

# **Education Amendment Bill (No 3)**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill amends the Education Act 1989. The Bill has 2 broad areas of policy focus: to enhance student safety in both the early childhood and compulsory sectors; and improve accountability for student attendance and engagement in the compulsory sector. There are minor policy changes designed to enhance the efficient governance of the compulsory education system and to enhance the efficient administration of the compulsory and tertiary education systems. There are changes to existing provisions to clarify some definitions and correct minor technical and drafting errors in the Act. These changes will help to modernise and improve education legislation.

### ***Student safety in early childhood and compulsory sectors***

#### **Police vetting changes**

The Bill proposes amendments designed to: minimise the risk that some non-teaching staff, contractors and volunteers may have unsupervised access to children without being police-vetted; reduce the compliance costs associated with obtaining police vets; and minimise needless police vetting.

The changes will require the police vetting of only those non-teaching staff, contractors and volunteers, who have, or are likely to have,

unsupervised access to children during opening hours. The police vet must be obtained before the person concerned has unsupervised access to children. School management or boards, and early childhood education services, will no longer be strictly required to police vet non-teaching staff, contractors and volunteers who do not have unsupervised access to children.

The Bill proposes that the New Zealand Teachers Council ceases to provide a police vetting service to early childhood education services and schools, and services and schools apply directly to the New Zealand Police to obtain police vets.

The Minister of Education is empowered to specify particular agencies which have police vetting processes for their employees who work within multiple schools or early childhood education services. The employees of these agencies will not have to be police-vetted again by the early childhood service(s) or school(s) concerned.

#### **Information-matching programme**

The Bill proposes amendments to allow for an authorised information matching system to: assist the Teachers Council to ensure that only registered teachers holding current practising certificates or persons authorised by the Council to teach, are employed in teaching positions; and to enable the Ministry of Education to keep accurate registration information about teachers who are entitled to registration-dependent allowances.

The proposed system will compare teacher information held on the Ministry of Education's payroll database with information contained in the Teachers Council's Teachers Register to identify—

- teachers who are teaching without a current practising certificate or authorisation:
- schools that are illegally employing these teachers:
- the registration category of teachers for determining eligibility for allowances dependant on registration type.

#### **Minor procedural changes to teacher complaints and disciplinary processes**

The Bill proposes 2 minor procedural changes to the current processes of the 2 independent disciplinary bodies, the Complaints Assessment Committee and the Disciplinary Tribunal, overseen by the

New Zealand Teachers Council. The proposals are designed to maintain student safety by ensuring that teachers have no contact with students where they are suspected of misconduct that could pose a risk to the students.

The Complaints Assessment Committee will be able to apply for an interim suspension of a teacher's practising certificate or authority to teach, where an allegation of serious misconduct is being investigated by the police or by a school board of trustees.

The initial maximum 3 month suspension of a teacher's practising certificate or authority to teach will be amended so the suspension can be reviewed after 3 months and extended for further periods of 3 months. Affected teachers will be able to make representations at each 3-monthly review.

A further amendment will remove a procedural inconsistency in the assessment of teacher impairment so it becomes a discretionary activity for cases involving both teacher incompetence and teacher misconduct.

### ***Accountability for student attendance and engagement in the compulsory sector***

The Bill proposes amendments designed to improve accountability by—

- specifying the minimum steps that a school board of trustees must ensure are taken in situations of unexplained or unjustified student absence. These will include monitoring attendance, contacting parents on the first day that unexplained or unjustified absence is identified, and following up any persistent unexplained or unjustified absences:
- amending the principal's existing duty to ensure students get good guidance and counselling to include specific reference to guidance on career choices and pathways:
- repealing the ability of the Secretary for Education to provide enrolment exemptions to 15-year-old students:
- making explicit that the educational value of the offsite experience is the key criterion to be considered by a school board when allowing students to undertake courses of education, obtain work experience, or make visits outside school premises.

### ***Other amendments***

The amendments summarised below are designed to—

- enhance the efficient governance of the compulsory education system:
- enhance the efficient administration of the compulsory and tertiary education systems:
- clarify some definitions:
- correct minor technical and drafting errors in the Act.

### **School Boards of Trustees**

The Bill proposes grouping together in a new section of the Act the current key responsibilities of a school board. This is designed to create a distinct section that parallels the approach taken with legislation for other Crown entities. The amendment will express the responsibilities of school boards as required functions, discretionary functions and authorised functions that require the approval of the Minister of Education. The Minister may approve classes of authorised functions (with any conditions considered necessary or desirable) that all boards may undertake without further approval. Board failure, or refusal, to fulfil the required functions of boards of trustees, or to follow conditions attached to an authorised function, are added as grounds for an intervention action.

The Bill proposes minor amendments to—

- repeal the requirement for a board to hold an election of elected trustees on the second Tuesday in May:
- give the Minister the power to prescribe a date or range of possible dates for triennial elections:
- exempt from an election school boards whose school is to close:
- give the Minister discretion to establish a combined board for 2 or more new schools:
- give the Minister greater discretion to establish an alternative board constitution for a school.

### **Schooling administration**

Amendments to: retrospectively validate payments made to schools where a change of proprietor (of a school integrated under the Private

Schools Conditional Integration Act 1975) has occurred without the Crown's prior consent; and repeal the section that requires an Order in Council to authorise the continuing payment of teacher salaries through the central resourcing system.

