

# **Education Amendment Bill (No 2)**

Government Bill

## **Explanatory note**

### **General policy statement**

The Education Amendment Bill (No 2) (the **Bill**) amends the Education Act 1989, the Education Act 1964, and the Education (Update) Amendment Act 2017. The Bill clarifies the functions, duties, and powers of specified education entities.

The public policy objectives of the Bill are to—

- ensure that the Education Council of Aotearoa New Zealand’s decisions on matters relating to the teaching profession are made within the context of Government policy;
- require private schools to be safe places for students;
- remove provisions, due to come into force on 31 December 2019, that would enable communities of online learning to be established while the future of online learning is considered in the context of wider education sector reviews;
- ensure that school boards cannot adopt a cohort entry policy that enables children to begin school as part of a cohort before the age of 5 years.

### **Education Council decision making**

The purpose of the Education Council of Aotearoa New Zealand is to ensure safe and high-quality leadership, teaching, and learning for children and young people in early childhood, primary, and secondary schooling. The Council has a broad range of functions, including in relation to setting standards for teacher education and establishing teacher registration criteria. The degree of public interest means that there needs to be some ability for the Government to influence the work of the Council on behalf of all New Zealanders, and, in particular, children and young people.

The Bill will introduce a requirement that the Council consult the Minister of Education before making changes to the standards for qualifications that lead to teacher registration or to the teacher registration criteria. It will also give the Minister discre-

tion to issue a Government policy direction relating to 1 or more functions of the Council that the Council must have regard to when performing its functions. The Government policy direction must be issued by notice in the *Gazette* to ensure transparency. These provisions will ensure that the public interest is protected and the Government is able to respond to Education Council proposals and decisions in a timely manner.

The provisions in this Bill complement the changes to the Education Council's composition that are being made through the Education (Teaching Council of Aotearoa) Amendment Bill. It is therefore intended that they come into force by Order in Council at the same time as the amendments in that Bill.

### **Including student safety in private schools' registration criteria**

Minimum standards of safety for students required of State and State integrated schools should also apply to private schools. It is particularly important that the law be explicit that schools must provide a safe physical and emotional environment, given the lasting impacts that bullying and other forms of emotionally harmful behaviour in schools can have on students. The Bill provides a new registration criterion that a private school is a safe physical and emotional place for its students. This will ensure that—

- students' physical and emotional safety is considered by the Secretary for Education when assessing a private school's application for registration;
- a private school's registration may be cancelled if the Secretary has concerns about the safety of the school's students;
- the Education Review Office can review private schools' safety policies and procedures.

### **Communities of online learning**

In 2017, the Education Act 1989 was amended by the Education (Update) Amendment Act 2017 to introduce a new regime to expand the provision of distance education through communities of online learning. The new legislative provisions allowed for distance education for part-time and full-time tuition, and enabled accreditation of distance education provision by public or private providers through a statutory accreditation system. These provisions are repealed. This will provide further time to consider the future of online learning in New Zealand, in the context of wider education sector reviews.

### **Cohort entry for children over 5 years old**

Before 2017, State schools were legally obliged, under the Education Act 1989, to enable children to start school, on the prerogative of parents and legal guardians, on a date on or after their fifth birthday. This is referred to as continuous entry. The Education (Update) Amendment Act 2017 enabled schools to adopt a cohort entry policy starting from term 1 in 2018. The first eligible starting date for children subject to a cohort entry policy is the first day of term closest to their fifth birthday. As a conse-

quence, some children can currently start school with a cohort up to 2 months before their fifth birthday.

The Bill enables schools to get the benefits of cohort entry (eg, students developing beneficial relationships with other students and an improved transition into school, improved administrative continuity for schools), while at the same time ensuring that students under 5 cannot attend school. Under the proposed changes, if a school adopts a new cohort entry policy, children over 5 will be able to start school on the first day of term, or at a mid-point during a term, after they have turned 5. Having 2 starting dates per term, rather than 1, will mean—

- parents will have more flexibility about when their child starts school (8 entry points per year rather than 4):
- the Government, and parents, will not have to pay as much in fees to keep children in early childhood education while they wait for the first eligible cohort start date:
- schools in areas of high enrolment numbers will potentially have more manageable cohort sizes:
- less adjustment will be required to the supply of places in early childhood education, as providers are not retaining children in their centres as long as they would need to with 1 cohort entry point per term (4 in total per year).

