

Education Amendment Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Education Amendment Bill and recommends by majority that it be passed with the amendments shown.

About the bill as introduced

The Education Amendment Bill would amend the Education Act 1989 and the Education (Update) Amendment Act 2017. The main objectives of the bill are to:

- strengthen the quality of school education by removing the provisions relating to national standards and the partnership school model from legislation
- improve the governance of tertiary education institutions by restoring places for elected staff and students on their councils
- support the introduction of free tertiary education by making it an offence to make a false representation about an application for free tertiary education
- improve the new strategic planning and reporting framework for State- and State-integrated schools and enable a smooth transition to the new regime.

Proposed amendments

This commentary covers the main amendments that the majority of us recommend to the bill as introduced. It does not discuss minor or technical amendments.

Tertiary education institutes' governance arrangements

Teaching and general staff council membership

Clauses 12 and 14 of the bill as introduced would amend sections 171B and 222AD of the Education Act to change the membership requirements of university and poly-

technic councils. At least one member of these councils would need to be a permanent member of the teaching or general staff of the institution. They would also need to be elected by the teaching or general staff.

We recommend amending new section 171B(2A) so that, as an alternative, university and polytechnic councils could have one teaching staff member elected by teaching staff and one general staff member elected by the general staff. We believe tertiary education institutions should be able to decide whether it is appropriate to have both a general staff council member and teaching staff council member or just one member representing both groups.

Student council representations

The Green Party view is that student representation on tertiary and polytechnic councils should be increased from “at least one” to “at least two” in subparagraphs 12(2A)(b) and 14(4)(b) of the amendment bill to guarantee greater democratic representation, balanced decision making, and to reflect the strong will of a majority of submitters on this issue.

Limitations on council statutes

We recommend inserting subclause (2D) in new section 171B through clause 12 so that an institution or its council could not specify who is eligible to stand for election as a staff or student representative.

Wānanga exempted

During consultation, wānanga expressed concern that the bill as introduced would negatively affect their ability to include tikanga-competent and iwi-representative council members. They see this as a critical aspect of the principle of active protection of mātauranga Māori.

We acknowledge this concern and the need for flexibility to ensure that iwi views and Māori cultural values are adequately represented on wānanga councils. Therefore, we recommend amending clause 12 to insert subsection 171B(2B) to exempt wānanga councils from the requirement to have staff and student representatives.

Council membership requirements

For clarity, we recommend inserting subsection 171B(2C) to specify that student and staff members elected to the council should be treated as automatically meeting the statutory knowledge, skill, and experience requirements.

We recognise that there is value in seeking nominations from tertiary education institutions’ councils because it strengthens the relationship between the Crown and the councils. Therefore, we recommend inserting subsection 171B(2E) to require the Minister to seek and consider nominations from the relevant council.

Transition period

We acknowledge that tertiary education institutions would need time to incorporate these legislative changes affecting staff and student council members. Therefore, we

recommend making the transition period 12 months instead of 6, by amending clause 18 (Schedule 1, new clause 13(1)(b)(ii) in the Act).

Polytechnic council membership

Currently, the Act requires polytechnic councils to have 8 members. However, we believe it is important for polytechnics to have flexibility in the number of members they have on their council. We recommend amendments in clause 13 (section 222AA of the Act) so that designated polytechnics' constitutions would provide for 8, 9, or 10 members. Of the total, 4 members must be appointed by the Minister, with the balance appointed by the council.

We also recommend (new subsection 222AA (1A)) that polytechnic councils could vary their size after they have been established, provided they maintain between 8 and 10 members.

Additionally, we recommend including a requirement that the Minister ensure that at least 50 percent, but no more than 60 percent, of the members of a combined council are members appointed by the council (new clause 14A, replacing section 222AM(2) of the Act).

Aligning polytechnic council requirements with tertiary education institution requirements

We recommend, by majority, a number of amendments to bring the requirements on polytechnic councils' and tertiary education institutions into alignment. These are:

- inserting subsection 222AD(5) through clause 14 to specify that student and staff members elected to the council should be treated as automatically meeting the statutory knowledge, skills, and experience requirements
- inserting subsection 222AD(6) to prevent an institution or its council from specifying a staff member or student who is eligible to stand for election
- inserting subsection 222AD(2A) to require the Minister to seek and consider nominations from the relevant council before making appointments.

Process for establishing designated character schools

We recommend inserting new clause 9A to amend section 156AA of the Act. This would enable the Minister to name a body that has a special affiliation with or responsibility for the different character of a designated character school. This provision would not apply if the designated character school were a Kura Kaupapa Māori. This amendment would also require the Minister to consult the named body before amending the description of the school's different character.

Transitional arrangements for employees of specified partnership schools kura hourua

We also recommend amending clause 18 to insert new clause 12A in Schedule 1 of the Act. This would set out the transitional arrangements for employees who apply for

an equivalent position at a specified State school that replaces a specified partnership school kura hourua.

New clause 12A(2) would specify that the employee must be offered an equivalent position, with two exceptions. These are, first, if another employee to whom this clause applied was appointed to the position. The second is if the appointment would contravene the sections in the Act that place restrictions on teachers' appointment or continued employment.

New clause 12A(3) would make it clear that an employee appointed to an equivalent position could not receive any other payment or benefit that related to their employment with the specified partnership school kura hourua having ceased.