### **Tertiary education**

Amendments to expand existing offence provisions relating to student allowances and loans to include: students who knowingly make false or misleading statements in their applications; students who refuse to supply requested information; and students or third parties who refuse to answer questions during an investigation.

### **Special education**

Amendments to: enable special schools to apply to the New Zealand Qualifications Authority to assess against the standards for NCEA; and link the terms special class, special clinic, special school and special service to the definition of a state school.

### **New Zealand Qualifications Authority**

Technical amendments to: include private schools in the definition of schools which are eligible to be accredited by NZQA; validate previous decisions made by the New Zealand Qualifications Authority in respect of private schools for the purposes of being accredited; and clarify the definition of institution that applies to the operation of course approvals and accreditation.

Miscellaneous amendments. About 39 minor technical and drafting errors are corrected.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause, and provides that the Act comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### Amendments to principal Act

*Clause 3* states that *Part 1* amends the principal Act, that is, the Education Act 1989.

*Clause 4* provides that references to sections in Part 26 of the principal Act are references to those sections as substituted by the Education Amendment Act 2006. The provisions of the Education Amendment Act 2006 that substitute a new Part 26 in the principal Act come into force on 1 December 2008: *see* Education Amendment Act 2006 Commencement Order 2008 (SR 2008/203).

*Clause 5* amends the definition of State school to include special schools, and substitutes new meanings for special school and associated expressions, as the specified definitions referred to meanings assigned by section 2 of the Education Act 1964. However, that section did not assign meanings to the relevant expressions.

*Clause 6* corrects a technical error.

*Clauses 7 and 8* repeal incorrect compare notes.

*Clauses 9 to 11* correct errors of expression.

*Clause 12* repeals an incorrect compare note.

*Clause 13* repeals section 22, which had allowed some exemptions from school attendance for persons who have turned 15. *Clause 84* is a transitional provision in relation to *clause 13*.

*Clause 14* makes an amendment to section 23 that is consequential upon the repeal of section 22 by *clause 13*, and also repeals an incorrect compare note.

*Clause 15* specifies some of the reasonable steps a board must take to ensure that students who are required to attend school do so.

*Clause 16* corrects an error of expression.

*Clause 17* corrects a technical error.

*Clause 18* corrects technical errors, including one that occurred when the definitions of **domestic student** and **foreign student** changed elsewhere in the principal Act. Also, *clause 18* provides new definitions, for **unsupervised access to students** and **vetting-exempted agency**, that relate to changed requirements for police vetting. *Clause 18* also applies the definitions in section 60 to the provisions of Part 7A of the principal Act.

*Clause 19* inserts *new sections 60AA and 60AAB* in the principal Act. *New section 60AA* lists functions that boards must, or may, perform. *New section 60AAB* empowers the Minister, after considering the matters listed, to authorise all boards, or a particular board, to perform other functions, on any conditions specified by the Minister.

*Clauses 20 to 22* correct errors of expression.

*Clause 23* prohibits a board from authorising courses of education, work experience, or visits outside school premises unless satisfied of the educational benefit of doing so to the students concerned.

*Clause 24* corrects a technical error.

*Clause 25* includes guidance and counselling on career choices and career pathways in the guidance and counselling that a principal of a State school must ensure is available to students.

*Clause 26* substitutes *new sections 78C to 78CC* for sections 78C to 78CB. New procedures and criteria are set out for obtaining police vets of those who will have unsupervised access to students at schools. Some agencies may be exempted by the Minister, by notice in the *Gazette*, from police vetting requirements in respect of all the agency's employees, or a class of, or classes of, its employees.

*Clause 27* substitutes a *new section 78H*, which sets out the purpose of Part 7A of the principal Act. *New section 78H* includes references to interventions that may be used when a board does not perform the functions set out in *new section 60AA(1)*, or does not comply with conditions on functions authorised under *new section 60AAB*.

*Clause 28* amends section 78I to allow interventions in schools whose boards are not performing the functions set out in *new section 60AA(1)* or not complying with conditions or functions authorised under *new section 60AAB*.

*Clause 29* amends section 78J so that the reasons for the Secretary to require a board to provide specified information include the Secretary's reasonable grounds for concern about the board's performance of the functions set out in *new section 60AA(1)*, or its compliance with conditions on functions authorised under *new section 60AAB*.

*Clause 30* corrects a technical error.

*Clause 31* repeals a defunct definition.

*Clauses 32 to 35* repeal references to the defunct definition that is repealed by *clause 31*.

*Clauses 36 and 37* correct errors of expression.

*Clause 38* substitutes a *new section 101(4)(a)*, relating to dates of elections of trustees to boards (other than elections of student representatives), and those ranges of dates may be different for boards that have staggered election cycles: *see new section 101(4A)*. *Clause 38* also amends section 101(10) to make section 101 subject to *new section 101AB*, which relates to schools under notice of closure.

*Clause 39* inserts a *new section 101AB*, providing that schools under notice of closure are not to hold elections for board trustees or student representatives on boards.

*Clause 40* provides a new ground for the Minister to approve an alternative constitution, subject to consultation conditions.

*Clause 41* inserts a *new section 110A* that allows the Minister to establish a combined board for 2 or more newly established schools. If the Minister does so, the combined board is the board of a newly established school for the purposes of section 98 (which relates to the composition of the school's board).

*Clauses 42 to 44* repeal incorrect compare notes.