### **Departmental disclosure statement**

The Ministry of Education is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=90>

### **Regulatory impact assessment**

The Ministry of Education produced regulatory impact assessments on 7 May 2018, 8 May 2018, and 22 May 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <http://www.education.govt.nz/ministry-of-education/regulatory-impact-statements/education-amendment-bill-2018-no-2>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that the Bill comes into force on the day after it receives the Royal assent, except for the following provisions:

- *clauses 4, 5, and 8* (which relate to cohort entry policies) come into force on 1 January 2020:
- *clauses 12 and 13* (which relate to the Education Council's functions) come into force by Order in Council. It is intended that these provisions come into force at the same time as other amendments to the Education Act 1989 currently before the House.

## Part 1

### Amendments to Education Act 1989

*Clause 3* provides that *Part 1* amends the Education Act 1989 (the **principal Act**).

*Clause 4* amends section 2 of the principal Act to insert a definition for cohort entry policy.

*Clause 5* replaces sections 5 to 5B of the principal Act.

*New section 5* does not allow a child under the age of 5 to attend a primary school. This reinstates the position that existed before 3 July 2017 when the principal Act was amended to allow a child under 5 years to attend a school if the school had a cohort entry policy and the child was attending in accordance with that policy.

*New section 5A* allows a school to adopt or revoke a cohort entry policy that applies to children aged 5 (but not to children aged 4 as at present). If a school has a cohort entry policy, children aged 5 may start school only on a date determined in accordance with *new section 5B*.

*New section 5B* provides that if a school has a cohort entry policy, a child aged 5 may start attending the school at the start of a term (a **term start date**) or on a date in the middle of a term (a **mid-term start date**).

*Clause 6* inserts *new section 5D* into the principal Act to require the Minister to publish in the *Gazette* the mid-term start dates. The mid-term start dates must be published before 1 July in any year for the following year. A mid-term start date must be the Monday that is closest to the date that is halfway between the first and last dates of a term.

*Clause 7* amends section 11PB of the principal Act, which concerns enrolment schemes of certain State schools. The amendments remove the references to enrolling communities of online learning.

*Clause 8* amends section 25 of the principal Act, which is necessary because of *new section 5* (see *clause 5*).

*Clause 9* amends section 35C of the principal Act, which sets out the criteria for registration as a private school. The amendment augments the criteria by requiring a school seeking registration to also be a physically and emotionally safe place for students. The effect of adding this new registration criterion is that the Secretary for

Education must consider the physical and emotional safety of students when registering a private school. If, subsequently, the Secretary considers that a school is not meeting this additional criterion, the Secretary may take action under section 35J, which may include suspending or cancelling a private school's registration. The additional registration criterion also means that the Chief Review Officer can consider physical and emotional safety of students when conducting reviews under section 35I.

*Clause 10* repeals section 35K of the principal Act, because the amendment to section 35C makes it obsolete (*see clause 9*).

*Clause 11* amends section 35L of the principal Act, because of the repeal of section 35K (*see clause 10*).

*Clause 12* amends section 382 of the principal Act to require the Education Council to consult the Minister before changing the criteria for teacher registration established under section 382(1)(e) of the principal Act, or the standards for qualifications that lead to teacher registration established under section 382(1)(f) of the principal Act.

*Clause 13* inserts *new section 382A* into the principal Act to give the Minister the power to issue a Government policy direction relating to 1 or more of the Education Council's functions specified in section 382 of the principal Act. The Minister must consult the Education Council before issuing a direction, and every direction must be given in writing to the Council and published in the *Gazette*. When performing its functions, the Council must have regard to any relevant Government policy direction that the Minister has issued.

*Clause 14* amends Schedule 1 of the principal Act, which contains transitional, savings, and related provisions. The amendment inserts *new Part 8*, which sets out transitional provisions in relation to the registration and suspension of private schools.

## Part 2

### Amendments to other enactments

#### Subpart 1—Amendments to Education Act 1964

*Clause 15* provides that *subpart 1* amends the Education Act 1964 (the **principal Act**).

*Clause 16* amends section 2 of the principal Act (interpretation) to reinstate the definition of correspondence school or correspondence classes, which was removed by the Education (Update) Amendment Act 2017.

*Clause 17* inserts *new section 96* into the principal Act, which provides that the Minister may establish correspondence schools or correspondence classes. It reinstates a provision that was removed by the Education (Update) Amendment Act 2017.