We recommend providing a definition of "equivalent position" in new clause 12A(5). Our proposed definition explains that an equivalent position means employment relative to the employee's current position that:

- involves comparable duties and responsibilities
- is in the same general area or is in an area within reasonable commuting distance
- is on terms and conditions that are no less favourable
- treats the period of service with the sponsor of the specified partnership school kura hourua and the specified State school as continuous.

Amendments to the Education (Update) Amendment Act

Strategic planning and reporting

The new strategic planning and reporting framework brought in by the Education (Update) Amendment Act 2017 omitted the requirement that annual financial statements in a board's annual report must be in the form (if any) determined by the Secretary after consultation with the Auditor-General. We recommend amending clause 21(5) to reinstate this requirement.

We also recommend amending clause 21(9) to require a board with a 2019 school charter to continue to update the annually updated sections of its charter until its first required annual implementation plan.

New Zealand National Party minority view

National opposes the main objectives of this bill because they are driven by an ideological agenda rather than policy that is focused on the best interests of all New Zealand children.

Both partnership schools and national standards enabled opportunities for children with tough backgrounds to get additional support where they needed it.

We note that there have been serious issues of process and fairness surrounding the Government's removal of both national standards and the termination of partnership

schools and the partnership school model. The Government has chosen ideology over a kinder social conscience. This bill does not reflect a kinder New Zealand.

Removal of national standards—importance of frequent, clear, reliable reporting to parents

National believes it has been irresponsible of the Government to get rid of national standards without having a detailed system to replace it with. The Minister amended the national administration guidelines to effectively scrap national standards without consultation from parents in December of last year. We believe it is arrogant that the Government did not even try to consult with parents before it scrapped national standards.

Parents and students deserve to be treated better than this. The removal of the standards has been confusing and chaotic with some schools trying to keep national standards while others develop new systems. We note that Treasury has previously recommended that the Government delay scrapping national standards until they had a new system to replace it with in order to prevent a gap in system-level information on how schools are performing. Under the changes, the Government has ensured there is no standardised reporting back to the Ministry of Education. This has resulted in real issues of accountability of reporting and understanding of the nationwide picture of achievement.

If parents have issues with their school it is now much harder for the ministry to understand what is going on. We note the submitters who raised the importance of enabling parents to monitor their child's progress and the ability to benchmark that progress. This legislation reflects the Government removing national standards provisions in law nearly 7 months after they scrapped the system via the national administrative guidelines.

National supports frequent, clear, and reliable reporting to parents. We also support reporting progression across all of the curriculum areas. However, we are concerned that the tools have not been adequately invested in to enable quality reporting. We believe there must also be reporting to the ministry to ensure we can ensure we have a nationwide school level picture of achievement.

Large support for retaining the partnership school kura hourua model

We note that more than 90 submitters supported partnership schools versus 60 opposing submissions on the bill. The Government members and their support parties have chosen to ignore the democratic will of the majority of submitters who want to keep the model in law.

National notes partnership schools have been a hugely successful and innovative model of schooling that has supported children who have struggled in other schools. The overall results and independent evaluations for partnership schools have shown huge progress for children with complex needs. National has visited the schools, met with parents and continued to fight for these schools. We are concerned that, since becoming Minister of Education, the Minister has failed to visit any of the partnership

schools affected. He has also failed to adequately consult with students, staff, and the schools and whānau and communities affected by his decisions.

We oppose the legislation going through the House to scrap the model and we have opposed the schools' closure. The Government and its support parties are ideologically opposed to these schools and their treatment of some of our most disadvantaged children and their families is hugely disappointing.

We note that prior to this legislation the Government terminated 10 out of 11 partnership schools. The treatment of these schools throughout this process has been appalling, with schools finding out their potential future through the media, and a general lack of communication from the Minister and ministry. The Government asked schools to apply to transition to a different schooling model (designated character or State-integrated schools) but we know that these models do not have the flexibility of the partnership school model. Many of these schools were left in a state of limbo for a long period of time with no certainty about their future while the Government worked out whether they would allow the school to open as a different school. There are still several schools who do not have clarity on their future. The process has been clumsy and upsetting for many schools and their students. National opposes the provisions in this bill.

Treaty of Waitangi claim opposing removal of kura hourua model

Several months ago senior Māori educators lodged a claim at the Waitangi Tribunal regarding the Crown's treatment of partnership schools. These leading Māori educators have mana and collectively have decades of experience in supporting young Māori to achieve in the community and our education system. We have recently become aware that the Minister has now denied being served with a claim. The Minister's response to a parliamentary question during this process indicated he was not aware that a claim had been lodged. National believes that this is a technical point. This is due to the fact that legal papers were served by iwi leaders' legal representatives to Crown Law. The Minister of Education has shown no leadership on this issue or any care for iwi leaders and other submitters who have genuine concerns about potential treaty breaches. The Minister needs to seriously consider the Tribunal claim and reflect on the appropriateness of proceeding with the legislation to remove the partnership school model at this time.

We also acknowledge prominent Māori leader Sir Toby Curtis and Dame Iritana's presentation to our select committee. Sir Curtis stated that schools are fearful of the Minister, saying they have been muzzled and have felt the Minister's foot on their throats. We also note Dame Tariana Turia and Pem Bird MNZM have joined the claim. The claim is supported by a large number of kaumātua from around the country. The Government is instead arrogantly pressing ahead with legislation to remove the model. We also note the Minister responsible for protecting Māori education has removed himself entirely from the process claiming a conflict of interest.