*Clause 45* inserts a *new section 128A*, allowing information matching between the New Zealand Teachers Council and the Ministry to identify the registration status of people employed in teaching positions, and who they are employed by, and to identify their entitlement and eligibility for allowances available on the basis of registration.

*Clause 46* repeals an incorrect compare note.

*Clause 47* omits references in section 139AE to the New Zealand Teachers Council obtaining police vetting of people other than teachers.

*Clause 48* corrects an error of expression.

*Clause 49* amends section 139AU to allow the Complaints Assessment Committee to apply to the chairperson of the Disciplinary Tribunal for the interim suspension of a teacher's practising certificate or authority during the investigation by the Complaints Assessment Committee, the New Zealand Police, or the teacher's employer, of a complaint of possible serious misconduct by the teacher.

*Clause 50* inserts a *new section 139AUA*, which allows the interim suspension to continue initially for a period of 3 months or less, then to be renewed for further 3-month periods. An initial period of interim suspension must be reviewed by the chairperson of the Disciplinary Tribunal at the request of the teacher, and any further 3-month



interim suspension period may be the subject of a hearing by the Disciplinary Tribunal if the teacher believes that there is an unreasonable delay in concluding the matter.

*Clauses 51 and 52* correct errors of expression.

*Clause 53* amends section 139AZD to reflect that the New Zealand Teachers Council will no longer co-ordinate police vetting of persons other than teachers with unsupervised access to children in schools and early childhood services.

*Clause 54* repeals a redundant definition in section 159.

*Clauses 55 and 56* update references to enactments.

*Clauses 57 to 60* correct technical errors.

*Clause 61* repeals the definition of secondary school in section 246, and inserts a definition of relevant school. The term relevant school replaces references to secondary school throughout Part 20. Relevant school includes schools registered under section 35A, as had been the intention with the previous term, secondary school, and special schools are included as schools that may be authorised by the Authority to do such things as provide training towards certain qualifications. A validation provision relating to the substitution of terminology made by *clause 61* is located at *clause 85*.

*Clause 62* amends section 253 to reflect the changed terminology in section 246, and to correct inexact references to institutions and other bodies in that section.

*Clauses 63 to 65* amend terminology in accordance with amendments to section 246 made by *clause 61*.

*Clause 66* corrects inexact references to institutions in section 258A.

*Clause 67* amends terminology in accordance with amendments to section 246 made by *clause 61*.

*Clause 68* corrects inexact references to institutions in section 259A.

*Clauses 69 and 70* amend terminology in accordance with amendments to section 246 made by *clause 61*.

*Clause 71* corrects a technical error.

*Clause 72* corrects an error made during earlier amendments, reinstating wording mistakenly repealed.

*Clause 73* amends section 307 to refer to an extended range of persons who are not in receipt of a statutory allowance or loan as non-recipients who have duties to provide information to the Secretary.

*Clause 74* inserts a *new section 307AAA* that sets out some consequences, previously included in section 307, of failure or refusal to comply with requests for information, either produced in document form or in response to questions during an investigation under section 307(4).

*Clause 75* amends section 307AA, which relates to offences concerning allowances. *Clause 75(1)* corrects a technical error. *Clause 75(2)* substitutes *new section 307AA(2) and (2A)*, creating new offences of refusal to comply with section 307(5), and knowingly making a false or misleading statement in an application for a student allowance or student loan.

*Clause 76* corrects an error of expression.

*Clause 77* amends section 309 to provide new definitions, for unsupervised access to children, and vetting-exempted agency, that relate to changed requirements for police vetting.

*Clause 78* substitutes *new sections 319D to 319FA* for sections 319D to 319F. New procedures and criteria are set out for obtaining police lists of those who will have unsupervised access for children at schools. Some agencies may be exempted by the Minister, by notice in the *Gazette*, from police vetting requirements in respect of all the agency's employees, or classes of its employees.

*Clause 79* corrects an error of expression.

*Clause 80* corrects a technical error and an error of expression.

*Clause 81* substitutes a new clause 8(3) in Schedule 6, related to the timing of meetings of the board to deal with vacancies, depending on the time the vacancy occurs in relation to election years.

*Clauses 82 and 83* correct technical errors.

## **Part 2**

### **Transitional provision, validations, and consequential amendments**

*Clause 84* allows certificates of exemption that are issued under section 22(1) prior to its repeal by *clause 13* in respect of people under 16 years of age to remain in force, unless repealed by the Secretary in accordance with *clause 84(2)*.

*Clause 85* provides for the validity of the Authority's actions to be determined as if section 246, and the other provisions of Part 20,

had referred to relevant schools, and not to secondary schools, at all material times.

*Clause 86* provides that actions done under the Education Act 1989 or the Private Schools Conditional Integration Act 1975 are not invalid solely because of a defect or error in the processes relating to a change of proprietor of an integrated school.

*Clause 87* amends the Privacy Act 1993 to add the New Zealand Teachers Council to the list of specified agencies in section 97 of that Act. *Clause 87* also adds *new section 128A* of the Education Act 1989 to the item relating to that Act in Schedule 3 of the Privacy Act 1993. These amendments are consequential upon the insertion of *new section 128A*, which relates to information matching, into the Education Act 1989.

### **Regulatory impact statements**

#### ***Matching of teacher registration information between Ministry of Education and New Zealand Teachers Council***

##### **Executive summary**

This regulatory impact statement sets out a proposal to establish an authorised information-matching programme between the Teachers Council and the Ministry of Education (the **Ministry**) to enable effective identification of the registration status of teachers.

