Three Education Bills: Approval for Introduction

Proposal

1 I propose that the following three bills be approved for introduction into the House of Representatives:
   1.1 Education Amendment Bill;
   1.2 Industry Training and Apprenticeships Amendment Bill; and
   1.3 State Sector Amendment Bill.

2 It was my intention to include the provisions contained in the three bills in a single omnibus bill - the Education Legislation Bill (ELB). On 21 March 2018 the Cabinet Business Committee noted that the scope and theme for the Education Legislation Bill had yet to be determined and that some issues may not be suitable for an omnibus bill (CBC-18-MIN-0036). On 20 July 2018 the Office of the Clerk of the House, Parliamentary Counsel and the Ministry of Education agreed that the theme for the ELB was too broad to be an omnibus bill as defined by Standing Order 263(a).

Executive Summary

3 The three bills have been finalised for introduction into the House of Representatives. These bills replace the proposed Education Legislation Bill which I had intended would be the vehicle for the amendments set out in paragraphs 7 and 8 below.

4 The ELB held a priority 2 in the 2018 Legislative Programme – to be passed in the year. As I am not proceeding with the ELB, it should be removed from the 2018 Legislative Programme. I proposed that the three bills discussed in paragraph 1 be included on the 2018 Legislative Programme with a priority 5 – to be referred to the select committee in 2018.

5 The three bills amend the following enactments:
   5.1 Education Amendment Bill, amends the Education Act 1964, the Education Act 1989 and the Education (Update) Amendment Act 2017;
   5.2 Industry Training and Apprenticeships Amendment Bill amends the Industry Training and Apprenticeships Act 1992;
   5.3 State Sector Amendment Bill amends the State Sector Act 1988.

6 The Education Amendment Bill and the Industry Training and Apprenticeships Amendment Bill include transitional and other minor matters which were not identified in Cabinet’s policy decisions.
Policy
7 On 28 May 2018, Cabinet agreed to the following policies being progressed through an ELB (CAB-18-MIN-0240):

Education Act 1989
7.1 Ensuring the Education Council of Aotearoa New Zealand’s decisions on matters relating to the teaching profession are made within the context of a government policy direction:

7.1.1 providing a power for the Minister of Education to, by notice in the Gazette, issue a government policy relating to a specific function or functions of the Education Council of Aotearoa New Zealand (Education Council);

7.1.2 requiring that the Education Council must have regard to the policy in discharging the function or functions to which the policy relates;

7.1.3 requiring that the Minister must consult the Education Council prior to issuing the policy direction; and

7.1.4 requiring the Education Council to consult the Minister of Education prior to proposing changes to teacher education programme requirements and teacher registration criteria.

7.2 Including a new criterion for private schools’ registration that they must be a safe physical and emotional place for their students.

Education (Update) Amendment Act 2017 and Education Act 1964
7.3 Repealing provisions relating to communities of online learning which are due to come into force on 31 December 2019.

Industry Training and Apprenticeships Act 1992

State Sector Act 1988
7.5 Resolving a technical drafting matter in the State Sector Act 1988 on mergers and closures of State integrated schools, which was inadvertently omitted from the Education (Update) Amendment Act 2017.

8 On 28 May 2018, the Cabinet Business Committee (CBC) agreed that the Bill should amend the Education Act 1989 to enable schools to adopt a cohort entry policy for children five years and older, with two entry points per term - the first day of term and a mid-point during each
term (CBC-18-MIN-0070 refers). Cabinet confirmed the CBC decisions (CAB-18-MIN-0265). The amendments will remove the current cohort entry policy which allows schools to enrol children who are four years of age.

9 The policies to be implemented through the three bills are unlikely to be contentious within the general community and there is general support from the education sector.

10 Legislative action is required because, in order for the policies set out in paragraphs (7) and (8) above to have legal effect, changes must be made to the respective Acts.

**Subsequent changes**

11 Consistent with my authorisation by the Social Wellbeing Committee (SWC) to make decisions of detail that arise during the drafting process without further reference to Cabinet (SWC-18-MIN-0059 refers), the Education Amendment Bill and the Industry Training and Apprenticeships Amendment Bill include transitional provisions as discussed below.

**Education Amendment Bill**

11.1 Cohort entry - CBC agreed that schools that have already taken up cohort entry policies under the current legislation be given 12 months to transition to the new arrangements or return to continuous entry (CBC-18-MIN-0070 refers). I have decided that cohort entry policies adopted under the old provisions should be revoked no later than 1 January 2020, and any new policies should be able to have effect by that date. This would enable schools to have a new cohort entry policy in place for Term One in 2020;

11.2 Private School Registration Criteria - To ensure that the new private school registration provisions do not affect administrative decisions underway at the commencement of the Act, I have agreed to transitional provisions to avoid retrospective treatment. This includes, for example, where the process of cancelling a school’s registration started, but was not completed, before the commencement of the Education Amendment Bill (No2).