National supports the iwi leaders' view that the provisions removing the partnership school model from law should not proceed without the Waitangi Tribunal claim being

heard first. This is about fairness and justice on this issue and respecting iwi leaders, schools, staff, students, and their families affected by the Government's decisions.

Partnership schools Supplementary Order Paper

A Supplementary Order Paper provided very late to the select committee amends the bill to establish a preferential right for current staff of partnership schools to apply for positions in any new State school that is established to replace the partnership school. The amendments will also prohibit an employee from being entitled to redundancy if the employee is offered and accepts an equivalent position in the new school. National supports the sponsors of partnership schools who have raised serious concerns about the inadequate time given to consider these issues due to the Minister's late amendment.

Governance of tertiary education institutions

National opposes the changes proposed in this bill. The changes revert back to a previous model with no evidence that these changes will create more effective management of our tertiary institutions. We believe that this is another example of the new Government's ideological policy making rather than basing education policy on sound evidence.

The changes will mean that governance boards will have higher numbers of people and will potentially have people on them who lack the core governance skills that are required for any ministerial appointment. The requirements for ministerial appointments are waived for those who are elected representatives. National believes strongly in the importance of supporting student and staff views to be heard. However, we believe that there are multiple avenues whereby this can be achieved. In our view the changes proposed do not reflect the best governance arrangements for tertiary institutions.

New offence for a false statutory declaration

The new offence for a false statutory declaration has been introduced by the Government as a response to the new fees-free policy. We are concerned that the Government does not hold adequate data to determine who is eligible for this costly policy. We also believe that this offence should have been in place prior to the implementation of the policy. We also believe that the quantum of the fine is unlikely to be an adequate deterrent, as the potential benefit of the fees-free policy outweighs the cost of the fine if caught.

Select committee process—report back timeline inadequate

The process surrounding this bill's passage through the committee has been inadequate and has undermined our ability to properly scrutinise the bill.

Given the large number of submitters and far-reaching implications of this bill, Opposition members called for an extension to the original report back date of 15 August. The Business Committee granted an extension until 3 September despite a longer time period being requested.

During the course of hearing public submitters, one particular group, Tertiary Education Union (TEU), had such a sizeable bundled submission that the committee had significant challenges on how to hear all oral presentations. This particular issue lengthened the submitter timeline for the committee.

In the last committee meeting before the report back date (15 August), Opposition members once again expressed a strong desire to extend the report back date a second time. This was on the basis of three reasons:

- the Parliamentary Counsel Office verbally informed the committee that the shortened timeline was unusual and they would struggle to provide staffing resources to complete the revision tracked version of the bill based on recommendations of the departmental report
- the 3 September report back date would mean that, due to the two week recess prior, neither Government nor Opposition members could present the revised bill changes to their caucus
- adhering to the 3 September report back date would require the committee to meet with short notice during Parliament's recess on a day where many members had prior electorate-based commitments already in place.

These points were disregarded by the Government members of the committee. Subsequently, a motion was moved by Simeon Brown and it was agreed by the committee that:

“the committee write to the Business Committee outlining frustration with the report back date for this bill, in particular the reduced timeframe for Parliamentary Counsel to draft the revision-tracked version of the bill and the inability to take the report to caucus.”

Due to the sweeping and important implications contained in this bill for New Zealand's education system, the Education and Workforce Committee should make certain the process be unhurried and thoroughly adequate. This has not occurred and we, the Opposition members, wish to have our strong disapproval on record.

Appendix

Committee process

The Education Amendment Bill was referred to the committee on 15 February 2018. The closing date for submissions was 13 April 2018. We received and considered 641 submissions from interested groups and individuals.

We received advice from the Ministry of Education.

Committee membership

Dr Parmjeet Parmar (Chairperson)

Simeon Brown

Hon Nikki Kaye

Denise Lee

Marja Lubeck

Jo Luxton

Mark Patterson

Jamie Strange

Chlöe Swarbrick

Jan Tinetti

Nicola Willis

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Chris Hipkins

Education Amendment Bill

Government Bill

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal Act	2
Part 1	
Amendments to principal Act	
4 Section 60A amended (Curriculum statements and national performance measures)	2
5 Section 61 amended (School charter)	2
6 Section 71A amended (Off-site locations for schools)	3
7 Section 75A amended (Appointment of principals)	3
8 Section 92 amended (Interpretation)	3
9 Section 146 amended (Minister may establish schools)	3
<u>9A</u> <u>Section 156AA amended (Process for establishing designated character schools)</u>	<u>3</u>
10 Part 12A repealed	3
11 Section 159 amended (Interpretation)	4
12 Section 171B amended (Matters to be considered when appointing members)	4
13 Section 222AA amended (Constitution of polytechnic councils)	5
14 Section 222AD amended (Matters to be considered when appointments made)	5
<u>14A</u> <u>Section 222AM amended (Constitution of combined councils)</u>	<u>6</u>
15 Section 292A amended (Offences relating to false representations)	6
16 Section 310 amended (Meaning of early childhood education and care centre)	7

17	Section 319B amended (Powers of entry and inspection without warrant)	7
18	Schedule 1 amended	7
	<u>12A</u> <u>Transitional arrangements for employees of specified partnership schools kura hourua</u>	<u>8</u>
	<u>12B</u> <u>Minister may specify schools for purposes of clause 12A</u>	<u>9</u>
	<u>13</u> <u>Interpretation</u>	<u>9</u>
19	Schedule 5A amended	11
20	Consequential amendments to principal Act	11

Part 2

Amendments to other enactments

21	Amendments to Education (Update) Amendment Act 2017	12
22	Amendments to other enactments	14

Schedule 1

Consequential amendments to principal Act

Schedule 2

Amendments to other enactments

18

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education Amendment Act **2018**.