The key impacts of this proposal will be—

- the Teachers Council will be able to closely monitor the registration status of teachers in schools to ensure schools only employ teachers with a current practising certificate or authorisation, as required by law; and
- the Ministry will be better able to ensure that only registered teachers benefit from collective agreement allowances.

The information-matching programme carries no compliance or financial costs for schools.

##### **Adequacy statement**

This regulatory impact statement has been assessed as being adequate according to the objectives defined by Cabinet [Cabinet Office Circular CO (07) 3 refers, dated 3 April 2007].

**Status quo and problem**

Presently, because of different data collection requirements associated with teacher registration and payroll systems, neither the Teachers Council nor the Ministry is able to identify the registration status of a teacher *and* the name of the school where the teacher is teaching. This means that the Teachers Council cannot identify people who are teaching without a current practising certificate or authorisation, and the Teachers Council has difficulties in contacting registered teachers.

The purpose of Part 10 of the Education Act 1989 is to ensure that only those who have a current practising certificate or authorisation are employed in teaching positions in New Zealand schools and kindergartens. The reason for allowing only registered or authorised teachers in New Zealand classrooms is to ensure that the learning environment is safe and that it maximises students' learning. In effect, the purpose of registration fails where non-registration is ignored.

Because some teachers move without notifying the Teachers Council of their new postal address, the Teachers Council has had difficulty trying to contact registered teachers. The Teachers Council needs to do this for the following reasons:

- to establish which sector the teacher is currently working in — this has a bearing on election rolls and for statistical research relating to teachers' professional progress inside and outside the New Zealand education system:
- to provide a means of contacting teachers for renewal reminders as addressing information often becomes invalid (and is also often previous-school based):
- to gain and maintain full registration requires a teaching service requirement. If this was being updated regularly through information-matching, it would reduce a number of queries to registration applicants. Those queries delay processing and can be costly.

The Ministry also needs to identify which teachers are registered to honour collective agreement allowances. This currently involves time-consuming and costly manual identification processes.

**Objectives**

New Zealand schools should comply with the Education Act 1989 and only employ teachers with a current practising certificate or authorisation.

The Teachers Council should rely upon a reliable and effective mechanism to enforce such compliance by monitoring teacher registration and tracking employment.

The Ministry should be able to easily identify the registration status of teachers for payment of allowances.

**Alternative options**

Identifying schools employing teachers without a current practising certificate or authorisation could be achieved by asking the Privacy Commissioner to issue a Code of Practice. However, considering that identifying teachers' registration status by school potentially concerns individuals' livelihoods, this matter is better dealt with through primary legislation.

In 2005, the Ministry asked schools to provide the registration numbers of teachers on the payroll so it could set up a database to determine teachers' eligibility for collective agreement allowances. Poor levels and degrees of compliance resulted in inaccurate data. This experience, combined with the need to minimise compliance costs for schools, means that this is not a preferred option.

**Preferred option**

An authorised information-matching programme would allow the Teachers Council to identify schools employing teachers who do not hold a current practising certificate or authorisation. The programme would also allow the Ministry to streamline its presently inefficient method of determining a teacher's registration status and correctly pay those allowances that are dependent on such status.

In December 2006, the Minister of Education indicated a preference for an authorised information-matching programme over the issuance of a Code of Practice.

The information-matching programme carries no compliance costs for schools or teachers. Financial savings will be made for both the Teachers Council and the Ministry if the information-matching programme is implemented. The money required to finance the devel-

opment and ongoing administration associated with the new system will come from within department budgets.

The legislation stating that New Zealand schools may only employ in teaching positions those who have a current practising certificate or authorisation will not change as a result of this programme.

Legislation would be enacted to provide for an Authorised Information-Matching Programme. This would include—

- a provision in the Education Act 1989 allowing for the matching:
- an amendment to section 97 of the Privacy Act 1993 to include the Teachers Council in the list of specified agencies:
- an amendment to Schedule 3 of the Privacy Act 1993.

#### *Privacy considerations*

The only new information about an individual that the Ministry will receive from the Teachers Council as a result of the information-matching programme is teacher registration information: registration status; registration number; and expiry date. The only new information about an individual that the Teachers Council will receive from the Ministry is the name of the school where the teacher is teaching. Risks regarding data security are addressed separately in detail in an information-matching privacy impact assessment document which has been provided to the Privacy Commissioner.

### **Risks and impacts**

#### *Impacts on school students, parents, and the community*

Teachers who do not hold a current practising certificate or authorisation will be required to obtain them or leave their job. An unknown number of unqualified people may be required to demonstrate competence to be able to retain a teaching role.

Those individuals will also be required to go through the police vetting procedure that accompanies the process of gaining a practising certificate or authorisation. This will provide health and safety benefits for students while ensuring that all students are taught by suitably qualified teachers.

*Impacts on the status of the teaching profession*

That some teachers in schools do not hold a current practising certificate or authorisation undermines the status of the profession. A system that better enables enforcement of registration requirements will address this.

Public concern may arise if it is found that there have been significant numbers of teachers teaching without a current practising certificate or authorisation. This could be damaging to the status of the profession in the short term. Teachers Council intervention using the results of the information-matching programme would ensure that such a situation would not exist again, thus helping to allay any concerns that may arise.

