

Education Amendment Bill (No 2)

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Education Amendment Bill (No 2) and recommends by majority that it be passed with the amendments shown.

Introduction

The Education Amendment Bill (No 2) seeks to amend the Education Act 1989, the Education Act 1964, and the Education (Update) Amendment Act 2017. The main objectives of the bill are to:

- ensure that the Teaching Council of Aotearoa New Zealand’s decisions on matters relating to the teaching profession are made within the context of Government policy¹
- 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, as 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 five years of age.

¹ The Teaching Council’s name was changed from the Education Council of Aotearoa New Zealand in September 2018.

Proposed amendments

This commentary covers the main amendments the majority of us recommend to the bill as introduced. We do not discuss all minor or technical amendments. We also discuss some aspects of policy raised during our consideration of the bill.

Cohort entry provisions

Before 2017, the Government had a continuous entry policy for new entrants to primary school. This meant schools were required to enrol children on a date on or after their fifth birthday as chosen by the parents or legal guardian. Enrolment was compulsory by the age of six.

The Education (Update) Amendment Act 2017 gave schools the option to adopt a cohort entry policy, which would allow students to enrol on the first day of a school term closest to their fifth birthday. Under the current framework, if a school has adopted a cohort entry policy, it is possible for four year olds to start school up to two months before their fifth birthday.

As introduced, clause 5 of the bill would amend section 5 of the Education Act 1989 so that children could not attend school until their fifth birthday. If a school had a cohort entry policy, this would mean that a five year old might need to wait up to six weeks after their fifth birthday to enrol.

We note the bill as introduced uses the word “attend” rather than “enrol”, which is inconsistent with other provisions used in legislation relating to compulsory education. We were advised that this may create legal uncertainty.

The majority of us recommend that clause 5 of the bill be amended so that reference to attendance is replaced with reference to enrolment.

Government members of the committee support the changes to the cohort entry policy in the bill, preferring that children must have reached five years of age before enrolling in school.

National Party members of the committee do not support the changes to the cohort entry policy in the bill, preferring that the legislation enacted in 2017 be continued.

Changes to the Education Council provisions

Clauses 12 and 13 of the bill as introduced would make changes relating to the Education Council, now known as the Teaching Council.

Legal name of the council and enactment date for the bill

The bill as introduced refers to the Education Council of Aotearoa New Zealand. Since the bill’s introduction, the Education (Teaching Council of Aotearoa New Zealand) Amendment Act 2018 was enacted. That Act changed the legal name of the council to the Teaching Council of Aotearoa New Zealand.

The eventual change in the council’s legal name was envisaged at the time of the bill’s introduction. However, the timing of the change was uncertain. As a result, clause 2(b) of the bill as introduced provides for some flexibility in the commence-

ment of clauses 12 and 13. Clause 2(b) provides that clauses 12 and 13 would commence on a date appointed by the Governor-General by Order in Council.

The majority of us recommend amending clauses 12 and 13 to reflect the change to the council's legal name. The majority of us also recommend deleting clause 2(b) as a delayed commencement date is now unnecessary.

Changes to aspects of the council's functions

Section 382(1) of the Education Act 1989 specifies the functions of the council. Section 382(1)(e) enables the council "to establish and maintain any criteria for teacher registration under Part 31 that the Teaching Council considers necessary or desirable". Section 382(1)(f) enables the council "to establish and maintain standards for qualifications that lead to teacher registration".

Clauses 12(1) and 12(3) of the bill as introduced would remove the word "maintain" from the provisions in the Act referred to above.

Clause 12(2) of the bill as introduced would allow the council to review the criteria for teacher registration in section 382(1)(e) referred to above, and make some changes to them after consultation with the Minister.

Similarly, clause 12(4) of the bill as introduced would allow the council to review the standards for qualifications that lead to teacher registration and make some changes to them after consultation with the Minister.

