the Update Act.
- 25** As a consequential amendment to the postponement of the new planning and reporting framework, the first SOP changes the commencement of these regulation-making powers to come into force the day after the date the Bill receives its Royal assent.

## **Other instruments**

- 26** The SOPs do not include any provision empowering the making of legislative or disallowable instruments.
- 27** Under section 38(2) of Legislation Act 2012, a resolution of the House of Representatives (as is proposed as part of the amendment to the process for changing universities' names) is not a disallowable instrument.

## **Definition of Minister/department**

- 28** The SOPs do not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department.

## **Commencement of legislation**

- 29** The SOPs will come into force the day after the date on which the Bill receives Royal assent.
- 30** The SOPs change the commencement date for the following sections of the Education (Update) Amendment Act 2017:
- 30.1** section 2(5) of the Update Act is amended to change the commencement date for sections 41(2) and (5), 43, 60, 68, and 158(2) of that Act from 1 January 2020 to 1 January 2023 or such earlier date as appointed by the Governor-General by Order in Council;
- 30.2** section 2(5) of the Update Act is amended to provide that the regulation-making powers, inserted by section 95 of that Act, comes into force on the day after the date that the Bill receives the Royal assent; and
- 30.3** clause 19 is amended to replace section 2(4) of the Update Act so that sections 22, 25 and 98 of that Act come into force on the day after the date the Bill receives the Royal assent.

## Parliamentary stages

- 31 The Education Amendment Bill (No 2) was introduced into the House on 13 September 2018. The Bill was referred to the Education and Workforce Committee on 27 September 2018. The Committee provided its report back on the Bill on 5 April 2019.
- 32 As the Select Committee stage of the Bill has passed, the SOPs will not be referred to the Education and Workforce Committee.
- 33 I propose tabling the SOPs at the Committee of the Whole House.
- 34 The Bill should be enacted in early June 2019. This is to allow for time to publish the 2020 mid-term dates for cohort entry policies (the settings of which are changed by the Bill). The Bill requires the mid-term dates to be published before 1 July 2019.

## Proactive Release

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

## Recommendations

- 36 The Minister of Education recommends that the Committee:
- 1 **note** that the Education Amendment Bill (No 2) (the Bill) holds a **§ 9(2)(f)(iv)** [redacted], on the 2019 Legislation Programme
  - 2 **note** that the two supplementary order papers (SOPs) to the Bill implement policies to:
    - 2.1 delay the commencement of the new planning and reporting framework for school boards of trustees from 1 January 2020 to 1 January 2023
    - 2.2 make a technical amendment to change the retrospective commencement date contained in clause 19 of the Bill
    - 2.3 amend the process for changing the names of New Zealand universities
  - 3 **approve** the SOPs for release
  - 4 **note** that I intend to table the SOPs at the Committee of the Whole House Stage of the Bill.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education