*Impacts on teachers, schools, and communities*

There may be staffing impacts for some schools where teachers are employed who would not be able to gain a practising certificate or authorisation. Some schools may find it difficult to recruit suitably qualified teachers. Some schools may resent dismissing teachers who they deem competent, despite their lack of registration or qualifications.

Teachers and schools may be prosecuted as a result of the information-matching programme.

Teachers teaching without a current practising certificate or authorisation are breaking the law. The information-matching programme serves to reveal those teachers. The risks listed above are outweighed by the benefits to be gained from this programme—ie, an appropriately qualified, trained and registered workforce.

**Implementation and review**

The Ministry is ready to initiate the information-matching programme as soon as consent is granted.

A review of the programme will be conducted after 6 months and annually thereafter. Effectiveness will be evaluated against the objective of all teaching staff being registered.

When a school employing a teacher who does not hold a current practising certificate or authorisation is identified, the Teachers Council will write to the individual and the school alerting them to the non-compliance. As the information matching will be done on a fort-

nightly basis, this will enable a school and/or an individual to act on the information immediately. If, at the next fortnightly match, the situation is unchanged the Teachers Council will investigate to prosecute either a school or an individual.

Details about this information-matching programme will be included in information regarding teacher registration on the Teachers Council website. A similar statement will also be placed on teacher payroll forms which are published by the Ministry on the Payroll website.

### **Consultation**

This statement was developed in consultation with the New Zealand Teachers Council. The presidents of the major teacher unions—the New Zealand Education Institute and the Post-Primary Teachers Association—have been fully informed and support the information-matching programme.

### ***Amending police vetting requirements for non-permanent non-teaching staff, contractors and volunteers in Early Childhood Education services and schools***

#### **Executive summary**

The Education Act 1989 was amended in 2001 to provide minimum standards for the police vetting of non-teaching staff and contractors in schools and Early Childhood Education (ECE) services. These standards were introduced to prevent people with serious criminal records gaining access to children in these settings. They do not, however, provide sufficient protection for children, as—

- they allow for some staff and contractors to have unsupervised access to children prior to a police vet being obtained; and
- they do not apply to volunteers, who may have ongoing, unsupervised access to children.

They also place a heavy compliance burden on the education sector and on contractors.

The preferred option would introduce unsupervised access as the sole criterion for the police vetting of all non-teaching staff, contractors and volunteers. It would also remove the New Zealand Teachers Council as the conduit for police vetting for all non-teaching staff and contractors.



**Adequacy statement**

This Regulatory Impact Statement has been assessed as being adequate according to the objectives defined by Cabinet [Cabinet Office Circular CO (07) 3 refers, dated 3 April 2007].

**Status quo and problem**

The Education Act 1989 (the **Act**) currently requires schools and ECE services to obtain a police vet for—

- all permanent non-teaching staff prior to appointment:
- all non-permanent non-teaching staff within 2 weeks of appointment:
- contractors and their staff, if they “regularly work” at the school or the ECE service during operating hours, within 2 weeks of first starting work.

Schools and ECE services are also obliged under the Act to send requests for police vets to the New Zealand Teachers Council, which forwards any such requests on to the New Zealand Police.

The New Zealand Police provide a record of any convictions on the Law Enforcement System that have not been cleared by the Criminal Records (Clean Slate) Act 2004 and undertake an additional check for information of a sexual or violent nature that has not resulted in a conviction. The resulting information is then sent to the New Zealand Teachers Council, which forwards the original material to the job applicant and provides a copy of this to the school or ECE service that requested it.

Concerns have been raised by members of the schooling and ECE sectors, by contractors employed in both sectors, and by commentators such as the Children’s Commissioner about several aspects of the current system.

Firstly, there are safety concerns—

- many people other than staff and contractors come into ECE centres and schools and have contact with children. This creates a significant safety risk if they have unsupervised access to children because there will have been no police vet:
- a window of 2 weeks is provided for the police vetting of non-permanent staff and of contractors who “regularly work” in a school or ECE service. This creates a safety risk in the

intervening period before a police vet is obtained. By using regularity as the relevant threshold, rather than unsupervised access (in the case of contractors), it also overlooks the potential for a safety risk to arise through even occasional or one-off access to children.

There are also compliance concerns for schools, ECE services and contractors (which are generally small- to medium-sized businesses)—

- the statutory role of the New Zealand Teachers Council in facilitating police vets is subsidised by user schools and ECE services, which incur a \$10 fee per police vet. This is a needless cost, as the New Zealand Police is able to provide a police vetting service free of charge to all schools and ECE services:
- all contractors who regularly work in a school or ECE service during operating hours are required to undergo a police vet, even though many would never have unsupervised access to children. This creates needless compliance costs for the schools and ECE services that employ these contractors. This is exacerbated by the lack of any definition in the Act for “regularly”, which results in inconsistent and excessive police vetting:
- there is no allowance in the Act for the recording or sharing of police vetting information between schools and ECE services. This means that contractors who work within multiple schools and/or ECE services are required to complete a new police vet for every school or ECE service, creating excessive compliance costs for all affected parties.

The status quo entails a low cost for the Crown but a high cost for schools, ECE services, contractors, the New Zealand Teachers Council and the New Zealand Police. The status quo also creates a potentially high risk for some children because of its failure to provide adequate safeguards.

### **Objectives**

To improve children’s safety.