2 Commencement

This Act comes into force on ~~4 August 2018~~ the day after the date of Royal assent. 5

3 Principal Act

This Act amends the Education Act 1989 (the **principal Act**).

Part 1

Amendments to principal Act

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4 Section 60A amended (Curriculum statements and national performance measures)

Repeal section 60A(1)(ba).

5 Section 61 amended (School charter)

In section 61(4)(a), delete “, including the assessment of students against any national standard published under section 60A(1)(ba)”. 15

6 Section 71A amended (Off-site locations for schools)

In section 71A(4), replace “in subsection (2), ~~a school~~” with “under this Act, ~~a board~~”.

7 Section 75A amended (Appointment of principals)

In section 75A(1), replace “section 65” with “clause 6 of Schedule 6”.

5

8 Section 92 amended (Interpretation)

In section 92(1), definition of **special institution**, replace paragraph (c) with:

(c) an institution (other than an institution that is part of a school) situated within—

- (i) an institution under the control of the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; or
- (ii) a hospital care institution (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001)

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9 Section 146 amended (Minister may establish schools)

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After section 146(4), insert:

- (5) Despite section 98 or 98A, the Minister may approve an alternative constitution when establishing a school.

9A Section 156AA amended (Process for establishing designated character schools)

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(1) After section 156AA(3), insert:

(3A) The notice establishing a designated character school that is not a Kura Kaupapa Māori may also name a body that has a special affiliation with the school or has responsibility for the different character of the school.

(2) Replace section 156AA(4)(b) with:

25

(b) for any other type of designated character school,—

- (i) amend the description of the different character of the school:
- (ii) name a body that has a special affiliation with the school or has responsibility for the different character of the school:

(3) After section 156AA(4), insert:

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(5) The Minister must consult any body named under **subsection (3A)** or **(4)(b)(ii)** before amending the description of the school’s different character.

10 Part 12A repealed

Repeal Part 12A.

11 Section 159 amended (Interpretation)

In section 159(1), insert, in its appropriate alphabetical order:

permanent member, in relation to the teaching or general staff of an institution, means a member of the staff who—

- (a) is employed, on either a full-time or part-time basis, for a period ending, unless sooner terminated, on his or her resignation or retirement; or 5
- (b) has been employed, on either a full-time or part-time basis, whether under an employment agreement for a fixed term or otherwise, for at least 3 months; or
- (c) has been employed, on either a full-time or part-time basis, whether under an employment agreement for a fixed term or otherwise, for less than 3 months and whose employment is, in the opinion of the chief executive of the institution, likely to continue for at least 3 months from the date of commencement of that employment 10

12 Section 171B amended (Matters to be considered when appointing members)

(1) After section 171B(2), insert:

(2A) When appointing members of a council, the council must ensure that—

- ~~(a) at least 1 member is—~~
 - ~~(i) a permanent member of the teaching or general staff of the institution; and~~ 20
 - ~~(ii) a person that the permanent members of the teaching and general staff of the institution have elected to represent them; and~~
- (a) at least—
 - (i) 1 member is a permanent member of the teaching or general staff of the institution that the permanent members of the teaching and general staff of the institution have elected to represent them; or 25
 - (ii) 1 member is a permanent member of the teaching staff of the institution that the permanent members of the teaching staff of the institution have elected to represent them and 1 member is a permanent member of the general staff of the institution that the permanent members of the general staff of the institution have elected to represent them; and 30
- (b) at least 1 member is a student—
 - (i) ~~a student who is~~ enrolled in the institution; and 35
 - (ii) ~~a person that~~ whom the students of the institution have elected to represent them.

(2B) However, subsection (2A) does not apply to the membership of the council of a wānanga.

- (2C) An elected person specified in **subsection (2A)**—
- (a) is to be treated as meeting any relevant knowledge, skills, or experience requirements; and
 - (b) must be appointed unless the person is ineligible for appointment under section 171A(1). 5
- (2D) An institution or its council may not specify who is eligible to stand for election as a representative of—
- (a) the permanent members of the teaching or general staff of the institution; or
 - (b) the students of the institution. 10
- (2E) Before making an appointment under this section, the Minister must seek, and consider, nominations from the relevant council.
- (2) In section 171B(3), replace “Subsections (1) and (2) do” with “This section does”.
- 13 Section 222AA amended (Constitution of polytechnic councils)** 15
- ~~In section 222AA(1)(b), replace “4 members” with “6 members”.~~
- (1) Replace section 222AA(1) with:
- (1) The council of a designated polytechnic must have a total of 8, 9, or 10 members, as provided in its constitution, comprising—
- (a) 4 members appointed by the Minister; and 20
 - (b) enough members appointed by the council by resolution, in accordance with its statutes, to bring the membership up to that total number.
- (2) After section 222AA(1), insert:
- (1A) However, once the council of a designated polytechnic is established, it may, in accordance with its statutes, vary its size provided that the council has at least 8 members and no more than 10 members. 25
- 14 Section 222AD amended (Matters to be considered when appointments made)**
- (1) After section 222AD(2), insert:
- (2A) Before making an appointment under this section, the Minister must seek, and consider, nominations from the relevant council. 30
- (2) After section 222AD(3), insert:
- (4) When appointing members of a council, the council must ensure that—
- (a) ~~at least 1 member is —~~
 - (i) ~~a permanent member of the teaching or general staff of the designated polytechnic; and~~ 35