**Industry Training and Apprenticeships Amendment Bill**

[Text continues with legislative provisions and amendments.]
13 In May 2018 SWC agreed to change the priority for the ELB on the Legislative Programme from 5, to be referred to select committee in the year, to priority 2, must be passed in the year (SWC-18-MIN-0059 refers). As the ELB will not be proceeding, I propose that it be removed from the 2018 Legislative Programme.

14 Given the workload on the Education and Workforce Committee, I have decided that it should have 6 months to consider the three bills. I therefore propose that the three bills be included in the 2018 Legislative Programme with a priority 5 - to be referred to select committee in the year.
Impact analysis

15 Regulatory impact statements (RIS) on Education Council decision-making, private school registration, the repeal of the 2017 COOL provisions, and ITO skills leadership were submitted with the paper SWC -18-SUB-0059 (SWC-18-MIN-0059 refers). A RIS was submitted on cohort entry at the time that the paper CBC-18-SUB-0070 was submitted (CBC-18-MIN-0070 refers).

16 A RIS was not prepared on the proposal to amend the State Sector Act 1988 in relation to State integrated school closures and mergers because a RIS was prepared on this matter in the development of the Education (Update) Amendment Bill.

Compliance

17 Each of the three bills proposed for introduction comply with the following:
   17.1 the principles of the Treaty of Waitangi;
   17.2 the disclosure statement requirements;
   17.3 the principles and guidelines set out in the Privacy Act 1993;
   17.4 relevant international standards and obligations; and

18 The Ministry of Justice has undertaken a vet of the three bills for compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. I will advise the Committee of the outcome of the vet at the Committee meeting.

19 A disclosure statement has been prepared for each of the three bills (see Appendix 1).

Consultation

20 Consultation with the Government caucuses and support parties was undertaken on the ELB. The three bills contain provisions identical to those consulted on for the ELB.

Government departments and other public bodies.

21 The following government departments and public bodies were consulted in the development of policy proposals: the Department of the Prime Minister and Cabinet, the Treasury, State Services Commission, Education Review Office, Ministry of Social Development, Office of Disability Issues, Ministry for Women, Te Puni Kokiri, Ministry for Pacific Peoples, Oranga Tamariki - the Ministry for Children, Ministry of Justice, Ministry of Business, Innovation and Employment, New Zealand Police, Tertiary Education Commission, New Zealand Qualifications Authority, and the Education Council.

22 The State Services Commission supports the State Sector Amendment Bill.
Relevant private sector organisations and public consultation processes

23 Targeted consultation was undertaken through discussion documents with education peak bodies, early learning centres, schools, teachers’ unions, tertiary education providers and other relevant stakeholders on the following issues: Education Council decision-making, private school registration criteria, repeal of COOL provisions, and ITO skills leadership.

24 The public had the opportunity to provide feedback on the discussion documents through the Ministry of Education website and email. Ninety-nine submissions were received across these issues.

25 Separate public and sector consultation was undertaken on cohort entry reflecting the wider public interest in this issue. The Ministry of Education received 136 submissions on this issue.

26 Public and sector consultation was undertaken on the State Sector Act 1988 amendments when the Education (Update) Amendment Bill was being prepared. Those amendments were inadvertently omitted from the Education (Update) Amendment Act 2017.

Binding on the Crown

27 The Industry Training and Apprenticeships Amendment Bill will bind the Crown, given that the principal Act itself binds the Crown.

28 Neither the Education Amendment Bill nor the State Sector Amendment Bill will bind the Crown. This is consistent with the Education Act 1989, the Education (Update) Amendment Act 2017, and the State Sector Act 1988.

Do the three bills create new agencies or amend the law relating to existing agencies?

29 Not applicable.

Allocation of decision making powers

30 Not applicable.

Associated regulations

31 In relation to the cohort entry provisions in the Education Amendment Bill, changes will be required to the Social Security (Childcare Assistance Regulations) 2004, to ensure that Childcare Assistance remains available for eligible caregivers. The Regulations will be amended by May 2019.

Other instruments

32 Not applicable.

1 Peak education groups consulted included: the Education Council of Aotearoa New Zealand; New Zealand School Trustees Association, NZEI Te Riu Roa, Post Primary Teachers Association, Early Childhood Council, NZ Kindergartens Incorporated, Playcentre Federation of New Zealand, Te Aho o Te Kura Pounamu; New Zealand Principals’ Federation, New Zealand Institutes of Technology and Polytechnics and the Industry Training Federation.