To remove needless compliance costs for schools, ECE services and contractors.

To promote risk management strategies in schools and ECE services.

## Alternative options

### *Non-regulatory option one: information campaign and centralised register*

An information campaign could be used to improve safety by highlighting the importance of police vetting for all staff who have unsupervised access to children. The campaign could also reduce needless compliance by providing a clear, consistent message about what constitutes regular work (as it applies to contractors) under the Act. In conjunction with this, the development of a centralised system for the copying and retention of completed police vets could assist in eliminating duplicate vetting. The apparent advantage of this approach would be eroded, however, through the increase in price that would be needed to cover the additional administrative costs that this option would create for the New Zealand Teachers Council. In this way, the option would merely replace existing compliance costs for schools and ECE services with new compliance costs.

### *Non-regulatory option two: development of a police vetting confirmation card*

Option two considered the development of a police vetting confirmation card, which could confirm that an individual had successfully completed a police vet and allow for employment across the education sector. This could be renewable on a 3-yearly basis.

This system already operates in a number of other countries and would address safety concerns caused through delays in obtaining police vets. It would also reduce the compliance costs associated with duplicate vetting requirements. This option would not, however, address all safety and compliance concerns.

It would not prevent unsupervised access to children and would do nothing to encourage schools to develop a risk management process—indeed, reliance on a card as a proxy for “safety” may encourage complacency in this area. This option would also introduce a new safety concern through the inherent risk of card fraud.

This option would also introduce new costs for schools and ECE services. Initial investigations suggest that the per-card cost may be \$45, once all production and processing costs are taken into account. This cost is not likely to be offset through the reduction in the number

of police vets most schools and ECE services would be required to obtain.

### **Preferred option**

The preferred option is to—

- restrict police vetting requirements to only those non-teaching staff, contractors, and volunteers who will have unsupervised access to children in an ECE or school setting; and
- remove the New Zealand Teachers Council as the conduit for the police vetting of all permanent and non-permanent non-teaching staff and allowing schools and ECE services to apply for police vets directly from the New Zealand Police, free of charge.

“Unsupervised access to children” will mean “*Access to a child or children on the site of an ECE centre or school that is not overseen, or in any other way observed, or able to be directed if necessary, by a registered teacher, another member of staff with appropriate police clearance or, in the case of an individual child, the child’s parent/s.*”

This would apply only when the ECE centre or school is open for instruction, which is consistent with the existing duty-of-care responsibilities of ECE managers and school boards of trustees.

Parents and others who act as volunteers will be affected by this amendment only if—

- they assist on the ECE or school site during ECE or school hours; and
- they can control and direct children because teachers or other (police vetted) school staff have no way of intervening in the event of danger to children caused by the volunteer.

In practice, it will be most likely to affect parents who have an ongoing voluntary position in the school, as schools will be able to avoid unsupervised access to children in most other situations.

Parents who act as volunteers will not be affected by this amendment if they assist with offsite activities or if they assist with activities on the ECE or school site outside of operating hours. In these circumstances, ECE managers and school boards of trustees will have their own risk management strategies to keep children safe.

The application of the proposed amendment to common scenarios is considered below.

**Parent affected**

A parent who coaches children's swimming on the school site, during school hours, with no teachers or other (police vetted) school staff in the vicinity of the swimming pool (reason: unsupervised access to children)

A parent who supervises children's reading in the school library during school hours, with no teachers or other (police vetted) school staff present (reason: unsupervised access to children)

A parent who comes into a school to mentor small groups of students without teachers or other (police vetted) school staff present

**Parent not affected**

A parent who helps another teacher to supervise children's swimming on the school site, during school hours, with teachers present in the vicinity of the swimming pool (reason: access to children is not unsupervised)

A parent who assists with a school camp (reason: offsite activity)

A parent who coaches after-school sports (reason: outside school hours)

A parent who drives students to a museum as part of a class trip (reason: off-site activity)

A parent who leads a Bible in Schools class in a primary school (reason: outside school hours)

This option is preferred as it will meet all the policy objectives without incurring the risks associated with the alternative options. It will have the following positive impacts:

- it will provide a high level of safety, by removing the risk that some staff, contractors or volunteers with serious criminal records may have unsupervised access to children—whether on a one-off or ongoing basis;
- it will significantly reduce compliance costs for schools, ECE services and contractors by avoiding needless police vetting (where contractors will have no unsupervised access to children) and the \$10 cost this incurs, and by reducing the need for duplicate vetting;
- it will promote risk management strategies in schools and ECE services by ensuring that the possibility of non-permanent staff, contractors and volunteers having unsupervised access to children is actively considered prior to appointment, and actively avoided where inessential.

This proposed amendment has been tested internationally (in the United States, England, Canada and Australia) and found to provide an effective safeguard for child safety.

There is a risk that this option may create some additional compliance costs for schools and ECE services by imposing a requirement that volunteers also be subject to police vetting. As there is no centrally-held data about the use of volunteers in schools and ECE services, it is not possible to quantify the impact of this new requirement. It is likely, however, to affect most schools and ECE services.

To minimise the risk of these additional compliance costs, a proposed amendment will allow the Minister of Education, by notice in the *Gazette*, to specify those agencies that are approved to undertake their own police vetting. This is likely to be particularly helpful in the case of large organisations that provide volunteer services to schools, and which are able to assume this responsibility for their own workforce. The preferred option does not conflict with, or make redundant, any pre-existing regulations.