- (ii) ~~a person that the permanent members of the teaching and general staff of the designated polytechnic have elected to represent them; and~~
- (a) at least—
- (i) 1 member is a permanent member of the teaching or general staff of the designated polytechnic that the permanent members of the teaching and general staff of the designated polytechnic have elected to represent them; or 5
- (ii) 1 member is a permanent member of the teaching staff of the designated polytechnic that the permanent members of the teaching staff of the designated polytechnic have elected to represent them and 1 member is a permanent member of the general staff of the designated polytechnic that the permanent members of the general staff of the designated polytechnic have elected to represent them; and 10 15
- (b) at least 1 member is a student—
- (i) ~~a student~~ who is enrolled in the designated polytechnic; and
- (ii) ~~a person that~~ whom the students of the designated polytechnic have elected to represent them.
- (5) An elected person specified in **subsection (4)**— 20
- (a) is to be treated as meeting any relevant knowledge, skills, or experience requirements; and
- (b) must be appointed unless the person is ineligible for appointment under section 222AA(2).
- (6) A designated polytechnic or its council may not specify who is eligible to stand for election as a representative of— 25
- (a) permanent members of the teaching or general staff of the designated polytechnic; or
- (b) students of the designated polytechnic.
- 14A Section 222AM amended (Constitution of combined councils)** 30
- Replace section 222AM(2) with:
- (2) The Minister must ensure that at least 50%, but no more than 60%, of the members of the combined council are members appointed by the council.
- 15 Section 292A amended (Offences relating to false representations)**
- (1) In section 292A(2), replace “this section” with “subsection (1)”. 35
- (2) After section 292A(2), insert:

- (3) A person commits an offence who, without reasonable excuse, makes a false representation for the purpose of receiving, or continuing to receive, free tertiary education from a tertiary education organisation.
- (4) A person who commits an offence against **subsection (3)** is liable on conviction to a fine not exceeding \$5,000. 5
- (5) For the purposes of **subsection (3)**,—
free tertiary education means any tuition or training—
- (a) that a tertiary education organisation provides to, or arranges for, eligible students; and
- (b) that has costs (which would otherwise be payable by those students) that are (in whole or in part) met by funds appropriated by Parliament 10
- tertiary education organisation** has the same meaning as organisation in section 159B.
- 16 Section 310 amended (Meaning of early childhood education and care centre)** 15
- Replace section 310(2)(f) with:
- (f) children’s health camps operated by an organisation funded by a state service to provide an education service to children attending health camps:
- 17 Section 319B amended (Powers of entry and inspection without warrant)** 20
- (1) Replace section 319B(1)(a) with:
- (a) enter and inspect—
- (i) any premises that are or contain a licensed early childhood education and care centre or that are used to provide a licensed home-based education and care service or a licensed hospital-based education and care service, or that are used by a certificated play-group: 25
- (ii) any offices of a service provider that are related to those premises:
- (2) In section 319B(1)(b), replace “disk” with “a storage device”.
- 18 Schedule 1 amended** 30
- In Schedule 1, after ~~Part 5~~ **Part 5B**, insert:
- Part 6**
- Provisions relating to partnership schools kura hourua**
- 12 Transitional provision for existing partnership schools kura hourua**
- (1) In respect of any partnership school kura hourua in existence immediately before the commencement of this clause, this Act applies as if **sections 10,** 35

~~48, and 20-20, and 22 of the Education Amendment Act 2018~~ had not come into force.

- (2) Despite **subclause (1)**, section 158C does not apply.
- (3) This clause ceases to apply in respect of a partnership school kura hourua on the earlier of—
 - (a) the expiry of the partnership school contract for the school; and
 - (b) the termination of the partnership school contract for the school.

12A Transitional arrangements for employees of specified partnership schools kura hourua

- (1) This clause applies to an employee—
 - (a) who is employed by a sponsor at a specified partnership school kura hourua that is or is to be replaced by a specified State school; and
 - (b) who applies in writing for an equivalent position at the specified State school.
- (2) The employee must be offered the equivalent position unless—
 - (a) another employee to whom this clause applies is appointed to that position; or
 - (b) the employee's appointment would contravene section 349 or 350.
- (3) An employee appointed to an equivalent position is not entitled to receive any payment or other benefit on the ground that the position held by the employee in the specified partnership school kura hourua has ceased to exist.
- (4) This clause overrides anything to the contrary in—
 - (a) an employment agreement;
 - (b) Part 6A of the Employment Relations Act 2000;
 - (c) sections 77G and 77H of the State Sector Act 1988.
- (5) In this clause,—

equivalent position means employment that, relative to the employee's current position,—

 - (a) involves comparable duties and responsibilities; and
 - (b) is in the same general locality or a locality within reasonable commuting distance; and
 - (c) is on terms and conditions that are no less favourable than those applying to the employee immediately before the specified partnership school kura hourua is replaced by the specified State school; and
 - (d) is on terms that treat the period of service with the sponsor of the specified partnership school kura hourua (and every other period of service recognised for the purposes of the previous position as continuous ser-

vice) as if it were continuous service with the education service (as that service is defined in section 2 of the State Sector Act 1988)

specified partnership school kura hourua means a partnership school kura hourua specified by the Minister by notice in the *Gazette* under **clause 12B** as a partnership school kura hourua to which this clause applies

specified State school means a State school (including a State integrated school) specified by the Minister by notice in the *Gazette* under **clause 12B** as a State school to which this clause applies.