#### Subpart 2—Amendments to Education (Update) Amendment Act 2017

*Clause 18* provides that *subpart 2* amends the Education (Update) Amendment Act 2017 (the **principal Act**). The amendments give effect to the policy decision to repeal

new Part 3A of the Education Act 1989, which is to be inserted by section 38 of the principal Act. New Part 3A would have established communities of online learning with the correspondence school as an enrolling community of online learning. The amendments preserve the status quo.

*Clause 19* replaces section 2(4) of the principal Act to take account of the repeal of a number of provisions and to provide that sections 22, 25, and 98 come into force on 1 January 2019.

*Clauses 20 to 22* repeal sections 5(5) and (6), 11, and 20(2) and (3) of the principal Act.

*Clause 23* amends section 25 of the principal Act. The amendment removes the references to enrolling communities of online learning.

*Clauses 24 to 33* repeal sections 26, 27, 28, 29, 30(2), 32, 33, 34, 36(2), 38, 39(3), 52, 67, 70, 71, and 72(1), (3), and (4) of the principal Act.

*Clause 34* amends section 98 by deleting new section 144A(1AAA)(c) of the principal Act.

*Clauses 35 to 44* repeal sections 100(1), 107, 120, 122(2), 125, 131, 132, 133, 134, 135, 140, 142, 156(4), and 161(3) of the principal Act.

*Clause 45* repeals Part 3 of Schedule 3 of the principal Act.

*Hon Chris Hipkins*

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**Part 2**  
**Amendments to other enactments**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Education Amendment Bill (No 2) **2018**.

**2 Commencement**

This Act comes into force as follows: 5

- (a) **sections 4, 5, and 8** come into force on **1 January 2020**:
- (b) **sections 12 and 13** come into force on a date appointed by the Governor-General by Order in Council:
- (c) the rest of this Act comes into force on the day after the date on which this Act receives the Royal assent. 10

**Part 1**

**Amendments to Education Act 1989**

**3 Principal Act**

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

**4 Section 2 amended (Interpretation) 15**

In section 2(1), insert in its appropriate alphabetical order:

**cohort entry policy** means a policy that provides for a child who is to start attending school to be assigned to a group of children and for all of the children in that group to start attending school on the same date, being a date that is determined in accordance with **section 5B**. 20

**5 Sections 5 to 5B replaced**

Replace sections 5 to 5B with:

**5 Restrictions on attending primary school**

The following persons may not attend a primary school, or attend a class below form 3 at a composite school: 25

<ul style="list-style-type: none"> <li>(a) a child under the age of 5 years:</li> <li>(b) a child who turned 14 years of age in a previous year:</li> <li>(c) a child who, in the opinion of the Secretary,— <ul style="list-style-type: none"> <li>(i) has completed the work of form 2; or</li> <li>(ii) has completed the work equivalent to form 2.</li> </ul> </li> </ul>	5
<b>5A Cohort entry policy</b>	
<ul style="list-style-type: none"> <li>(1) A State school or State integrated school may adopt or revoke a cohort entry policy after complying with the requirements in section 5C.</li> <li>(2) A cohort entry policy must— <ul style="list-style-type: none"> <li>(a) apply to all children aged 5 who have not previously attended school; and</li> <li>(b) provide that all such children may start attending school only on a date determined in accordance with <b>section 5B</b>.</li> </ul> </li> </ul>	10
<b>5B Dates for starting school under cohort entry policy</b>	
<ul style="list-style-type: none"> <li>(1) This section applies to a school that has a cohort entry policy.</li> <li>(2) A child may start attending the school not earlier than the child’s fifth birthday on a date that is— <ul style="list-style-type: none"> <li>(a) a term start date:</li> <li>(b) a mid-term start date.</li> </ul> </li> <li>(3) In this section,—</li> </ul> <p><b>mid-term date</b> means a date that is published as a mid-term date under <b>section 5D</b></p> <p><b>term start date</b>, in relation to a school, means a date that is the first day of a term that the school is open for instruction.</p>	15
<b>6 New section 5D inserted (Publication of mid-term dates)</b>	
After section 5C, insert:	
<b>5D Publication of mid-term dates</b>	
<ul style="list-style-type: none"> <li>(1) The Minister must, before 1 July in any year, publish in the <i>Gazette</i> (by reference to specific dates) the mid-term start dates for the following year.</li> <li>(2) A mid-term start date must be the Monday that is closest to the date that is half-way between the first and last dates of a term.</li> </ul>	30
<b>7 Section 11PB amended (Enrolment schemes of certain State schools)</b>	
<ul style="list-style-type: none"> <li>(1) In section 11PB(1), delete “State schools that are accredited as enrolling communities of online learning.”.</li> <li>(2) Repeal section 11PB(1)(ca).</li> </ul>	35