### **Implementation and review**

General information will be sent to all schools to advise of the legislative change, which will be supported by new police vetting guidelines. The impact of the changes will be monitored through informal feedback with schools, ECE services and industry groups.

### **Consultation**

This Regulatory Impact Statement was prepared in consultation with the New Zealand Teachers Council, the New Zealand Police and the Office of the Privacy Commissioner. The following education sector organisations were provided with a copy of this statement and invited to provide their feedback: the New Zealand School Trustees' Association, the New Zealand Principals' Federation, the Secondary Principals' Association of New Zealand, the Post-Primary Teachers' Association (Secondary Principals' Council), the New Zealand Educational Institute, Te Tari Puna Ora/New Zealand Childcare Association, New Zealand Kindergartens, Barnardos New Zealand, the Early Childhood Council, the Montessori Association of New Zealand, the Christian Early Childhood Education Association, the Hospital Play Specialists Association, the Federation of Rudolph Steiner Schools, the New Zealand Playcentre Federation and Te Kohanga Reo National Trust.

### *Changes to school attendance legislation*

#### **Executive summary**

New Zealand currently has very low rates of engagement in schooling: truancy rates continue to rise and retention in schooling until age 16 remains low compared to other OECD member countries. While the legislative settings for school attendance are unlikely to drive engagement, they do influence the way that this may occur and may currently limit engagement in a number of ways. Changes to New Zealand's school attendance legislation could signal, at the highest level, the possibilities for increasing student engagement in education.

The preferred option will enhance accountability for ensuring that school attendance occurs.

#### **Adequacy statement**

This regulatory impact statement has been assessed as being adequate according to the objectives defined by Cabinet [Cabinet Office Circular CO (07) 3 refers].

#### **Status quo and problem**

Most New Zealand students stay at school until at least the age of 16 and more are leaving school with qualifications than ever before, but it is clear that not all young people are engaged in learning. Retention in schooling until age 16 is lower today than in 1993, the year in which the school-leaving age was raised from 15 to 16, and is low by international comparisons. The number of students who are truant from school also continues to increase: approximately 24, 223 students were truant from school on any given day in 2004; in 2006, this number had risen to 29, 470. There is also a noticeable spike in truancy rates at the transition point from primary to secondary schooling—from 2.09% to 5.34%—revealing a general decline in engagement at this point. Combined, these statistics suggest that urgent action is needed to find new ways to engage all students in education; and particularly secondary-aged students.

While attendance is not the same as engagement, it is a prerequisite. Currently some of the provisions for school attendance in the Education Act 1989 (the **Act**) may limit engagement by providing only limited accountability for ensuring that student attendance occurs.

*Limited accountability for ensuring that student attendance occurs*

The Act shares the responsibility between 3 parties for ensuring that attendance occurs: parents, school boards of trustees and the Crown:

- parents are required to enrol children in school between the ages of 6 and 16 and ensure that they regularly attend:
- school boards of trustees are required to “take all reasonable steps” to ensure the attendance of students<sup>1</sup>, which may include the prosecution of parents where their children do not attend:
- the Crown may prosecute parents where their children do not enrol in schooling.

Currently the lines of responsibility are clear but the means of giving effect to these are not.

**Objectives**

To enhance accountability for ensuring that student attendance occurs.

**Alternative options***Non-regulatory approach: promulgate “best practice” advice*

An information campaign could be used to promulgate best practice advice, highlighting the effective practices that schools have already developed to ensure student attendance. However, the Ministry of Education already promulgates best practice, but this has not been enough to reverse the trends in student retention.

*Non-regulatory approach: develop funding incentives to encourage attendance*

Tying schools’ public funding to student retention could provide a powerful incentive to boost student engagement in learning. Under this model, the funding would follow the student and where a student leaves school, the school would lose the funding. This approach is likely, however, to create significant negative externalities, as it may have the effect of penalising schools for student behaviour that is beyond their control. The “punitive” effect of this approach is likely to

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<sup>1</sup> Sections 25, 31, Education Act 1989



impact on low-decile schools, in particular, which are disproportionately affected by truancy and early drop-out, and may compromise their viability. The costs of this approach are therefore likely to outweigh its possible benefits.

### **Preferred option**

The preferred option is to amend the Act by enhancing accountability for ensuring that student attendance at school occurs, by—

- specifying the minimum steps that a board of trustees must ensure are taken to ensure that student attendance occurs, to include—
  - monitoring all students' attendance (either on or off the school site) and identifying patterns, including frequent truancy:
  - contacting parents on the first day that unexplained or unjustified absence is identified:
  - following up on all persistent unexplained or unjustified absence:
- removing the Secretary for Education's ability to provide early leaving exemptions to 15-year-old students.

This option is preferred as it will meet all the relevant policy objectives without incurring the risks associated with the alternative options.

### **Costs and benefits**

#### *Minimum steps to ensure attendance*

The amendments seek to build on existing effective practice in schools and should overlap with this in most cases. For some schools, however, there will be new compliance costs associated with the requirements to take minimum steps to ensure attendance. These minimum steps will require schools to undertake new activities in some cases, including more detailed monitoring of attendance, more regular communication with parents and more routine interventions where absence is unjustified or unexplained. Of these activities, the requirement to contact parents on the first

day that unexplained or unjustified absence is identified is likely to impose the greatest cost for schools.