The majority of us are of the view that the word "maintain" should remain in sections 382(1)(e) and 382(1)(f) of the Education Act 1989. This would enable the council to continue to make minor changes to the criteria and standards, such as fixing typographical errors or updating names of qualifications, without having to consult the Minister. Therefore, the majority of us recommend deleting clauses 12(1) and 12(3) of the bill as introduced.

Statement of Government policy to the council

Clause 13 of the bill as introduced enables the Minister of Education to issue a Government policy direction relating to the council's functions. The council would be required to have regard to any policy direction when performing its functions. The Minister of Education would be required to consult the council before issuing a policy direction. The Minister would also be required to give the policy directions in writing to the council, and to publish it in the *Gazette*.

We considered whether "Government policy direction" was an appropriate term. We were concerned that the phrase could imply that the Government was issuing a directive to the council, when the intention was that the council must only "have regard to" a statement of Government policy made to it about the council's functions.

The majority of us recommend that clause 13 of the bill be amended so that reference to "Government policy direction" is replaced with "statement of Government policy".

We considered whether statements of Government policy by the Minister to the council should be presented to Parliament. We think this would improve transparency. The

majority of us recommend inserting into clause 13 a new section 382A(3)(c) of the Education Act 1989. This would mean every statement of Government policy to the council must be presented to the House of Representatives. The majority of us do not think it is necessary for the statement of Government policy to be tabled under section 41 of the Legislation Act 2012.

Other policy matters considered

The bill as introduced would implement several policy changes that the majority of us support. To indicate the wide-ranging discussions during our consideration of the bill, we note some of these matters below.

Private schools registration criterion

Clause 9 of the bill as introduced would amend section 35C of the Education Act 1989 to impose a new criterion for registration of private schools. The criterion would be that the private school “is a physically and emotionally safe place for students”.

Government members of the committee are supportive of this aspect of the bill. National Party members of the committee, while agreeing with the criterion in principle, are concerned that the provision lacks detail.

Repealing provisions for communities of online learning

The Education (Update) Amendment Act 2017 created a regime for the online provision of distance education in the schooling sector by providers known as “communities of online learning”. This is due to come into force no later than 31 December 2019. Clauses 16 to 45 of the bill as introduced would repeal the provisions relating to communities of online learning.

Government members of the committee are supportive of this aspect of the bill, while National Party members of the committee are not.

New Zealand National Party minority view

The National Party members of the committee oppose this bill. We believe this bill will have a detrimental impact on education in New Zealand because it will reduce the independence of the Education Council, prevent some students from starting school on their fifth birthday, and repeal communities of online learning. The bill also proposes making student safety a registration criterion for private schools, and while we agree with this in principle, we are concerned about the lack of detail in this aspect of the bill.

Reducing the independence of the Education Council

This bill as introduced would enable the Minister of Education to issue a Government policy direction to the Education Council, and requires the council to consult the Minister prior to making changes to teacher qualification requirements or registration criteria. The committee has recommended changing “Government policy direction” to “statement of Government policy”, and requiring statements of Government policy to

be presented to the House. We believe these changes are a positive step, but we continue to oppose this aspect of the bill because in our view it still significantly reduces the independence of the teaching profession and enables greater ministerial control.

Changing the rules for cohort entry

The committee has recommended the reference to attendance is replaced with reference to enrolment. We support this change to avoid creating legal uncertainty, but we still oppose this aspect of the bill. The previous National Government passed the Education (Update) Amendment Act 2017. This legislation enabled schools to adopt and enforce a cohort entry policy and allowed a small group of students to start school at a maximum of 8 weeks before their fifth birthday. National introduced these changes to enable greater choice and flexibility for parents and to reduce disruption in classes. The Education Amendment Bill (No 2) will change the requirements for cohort entry so that children can only start school after they have turned five. This means that there will potentially be thousands of children that will not be able to start school on their fifth birthday, effectively changing the school starting age in New Zealand, and limiting choice for parents. This bill will also create a period of uncertainty around cohort entry as existing cohort entry policies will remain in place until 1 January 2020 or until schools terminate them. We therefore oppose this aspect of the bill and prefer that the legislation enacted in 2017 be continued.