- 8 Section 25 amended (Students required to enrol must attend school)**  
In section 25(1)(b), delete “4 or”.
- 9 Section 35C amended (Criteria for registration as private school)**  
After section 35C(g), insert:  
(h) is a physically and emotionally safe place for students. 5
- 10 Section 35K repealed (Suspension of registration if welfare of students may be at risk)**  
Repeal section 35K.
- 11 Section 35L amended (Duration of suspension)**  
Repeal section 35L(2). 10
- 12 Section 382 amended (Functions of Education Council)**
- (1) In section 382(1)(e), delete “and maintain any”.
- (2) After section 382(1)(e), insert:  
(ea) to review, at any time, the criteria for teacher registration established under paragraph (e) and, after consultation with the Minister,— 15  
(i) vary, delete, or replace 1 or more of the criteria; or  
(ii) add 1 or more criteria; or  
(iii) delete all of the criteria and substitute new criteria:
- (3) In section 382(1)(f), delete “and maintain”.
- (4) After section 382(1)(f), insert: 20  
(fa) to review, at any time, the standards for qualifications established under paragraph (f) and, after consultation with the Minister,—  
(i) vary, delete, or replace 1 or more of the standards; or  
(ii) add 1 or more standards; or  
(iii) delete all of the standards and substitute new standards: 25
- 13 New section 382A inserted (Issue of Government policy direction relating to Education Council’s functions)**  
After section 382, insert:
- 382A Issue of Government policy direction relating to Education Council’s functions** 30
- (1) The Minister may, at any time, issue a Government policy direction relating to 1 or more of the Education Council’s functions specified in section 382(1).
- (2) Before issuing a Government policy direction, the Minister must consult the Education Council.

- (3) Every Government policy direction must be—
- (a) given in writing to the Education Council; and
  - (b) published in the *Gazette*.
- (4) A Government policy direction comes into effect on the date specified in the *Gazette* notice, which date must be on or after the date of the notice and is to be treated as the date on which the direction is issued. 5
- (5) When performing its functions, the Education Council must have regard to any relevant Government policy direction.
- (6) A Government policy direction may be amended, revoked, or replaced in the same way as it is given. 10
- (7) A Government policy direction issued under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act.

- 14 Schedule 1 amended** 15
- In Schedule 1, after Part 7, insert:

### Part 8

#### Provisions relating to Education Amendment Act (No 2) 2018

- 23 Interpretation** 20
- In this Part,—
- amendment Act** means the **Education Amendment Act (No 2) 2018**
- commencement date** means the date on which this clause comes into force
- transition period** means the period beginning on the commencement date and ending on the date that is 6 months after the commencement date.
- 24 Transitional provision in relation to criteria for registration as private school** 25
- (1) A school that is provisionally or fully registered as a private school under section 35A before the commencement date—
- (a) is to be treated as having met the criterion specified in **section 35C(h)** during the transition period; and 30
  - (b) must be able to show, after the expiry of the transition period, that it meets that criterion.
- (2) Despite **subclause (1)**, a school that is provisionally registered under section 35A must meet the criterion specified in **section 35C(h)** if—
- (a) the school's provisional registration is being renewed under section 35A(4); or 35

- (b) the school is being reviewed pursuant to a request made under section 35A(5); or
- (c) the school is being fully registered under section 35A(6).
- (3) An application to be registered as a private school made under section 35A before the commencement date, but not determined by that date, is to be treated as an application received on or after the commencement date. 5
- 25 Transitional provision in relation to suspension of private school**
- (1) Any process for the suspension of a school commenced before the commencement date is to be completed under this Act as if the amendment Act had not been enacted. 10
- (2) A suspension resulting from the process specified in **subsection (1)** is to be dealt with under this Act as if the amendment Act had not been enacted.
- (3) A complaint made under this Act before the commencement date, but not determined by that date, is to be dealt with under this Act as if the amendment Act had not been enacted. 15

## Part 2

### Amendments to other enactments

#### Subpart 1—Amendments to Education Act 1964

- 15 Amendments to Education Act 1964** 20  
This subpart amends the Education Act 1964.
- 16 Section 2 amended (Interpretation)**  
In section 2(1), insert in its appropriate alphabetical order:  
**correspondence school or correspondence classes** means any school or institution, or any classes, established by the Minister to provide instruction by correspondence 25
- 17 New section 96 inserted (Correspondence schools and classes for continuing education)**  
After section 95, insert:
- 96 Correspondence schools and classes for continuing education** 30  
Having regard to the provision of continuing education, the Minister may establish any school or classes to provide instruction by correspondence for that purpose; and any school or class so established shall be controlled in such manner, and shall charge such fees for the instruction provided, as the Minister may determine.