12B Minister may specify schools for purposes of clause 12A

The Minister may, by notice in the *Gazette*, specify—

- (a) a partnership school kura hourua that is replaced by a State school as a partnership school kura hourua to which **clause 12A** applies; and
- (b) the State school that replaces the partnership school kura hourua as a State school to which **clause 12A** applies.

Part 7

Provisions relating to tertiary education institutions

13 Interpretation

~~For the purposes of this schedule, unless the context otherwise requires,—~~

- ~~(a) **council** means the council of an institution;~~
- ~~(b) **transition period**, in relation to a council, means the period—~~
 - ~~(i) commencing on the commencement of this schedule; and~~
 - ~~(ii) ending on the close of the date that is 6 months after the commencement of this schedule;~~
- ~~(c) terms defined in section 159(1) have the meanings given by that section.~~

13 Interpretation

(1) For the purposes of this **Part**, unless the context otherwise requires,—

council means the council of an institution

transition period, in relation to a council, means the period—

- (a) commencing on the commencement of this **Part**; and
- (b) ending on the close of the date that is 12 months after the commencement of this **Part**.

(2) Terms defined in section 159(1) have the meanings given by that section.

14 Appointing members to existing councils

Despite the **Education Amendment Act 2018**, a council in existence immediately before the commencement of this clause is not required to comply with

section **171B(2A)**, 222AA(1)(b) (as amended), ~~and 222AD(4) (as applicable),~~ and **222AM(2)** until—

- (a) the date that new members must be appointed in accordance with a new constitution (*see* **clause 19(2)**); or
- (b) the date that new members must be appointed in accordance with a constitution amended under **clause 15(3)**, if earlier.

15 Existing councils to update constitutions

- (1) Every council must, if necessary to comply with **section 171B(2A)**, 222AA(1)(b), or **222AD(4)**,—

- (a) prepare a new draft constitution for the council for its institution; and
- (b) give a copy to the Minister.

- (2) The copy must be given to the Minister at least 2 months before the close of the transition period.

- (3) Alternatively, in the case of an institution that is not a designated polytechnic, the institution may have its constitution amended in accordance with section 170 so that it complies with **section 171B(2A)** and, in that case, **clauses 16 to 22** do not apply.

- (4) The recommendation required by section 170(1) must be given to the Minister at least 2 months before the end of the transition period.

16 Draft constitutions to be approved by Minister

The Minister must, by notice in the *Gazette* setting out the draft constitution, establish it as a new constitution if—

- (a) the council has given a copy to the Minister at least 2 months before the close of the transition period; and
- (b) the Minister is satisfied that it complies with the requirements of this Act.

17 Minister may establish new constitution if council does not act in time

The Minister may, by notice in the *Gazette* setting out the constitution, establish a new constitution if the council has not given a copy of a new draft constitution to the Minister at least 2 months before the close of the transition period.

18 When new constitution established and comes into effect

The new constitution—

- (a) is established when a notice under **clause 16 or 17** is published in the *Gazette*; and
- (b) comes into effect at the close of the transition period.

19 New members to be appointed

- (1) A council must appoint new members if necessary to give effect to the new constitution.
- (2) The council must appoint the new members in accordance with the Act—
- (a) as soon as practicable after the new constitution comes into effect; and
 - (b) no later than 6 months after the close of the transition period.

5

20 Council continues to be same body and membership of council continues

- (1) A council constituted under a new constitution—
- (a) is the same body as it was immediately before the close of the transition period; and
 - (b) continues to have the rights and obligations it had before the close of the transition period.
- (2) Members of the council appointed before the close of the transition period continue as members of the council after the close of the transition period, unless otherwise required by the new constitution.

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21 No compensation for loss of office

Neither the Crown nor a council is liable to compensate a member of the council who ceases to hold office after the close of the transition period as a consequence of a new constitution taking effect.

22 Temporary power of direction

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- (1) During the transition period, the Minister may, by written notice to the chief executive of the institution concerned, give any directions the Minister thinks reasonably necessary to ensure that the council can deal effectively with business before it after the close of the transition period.
- (2) The council must comply with the directions.
- (3) The Minister must consult the council before giving the directions.

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19 Schedule 5A amended

In Schedule 5A, item relating to section 168(1) and (2), replace “section 87(3)” with “regulations made under section 118A”.

20 Consequential amendments to principal Act

30

Amend the principal Act as set out in **Schedule 1**.