2 With the exception of Part 33, “State integrated schools”
Definition of Minister/department

33 Not applicable.

Commencement of legislation

*Education Amendment Bill*

34 The majority of the Bill will commence on the day after the Bill receives the Royal assent. The exceptions are:

34.1 The clauses on Education Council decision-making are intended to come into force on a date specified by Order in Council. This is to ensure that they come into force at the same time as amendments to the Education Act 1989 currently before the House in the Education (Teaching Council of Aotearoa) Amendment Bill. The reasons for commencement by Order in Council are set out in the Explanatory Note;

34.2 The clauses that specify when a new cohort entry policy may be adopted and when existing policies cease to have effect will come into force on 1 January 2020. This is to enable IT system changes to be made, and time for schools to consider making new cohort entry arrangements.

*Industry Training and Apprenticeships Amendment Bill*

35 The Bill will commence on the day after the Bill receives the Royal assent.

*State Sector Amendment Bill*

36 The Bill will commence on the day after the Bill receives the Royal assent.

Parliamentary stages

37 The three bills should be introduced to the House of Representatives on 14 August 2018 and be enacted as soon as possible after they are reported back to the House.

38 The three bills should be referred to the Education and Workforce Committee. Although amendments to the State Sector Act 1988 are usually considered by the Governance and Administration Committee, the amendments in the State Sector Amendment Bill relate solely to closures and mergers of State integrated schools.

39 In order for the three bills to be dealt with expeditiously in the House, I intend to seek leave of the House Business Committee, under Standing Order 269, for the Bills to be cognate bills.

Recommendations

40 The Minister of Education recommends that the Committee:

1 *note* that the Education Legislation Bill holds a category 2 priority, must be passed in the year, on the 2018 Legislation Programme
2 note the advice from the Clerk of the House that the theme for the Education Legislation Bill was too broad to meet the criteria for an omnibus bill as defined by Standing Order 263(a)

3 note that the content of the Education Legislation Bill has been included in the following three bills proposed for introduction to the House of Representatives:

3.1 Education Amendment Bill, amends the Education Act 1964, the Education Act 1989 and the Education (Update) Amendment Act 2017

3.2 Industry Training and Apprenticeships Amendment Bill amends the Industry Training and Apprenticeships Act 1992

3.3 State Sector Amendment Bill amends the State Sector Act 1988

4 agree that, because there will not be an Education Legislation Bill in 2018, it is removed from the 2018 Legislative Programme

5 note that the three bills proposed for introduction to the House implement policies to:

*Education Amendment Bill*

5.1 ensure that the Education Council of Aotearoa New Zealand’s decisions on matter relating to the teaching professions are made within the context of government policy

5.2 include a new criterion for private schools’ registration, to the effect that they must provide a safe physical and emotional place for their students

5.3 enable schools to adopt a cohort entry policy which applies only to children five years of age and over

5.4 repeal provisions in the Education (Update) Amendment Act 2017 on communities of online learning

*Industry Training and Apprenticeships Amendment Bill*

5.5 reinstate industry training organisations’ statutory skills leadership role

*State Sector Amendment Bill*

5.6 resolve a technical drafting matter, through the State Sector Act 1988, on mergers and closures of State integrated schools

6 note that, consistent with the Minister of Education’s authorisation to make decisions of detail that arise during the drafting process without further reference to Cabinet (SWC-18-MIN-0059 refers), the bills reflect the following changes:

6.1 in the Education Amendment Bill, cohort entry policies made under the new provisions can come into effect no earlier than 1 January 2020
6.2 in the Education Amendment Bill, transitional provisions have been included to ensure that existing school registrations are not affected and to provide time for registered schools to show that they meet the new criteria.

7 agree to include the Education Amendment Bill, Industry Training and Apprenticeships Amendment Bill and the State Sector Amendment Bill on the 2018 Legislative Programme with a category 5 - must be referred to select committee in the year.

8 approve the Education Amendment Bill, Industry Training and Apprenticeships Amendment Bill and the State Sector Amendment Bill for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives.

9 agree that the Education Amendment Bill, Industry Training and Apprenticeships Amendment Bill and the State Sector Amendment Bill be introduced into the House of Representatives on 14 August 2018.

10 agree that the Government propose that the Education Amendment Bill, Industry Training and Apprenticeships Amendment Bill and the State Sector Amendment Bill be:

10.1 referred to the Education and Workforce Committee for consideration.

10.2 enacted as soon as possible after it is reported back to the House of Representatives.

11 note that the Minister of Education intends to seek leave of the House Business Committee for the Bills to be treated as cognate bills under Standing Order 269.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education