## Subpart 2—Amendments to Education (Update) Amendment Act 2017

- 18 Amendments to Education (Update) Amendment Act 2017**  
This subpart amends the Education (Update) Amendment Act 2017.
- 19 Section 2 amended (Commencement)**  
Replace section 2(4) with: 5  
(4) Sections 22, 25, and 98 come into force on **1 January 2019**.
- 20 Section 5 amended (Section 2 amended (Interpretation))**  
Repeal section 5(5) and (6).
- 21 Section 11 repealed (Sections 7 and 7A repealed)**  
Repeal section 11. 10
- 22 Section 20 amended (Section 16 amended (Secretary’s powers when excluded student younger than 16))**  
Repeal section 20(2) and (3).
- 23 Section 25 amended (Section 20 replaced (New Zealand citizens and residents between 6 and 16 to go to school))** 15  
(1) In section 25, heading to new section 20, delete “**or enrolling community of online learning**”.  
(2) In section 25, replace new section 20(1):  
(1) Every person who is a New Zealand citizen or resident must, during the period beginning on the person’s sixth birthday and ending on the person’s 16th birthday, be enrolled at a registered school. 20
- 24 Sections 26 to 29 repealed**  
Repeal sections 26 to 29.
- 25 Section 30 amended (Section 25 amended (Students required to enrol must attend school))** 25  
Repeal section 30(2).
- 26 Sections 32 to 34 repealed**  
Repeal sections 32 to 34.
- 27 Section 36 amended (Section 35Q amended (Suspensions and expulsions of students from private schools to be notified to Secretary))** 30  
Repeal section 36(2).

<b>28</b>	<b>Section 38 repealed (New Part 3A inserted)</b> Repeal section 38.	
<b>29</b>	<b>Section 39 amended (Section 60 amended (Interpretation))</b> Repeal section 39(3).	
<b>30</b>	<b>Section 52 repealed (Section 78A amended (Powers of entry and inspection))</b> Repeal section 52.	5
<b>31</b>	<b>Section 67 repealed (Section 81A repealed (Grants for correspondence schools))</b> Repeal section 67.	10
<b>32</b>	<b>Sections 70 and 71 repealed</b> Repeal sections 70 and 71.	
<b>33</b>	<b>Section 72 amended (Section 92 amended (Interpretation))</b> Repeal section 72(1), (3), and (4).	
<b>34</b>	<b>Section 98 amended (Section 144A amended (Secretary may require information for proper administration of Act))</b> In section 98(1), repeal new section 144A(1AAA)(c).	15
<b>35</b>	<b>Section 100 amended (Section 145 amended (Interpretation))</b> Repeal section 100(1).	
<b>36</b>	<b>Section 107 repealed (Section 152 repealed (Correspondence schools))</b> Repeal section 107.	20
<b>37</b>	<b>Section 120 repealed (Section 158A amended (Interpretation))</b> Repeal section 120.	
<b>38</b>	<b>Section 122 amended (Section 158R amended (Secretary's powers when student younger than 16 is excluded from partnership school kura hourua))</b> Repeal section 122(2).	25
<b>39</b>	<b>Section 125 repealed (Section 159 amended (Interpretation))</b> Repeal section 125.	
<b>40</b>	<b>Sections 131 to 135 repealed</b> Repeal sections 131 to 135.	30

- 41 Section 140 repealed (Section 342 amended (Interpretation))**  
Repeal section 140.
- 42 Section 142 repealed (Section 350A replaced (Special provision for chief executive of correspondence school))**  
Repeal section 142. 5
- 43 Section 156 amended (New Schedule 1 inserted)**  
(1) In section 156(2), new Part 4 inserted in Schedule 1 of the Education Act 1989, clause 4, replace “schedule” with “Part”.  
(2) Repeal section 156(4).
- 44 Section 161 amended (Consequential amendments to other enactments)** 10  
Repeal section 161(3).
- 45 Schedule 3 amended**  
In Schedule 3, repeal Part 3.