**Briefing Note:** Advice on process for university name changes

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<th>To:</th>
<th>Hon Chris Hipkins, Minister of Education</th>
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<td>28 February 2019</td>
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<td>Round Robin:</td>
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**Purpose of paper**

You have indicated that you would like to change the process for university name changes via a supplementary order paper to the Education Amendment Bill (No 2). This paper sets out options for a new university name change process for your consideration prior to the Education Agencies meeting on Monday 4 March.

**Proactive release**

Agree that this Briefing will **not** be proactively released until after the supplementary order paper has been announced.

Agree / Disagree

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Group Manager, Tertiary Policy  
Graduate Achievement,  
Vocations and Careers  
28/02/2019

Hon Chris Hipkins  
Minister of Education  
3/3/19
Background

You have proposed amending the process for university name changes

1. You have proposed amending the process for changing a university’s name in section 162(5) of the Education Act 1989 (the Education Act) via a supplementary order paper (SOP) to the Education Amendment Bill (No 2) (the Bill).

2. Your Office has requested that the Ministry of Education provide advice setting out alternatives to the current university name change process. These alternatives are set out under the ‘Options’ heading below.

3. The current name change process for an institution is set out in s 162(5) of the Education Act and is as follows:

   The Minister may, on the recommendation of the council of the institution concerned, change the name of an institution by notice published in the Gazette.

4. The purpose of a change to this process is to clear up uncertainty about how s 162(5) of the Education Act 1989 operates in relation to university establishment Acts. A possible legal inconsistency was identified during the Victoria University of Wellington (VUW) name change application between s 162(5) of the Education Act and the establishment Acts of some universities (e.g. the Victoria University of Wellington Act 1961). The issue raised was that it is unclear what the implications would be if VUW’s name was changed via s 162(5) but remained the same in the Victoria University of Wellington Act.

5. The options listed below are focused on universities with an establishment statute in order to resolve the conflict between university establishment Acts and the Education Act. Therefore, option one does not affect Auckland University of Technology (AUT) which was established by Order in Council. Options two and three could be adapted to do so. None of the options would affect other tertiary education institutions, which would continue to be required to apply for a name change through the current process set out in s 162(5) of the Education Act.

6. The Ministry’s advice is that it would be preferable in policy and law for universities to all have the same name change process. All of the options could be amended to cover all universities consistently.

7. It is also worth noting that the University of Otago was established by an Act but it was a provincial ordinance of 1869. This means that how a name change for the University of Otago would work in practice may be different to the other universities.

8. We also understand that you wish to make the name change process more robust for universities with establishment statutes. Options two and three align the process more closely with what is required for establishment and disestablishment of an institution.

Giving effect to this change through the Education Amendment Bill (No 2)

9. It is not yet clear whether the proposed change is within scope of the Bill. Advice is being sought from the Office of the Clerk.

10. The SOP includes two other proposals. There will be one Cabinet Paper. However, there may be a need to split the SOP depending on which part of the Bill the amendments are made through.
11. $ 9(2)(h)$
12. The following three options are legally workable, although each has some shortcomings. Any change to the legislation would not be retrospective. Any of the below changes will put this process out of step with more substantive tertiary education institution decisions.

<table>
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<th>Options</th>
<th>Description of option</th>
<th>Advantages</th>
<th>Disadvantages</th>
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| Option 1: Prohibition on name change for all universities with statutes (other than by primary legislation). We propose inserting wording into the Education Act that prohibits universities with establishment statutes from changing their names. | **Decision-maker:** Not required.  
**Difficulty of process for universities:** Not possible for universities with statutes to change their names other than by primary legislation. This option goes further than creating a more substantive process for university name changes. It limits the autonomy of universities established by statutes to make name change decisions and is more restrictive than the processes required for establishment and disestablishment of an institution. | This would involve a relatively minor amendment of the Education Act.  
It would resolve any perceived inconsistency between university establishment Acts and the Education Act. | Universities may use a trading name if they are restricted from a legal name change. If you are interested in this option, the Ministry will obtain legal advice about whether just a change of legal name would be prohibited or also a change of trading name.  
This option is also likely to receive the most criticism from universities. They may raise questions as to why universities have been singled out to not be able to change their names while other tertiary education institutions still can (note that wānanga also have establishment Acts). |
| Option 2: House of Representatives resolution. We propose amending the Education Act to set out that | **Decision-maker:** House of Representatives.  
**Difficulty of process for universities:** This is a similar process to that required for the | While the possible inconsistency between the university establishment Acts and the Education Act could | This option may still result in universities pursuing use of a trading name if they see this process as creating too high |
the name change should be approved by the House of Representatives by resolution, and for the Minister to gazette the resolution for it to have legal effect.

disestablishment of an institution set out in s 164 of the Education Act. We would propose wording option 2 as follows:

a. For a university established via a statute, if the university wishes to change its name, it must notify the Minister in writing of its proposal.

b. The Minister must present the proposal to the House of Representatives.

c. The House of Representatives approves or declines the proposed name change by resolution.

d. If the House passes a resolution approving the name change, the Minister issues a Gazette notice to that effect.

remain, this would be a matter for the House to consider. This option would align the process for a name change with the process for disestablishment of an institution.

a barrier for a legal name change. This option would also require drafting of a new section and would be more complicated to implement than option 1. If you are interested in this option, the Ministry would consult with the Office of the Clerk about the proposal for this House resolution.

| Option 3: Order in Council.  
| We propose amending the Education Act so that rather than the Minister’s decision being published by notice in the Gazette, the Governor General would approve a name change by Order in Council. | Decision-maker: the Governor-General, in Executive Council (Minister to make a written recommendation).  
| Difficulty of process for universities: This is a similar process to the establishment and disestablishment processes for institutions set out in ss 162(2) and 164(1) Education Act. It remains a fairly similar process to that currently in place for institution name changes. | An Order in Council is a higher legislative instrument than a Gazette notice, so would make a name change for universities with statutes a more substantive option. It would also align the name change process with the requirements for establishment and disestablishment of institutions. | An inconsistency would still exist between the Order and the university’s establishment Act. Also, a Minister would have to make a recommendation to the Governor-General. This may not be too different to the current situation in practice. |
Education Amendment Bill (No 2) timeframes

13. The Bill is currently with the Education and Workforce Committee which is reporting back to the House on Friday 22 March.

14. A Cabinet Paper proposing the introduction of SOPs for the Bill is being developed and will be circulated with your colleagues from Friday 1 March.

15. The university name change proposal will not be ready for inclusion in the Cabinet Paper on Friday 1 March. As there are tight timeframes for Ministerial consultation for this paper, we propose circulating an updated version of the paper on Monday 4 March, following your decision on which of these options to put forward, if any.

16. We are aiming to ensure that the SOP will be available for tabling in the House from 9 April, the earliest possible date for Committee of the Whole House on the Bill.

Next Steps

17. You are meeting with education agencies on Monday 4 March from 10am to 11.30am. One item on the agenda is the current legislative programme. At this meeting, Ministry officials will discuss the options for the university name change process with you.

18. Following your decision, the Ministry will then include information about this proposal into the Cabinet Paper for the SOPs that is being circulated so that your Ministerial colleagues can provide feedback about the proposal.