Part 2

Amendments to other enactments

21 Amendments to Education (Update) Amendment Act 2017

- (1) This section amends the Education (Update) Amendment Act 2017.
- (2) In section 2(5)(b), replace “1 January 2019” with “**1 January 2020**”. 5
- (3) In section 43, repeal new section 61(b) of the principal Act.
- (4) In section 43, replace new section 62(2) of the principal Act with:
 - (2) Monitoring and evaluating must include, but is not limited to, monitoring and evaluating the performance of the students in relation to—
 - (a) any foundation curriculum policy statements and national curriculum statements in force under section 60A; and 10
 - (b) any qualification systems referred to in section 61(c) that are offered at the school.
- (5) In section 68, replace new section 87(3) of the principal Act with:
 - (3) In addition, a board that is a parent in a Crown entity group must, to the extent required to do so by generally accepted accounting practice, prepare consolidated financial statements in relation to the group for that financial year. 15
 - (3A) The annual financial statements must be in the form (if any) determined by the Secretary after consultation with the Auditor-General.
 - (4) The annual financial statements must be accompanied by a statement of responsibility that complies with section 155 of the Crown Entities Act 2004 but that is signed by the chair of the board and principal instead of 2 members. 20
 - (5) The requirements of this section and section 87A as to annual financial statements also apply to a Crown entity subsidiary of a board as if the subsidiary were a board and with all necessary modifications. 25
 - (6) The rest of the amendments made to this section by Schedule 6 of the Crown Entities Act 2004 apply as provided in section 198 of that Act.
 - (7) In this section,—

statement of variance means a statement that details—

 - (a) any variance between the school’s performance and the achievement of the school’s objectives set out in its strategic plan and annual implementation plan ~~(but if the board’s strategic plan is the 2019 school charter, the statement of variance is not required to include a comparison with an annual implementation plan)~~; and 30
 - (b) any matters required by regulations made under section 118A 35

trustee and **employee** include a person who was a trustee or an employee at any time during the applicable financial year but who is no longer a trustee or an employee.

- (8) However, in relation to a 2019 school charter, **statement of variance** means the statement referred to in section 87(2)(e) immediately before the commencement of **subsection (7)**.
- (5A) In section 95, new section 118A(2)(c) of the principal Act, replace “prepared, submitted, or updated” with “prepared or submitted”. 5
- (6) In section 95, after new section 118A(2)(d) of the principal Act, insert:
- (da) requirements for how and when plans are amended or expire:
- (7) In section 95, replace new section 118A(2)(h) of the principal Act with:
- (h) the form and contents of annual reports, including financial statements:
- (7A) In section 98(1), repeal new section 144A(1AAA)(b) of the principal Act. 10
- (8) In section 158(2), new clause 7(1)(a) of Schedule 6 of the principal Act, replace “for each 4-year period” with “, for each 3-year period or for a shorter period determined by the Secretary,”.
- (9) In section 158(2), after new clause 7(2) of Schedule 6 of the principal Act, insert: 15
- (2A) If, at the commencement of this ~~section~~ **clause**, a board has a charter ~~approved under Part 7~~ in effect for the 2019 year, the charter will be treated as the board’s first strategic plan.
- (2B) If a board’s strategic plan is its 2019 school charter, the statement of variance is not required to include a comparison with an annual implementation plan. 20
- (2C) However, a board with a 2019 school charter as its strategic plan must continue to update the annually updated sections of its charter until its first annual implementation plan is required under regulations made under section 118A.
- (2D) The annually updated sections of a 2019 school charter must be updated no later than a date fixed by the Secretary. 25
- (10) In section 158(2), new clause 8(1) of Schedule 6 of the principal Act, replace “4-year period” with “3-year period, or for a shorter period determined by the Secretary,”.
- (11) In section 158(2), after new clause 8(4) of Schedule 6 of the principal Act, insert: 30
- (5) This clause is subject to **clause 7(2A)**.
- (12) In section 158(2), new clause 9(4) of Schedule 6 of the principal Act, replace “must” with “must, by giving written notice to the board,”.
- (13) In section 158(2), after new clause 9 of Schedule 6 of the principal Act, insert:
- 9A Amending strategic plan** 35
- (1) A board may amend its strategic plan, but if a proposed amendment is significant the board must obtain the Secretary’s approval of the amendment before amending the plan.

- (2) Before approving an amendment, the Secretary may require the board to consult the school community, staff, students, or any other person or body the Secretary considers should be consulted.
- (3) The Secretary may require a board to amend its strategic plan.

9B Expiry of strategic plan

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- (1) A strategic plan expires 3 years after the plan takes effect.
- (1A) However, a 2019 school charter (which is a document that is to be treated as a board's first strategic plan) expires when replaced by a strategic plan adopted in accordance with regulations made under section 118A.
- (2) If there is no new plan to replace the expired plan, the expired plan will continue to apply for a period approved by the Secretary.

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- (14) In section 158(2), after new clause 10 of Schedule 6 of the principal Act, insert:

10A Amending annual implementation plan

A board may amend its annual implementation plan.

22 Amendments to other enactments

15

Amend the enactments specified in **Schedule 2** as set out in that schedule.

Schedule 1

Consequential amendments to principal Act

s 20

Section 2

In section 2(1), repeal: 5

- (a) definition of **partnership school contract**:
- (b) definition of **partnership school kura hourua**:
- (c) definition of **primary partnership school kura hourua**:
- (d) definition of **sponsor**.

In section 2(1), definition of **registered school**, delete “a partnership school kura hourua,”. 10

Section 3

In section 3, delete “or partnership school kura hourua”.