Repealing the start-up of communities of online learning

This bill will repeal communities of online learning, a proposed new system for distance education which would have provided students with access to quality online learning opportunities and content. This would have benefited all students, particularly home-schooled students or students at small schools with a limited range of teachers and subjects. We do not support this aspect of the bill because in our view it takes learning opportunities away from students and provides no alternative distance education system.

Making student safety a registration criterion for private schools

This bill will impose a new criterion for registration of private schools—that the school “is a physically and emotionally safe place for students”. While we support any reasonable and logical legislation that improves student safety, there is a lack of detail around this aspect of the bill, particularly around the definition of physical and emotional safety, and no evidence of existing issues that warrant this change.

Appendix

Committee process

The Education Amendment Bill (No 2) was referred to the committee on 27 September 2018. The closing date for submissions was 9 November 2018. We received and considered 16 submissions from interested groups and individuals. We heard oral evidence from 7 submitters.

We received advice from the Ministry of Education.

Committee membership

Dr Parmjeet Parmar (Chairperson)

Simeon Brown

Hon Clare Curran (from 24 October 2018)

Hon Nikki Kaye

Denise Lee

Marja Lubeck

Jo Luxton

Mark Patterson

Jamie Strange (until 24 October 2018)

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 (No 2)

Government Bill

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43	Section 156 amended (New Schedule 1 inserted)	10
44	Section 161 amended (Consequential amendments to other enactments)	10
45	Schedule 3 amended	10

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~~ proposes to enrol in a State school or State-integrated school to be assigned to a group of children and for all of the children in that group to ~~start attending~~ be enrolled in the 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 enrolment	
	The following persons may not attend <u>be enrolled in or continue to be enrolled in</u> a primary school; or attend a class below form 3 at a composite school:	
	(a) a child under the age of 5 years:	
	(b) a child who turned 14 years of age in a previous year:	5
	(c) a child who, in the opinion of the Secretary,—	
	(i) has completed the work of form 2; or	
	(ii) has completed the work equivalent to form 2.	
5A	Cohort entry policy	
(1)	A State school or State integrated school may adopt or revoke a cohort entry policy after complying with the requirements in section 5C.	10
(2)	A cohort entry policy must—	
	(a) apply to all children aged 5 who have not previously attended <u>enrolled in a registered</u> school; and	
	(b) provide that all such children may start attending school <u>be enrolled</u> only on a date determined in accordance with section 5B .	15
5B	Dates for starting school under cohort entry policy	
(1)	This section applies to a school that has a cohort entry policy.	
(2)	A child may start attending the school <u>be enrolled</u> not earlier than the child's fifth birthday on a date that is—	20
	(a) a term start date:	
	(b) a mid-term start date.	
(3)	In this section,—	
	mid-term date means a date that is published as a mid-term date under section 5D	25
	term start date , in relation to a school, means a date that is the first day of a term that the school is open for instruction.	
6	New section 5D inserted (Publication of mid-term dates)	
	After section 5C, insert:	
5D	Publication of mid-term dates	30
(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.	
(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.	

- 7 Section 11PB amended (Enrolment schemes of certain State schools)**
- (1) In section 11PB(1), delete “State schools that are accredited as enrolling communities of online learning.”
- (2) Repeal section 11PB(1)(ca).
- 8 Section 25 amended (Students required to enrol must attend school) 5**
- (1) In section 25(1)(b), delete “4 or”.
- (2) In section 25(3A), 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. 10
- 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) 15**
- Repeal section 35L(2).
- 12 Section 382 amended (Functions of ~~Education~~ Teaching 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,— 20
- (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: 25
- (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: 30
- 13 New section 382A inserted (Issue of statement of Government policy direction relating to ~~Education~~ Teaching Council’s functions)**
- After section 382, insert:

382A Issue of statement of Government policy ~~direction~~ relating to ~~Education Teaching Council's~~ functions

- (1) The Minister may, at any time, issue a statement of Government policy ~~direction~~ relating to 1 or more of the ~~Education Teaching Council's~~ functions specified in section 382(1). 5
- (2) Before issuing a statement of Government policy ~~direction~~, the Minister must consult the ~~Education Teaching Council~~.
- (3) Every statement of Government policy ~~direction~~ must be—
- (a) given in writing to the ~~Education Teaching Council~~; and
 - (b) published in the *Gazette*; and 10
 - (c) presented to the House of Representatives.
- (4) A statement of 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~~ statement is issued. 15
- (5) When performing its functions, the ~~Education Teaching Council~~ must have regard to any relevant statement of Government policy ~~direction~~.
- (6) A statement of Government policy ~~direction~~ may be amended, revoked, or replaced in the same way as it is given.
- (7) A statement of 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. 20

14 Schedule 1 amended

In Schedule 1, after Part 7, insert: 25

Part 8

Provisions relating to Education Amendment Act (No 2) 2018

23 Interpretation

In this Part,—

amendment Act means the **Education Amendment Act (No 2) 2018** 30

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	
(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	5
(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—	10
(a)	the school's provisional registration is being renewed under section 35A(4); or	
(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).	15
(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.	
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.	20
(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.	25

Part 2

Amendments to other enactments

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15 Amendments to Education Act 1964

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

- 17 New section 96 inserted (Correspondence schools and classes for continuing education)** 5
After section 95, insert:
- 96 Correspondence schools and classes for continuing education**
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. 10
- 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. 15
- 19 Section 2 amended (Commencement)**
Replace section 2(4) with:
(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). 20
- 21 Section 11 repealed (Sections 7 and 7A repealed)**
Repeal section 11.
- 22 Section 20 amended (Section 16 amended (Secretary’s powers when excluded student younger than 16))**
Repeal section 20(2) and (3). 25
- 23 Section 25 amended (Section 20 replaced (New Zealand citizens and residents between 6 and 16 to go to school))**
- (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) with: 30
- (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.

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)) Repeal section 30(2).	5
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)) Repeal section 36(2).	10
28	Section 38 repealed (New Part 3A inserted) Repeal section 38.	
29	Section 39 amended (Section 60 amended (Interpretation)) Repeal section 39(3).	
30	Section 52 repealed (Section 78A amended (Powers of entry and inspection)) Repeal section 52.	15
31	Section 67 repealed (Section 81A repealed (Grants for correspondence schools)) Repeal section 67.	20
32	Sections 70 and 71 repealed Repeal sections 70 and 71.	
33	Section 72 amended (Section 92 amended (Interpretation)) Repeal section 72(1), (3), and (4).	
34	Section 98 amended (Section 144A amended (Secretary may require information for proper administration of Act)) In section 98(1), repeal new section 144A(1AAA)(c).	25
35	Section 100 amended (Section 145 amended (Interpretation)) Repeal section 100(1).	
36	Section 107 repealed (Section 152 repealed (Correspondence schools)) Repeal section 107.	30

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| 37 | Section 120 repealed (Section 158A amended (Interpretation))
Repeal section 120. | |
| 38 | Section 122 amended (Section 158R amended (Secretary’s powers when student younger than 16 is excluded from partnership school kura hourua))
Repeal section 122(2). | 5 |
| 39 | Section 125 repealed (Section 159 amended (Interpretation))
Repeal section 125. | |
| 40 | Sections 131 to 135 repealed
Repeal sections 131 to 135. | 10 |
| 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. | 15 |
| 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)
Repeal section 161(3). | 20 |
| 45 | Schedule 3 amended
In Schedule 3, repeal Part 3. | |

Legislative history

13 September 2018
27 September 2018

Introduction (Bill 90–1)
First reading and referral to Education and Workforce
Committee