Section 5A

In section 5A(1), replace “State school, State integrated school, or partnership school kura hourua” with “State school or State integrated school”. 15

Section 16

Repeal section 16(1)(ba), (2A), and (5).

Section 17D

In section 17D(2), delete “or a partnership school kura hourua”. 20

Repeal section 17D(3A) and (5).

Section 25

In section 25(2), delete “and every sponsor of a partnership school kura hourua”.

In section 25(7), delete “or a sponsor”.

Section 31

25

Repeal section 31(1A), (3A), and (8A).

In section 31(2), delete “or sponsors, or a board and a sponsor jointly”.

In section 31(7),—

- (a) replace “officer, a sponsor,” with “officer,”:
- (b) replace “a board, a sponsor, or the Secretary” with “a board or the Secretary”. 30

Section 31B

Repeal section 31B(1)(a)(ia).

Section 31F

Repeal section 31F(ab).

Section 31G

Repeal section 31G(2)(ab).

Section 31I

Repeal section 31I(1)(ba).

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Section 35

In the heading to section 35, delete “**or sponsor (as applicable)**”.

In section 35, delete “or sponsor (as applicable)”.

Section 77A

Repeal section 77A(5) and (6).

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Section 78A

In section 78A(1)(b), replace “manager, or sponsor” with “or manager”.

Section 79

In the heading to section 79, delete “**or sponsors**”.

In section 79(1), delete “and sponsors”.

In section 79(2), delete “, or operated by the sponsor,”.

In section 79(3), delete “or sponsor”.

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Section 139A

Repeal section 139A(1)(ba) and (2)(ba).

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Section 139AB

Repeal section 139AB(2)(c) and (f)(iii).

Section 139AC

In section 139AC(2), definition of **employer**, repeal paragraph (c).

Section 144A

Repeal section 144A(1)(ab).

In section 144A(1), delete “sponsor,” in each place.

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Section 144C

In section 144C(1)(f), replace “boards, or sponsors” with “or boards”.

Section 158

In section 158(1), delete “or sponsors”.

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Section 158—*continued*

In section 158(1), replace “specified school” with “State school”.

In section 158(1A), replace “or sponsor of the specified school” with “of the State school” in each place.

Repeal section 158(3A).

Section 192

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Repeal section 192(2)(ab).

Section 246

In section 246, definition of **relevant school**, repeal paragraph (ba).

Section 348

In section 348, definition of **employer**, repeal paragraph (b).

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In section 348, repeal the definition of **partnership school kura hourua**.

In section 348, definition of **professional leader**, replace paragraphs (a) and (b) with:

(a) the principal:

Section 349

In section 349(2), delete “, other than a sponsor,”.

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Section 350

In section 350(2) and (3), delete “, other than a sponsor,”.

Section 374

In section 374(1)(j), delete “(other than a sponsor)”.

Section 383

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In section 383(8), delete “or the sponsor of any partnership school kura hourua”.

Schedule 2

Amendments to other enactments

s 22

Part 1

Amendments to other Acts

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Accident Compensation Act 2001 (2011 No 49)

In section 6(1), definition of **place of education**, replace paragraph (a)(i) with:

- (i) a composite school or a secondary school as defined by section 2(1) of the Education Act 1989 or a secondary school registered under section 35A of that Act; and

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Health Act 1956 (1956 No 65)

In section 125(1), repeal the definition of **partnership school kura hourua**.

In section 125(2), replace “public school, partnership school kura hourua, or early childhood education and care centre” with “public school or early childhood education and care centre”.

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Immigration Act 2009 (2009 No 51)

In section 4, definition of **compulsory education**, paragraph (a), delete “, or at a partnership school kura hourua”.

In section 4, definition of **course of study**, paragraph (a)(i), delete “, or by a partnership school kura hourua”.

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Income Tax Act 2007 (2007 No 97)

Repeal section CW 55BB(1)(b)(ia).

Local Government (Rating) Act 2002 (2002 No 6)

In Schedule 1, repeal clause 6(b)(vi).

Official Information Act 1982 (1982 No 156)

25

In section 2(1), definition of **organisation**, replace paragraph (a) with:

- (a) an organisation named in Part 2 of Schedule 1 of the Ombudsmen Act 1975 (other than the Parliamentary Service or mortality review committees):

Ombudsmen Act 1975 (1975 No 9)

30

Repeal section 2(5).

In Schedule 1, Part 2, delete “Sponsors (within the meaning of section 2(1) of the Education Act 1989) when performing a standing-down, suspension, exclusion, or expulsion function”.

State Sector Act 1988 (1988 No 20)

In section 2, definition of **education service**, paragraph (a)(iii), delete “(unless the institution is a sponsor within the meaning of section 2(1) of the Education Act 1989 and the employment relates to its functions as a sponsor under that Act or to a partnership school contract (as defined in Part 12A of that Act))”.

5

Vulnerable Children Act 2014 (2014 No 40)

In section 15(1), definition of **school board**, repeal paragraph (b).

Part 2**Amendments to legislative instruments****Education (Surrender, Retention, and Search) Rules 2013 (SR 2013/469)**

10

In rule 3, definition of **board**, paragraph (a), delete “; or”.

In rule 3, definition of **board**, revoke paragraph (b).

Legislative history

8 February 2018
15 February 2018

Introduction (Bill 15–1)
First reading and referral to Education and Workforce
Committee