The majority (at least 78%) of all schools already contact parents on the first day that unexplained or unjustified absence is identified, and only 10% wait 2 or more days to contact parents.<sup>2</sup> This latter group of schools is most likely to comprise mid-decile full primary schools.

The total annual per-school cost to be \$7,066 for those primary schools that already contact parents on the first day an absence is identified.<sup>3</sup> This will represent a new cost for the 10% of primary schools that do not currently follow this practice. Correspondingly, however, the new requirement is likely to decrease the average truancy rates of the affected schools from 5.7% to an estimated 1.8%—resulting, in absolute terms, in an extra 5 100 students regularly attending school.<sup>4</sup> So over time the cost per school would decrease. There will also be benefits for students and parents through enhanced student safety—particularly at the primary school level. While we cannot quantify these benefits, we expect them to be significant.

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<sup>2</sup> This is based on the results of the questionnaire on school attendance practices, circulated with the 2004 national attendance and absence survey. Question 3 of this questionnaire asked, “Generally, how soon are parent(s) informed if a student is found to be absent?” A total of 2147 schools responded to this question (80% of all state and integrated schools). Of these, 1669 (or 78%) stated that they responded on the first day, 224 (10%) waited 2 or more days and 254 (12%) provided an invalid response.

<sup>3</sup> This figure is based on annual business transaction costs of \$3,940 plus annual salary costs of \$3,126. The business transaction costs assume that each full primary school will make an average of 13.8 calls per day (based on the 2006 average absence rate for primary schools of 9.1% “converted” into 15 534 primary-aged students absent on any given day and spread between all 1 118 primary schools). The cost is based on Telecom’s flat charge for business customers of 4.5c (plus GST) per phone call per minute and an assumption that the average call will last 3 minutes. The annual salary costs assume a total of 1 hour’s work per day, remunerated at the median hourly rate for school secretaries (based on the 2007 School Support Staff collective agreement). If we assume that, for some schools, up to half of the parents will not have phone connections, the associated postal costs (at 50c per contact) will reduce the overall annual cost to \$5,746.

<sup>4</sup> This is based on a comparative analysis of the 2004 truancy rates of those schools that already contact parents on the first day an absence is identified relative to those that wait 2 or more days to contact parents.

### *Early leaving exemptions*

Removing early leaving exemptions is likely to reduce the number of students enrolling with education providers who cater for students under the age of 16. This will be compensated for by the increase in 16 to 18 year olds remaining engaged in education, skills, or structured learning under *Schools Plus*.

Since 2007 there has been a significant reduction in applications for exemptions as a result of the Ministry of Education tightening up on the criteria and application process and schools taking greater responsibility for meeting the needs of their students. For the period January to April 2007 there were 1 451 applications and for the same period in 2008 there were 326 applications.

The preferred option does not conflict with, or make redundant, any pre-existing legislation.

### **Implementation and review**

General information on how to comply with all new requirements will be issued to schools when the amendments come into force. The impact of the legislative changes will be monitored through national student attendance, truancy and retention data.

### **Consultation**

The following schooling sector groups have been consulted on the content of this Regulatory Impact Statement: the New Zealand School Trustees' Association, the New Zealand Principals' Federation, the Secondary Principals' Association of New Zealand and the New Zealand Secondary Principals' Council.

## ***Expansion of offence provisions in Part 25 of the Education Act 1989 relating to student allowances and loans***

### **Executive summary**

Part 25 of the Education Act 1989 (the **Act**) requires recipients of student allowances and loans, and third parties, to supply the Ministry of Social Development (the **Ministry**) with specific information required to assess student allowance and loan entitlements and provides offence provisions for when this does not occur.

The offence provisions associated with the above powers, however, are ineffective. This creates operational and enforcement difficulties for the Ministry in its assessment of correct student entitlements.

The proposal is that existing offence provisions be expanded to cover—

- additional situations where false and misleading statements are made by students; and
- students who refuse to provide required information; and students and third parties refusing to answer relevant questions during an investigation.

The amendments are necessary to act as a deterrent and to provide a sanction for those who make false or misleading statements or refuse to supply information required to assess student allowance and loan entitlements. The amendments will fix inconsistencies and gaps in the current legislation (which provides an offence for those who fail to advise of a change in circumstances but not for those who falsely advise of a change in circumstances, for example).

It is envisaged that use of the proposed offence provisions would be limited.

#### **Adequacy statement**

The Ministry, as lead government agency affected by the proposed amendments, has reviewed this Regulatory Impact Statement (RIS) and has determined it is adequate according to the criteria agreed by Cabinet. The Regulatory Impact Analysis Unit has not reviewed this RIS as the proposals will not have any significant potential impact on economic growth.

#### **Status quo and problem**

Section 307 of the Act requires recipients and third parties to supply specific information related to student allowance and loan entitlement.

The offence provisions as they currently stand are insufficient. The problem is discussed in detail below.

*False statements made by students*

Section 307AA(1) of the Act states that a person commits an offence against the Act who, in response to a requirement under section 307(3) or a question asked under section 307(4), knowingly—

- (a) makes a false or misleading statement; or
- (b) makes a statement from which any material matter has been omitted; or
- (c) provides any false or misleading paper, document, or record; or
- (d) provides a paper, document, or record from which any material matter has been omitted.

Section 307AA(2) of the Act provides for a maximum penalty of up to 12 months imprisonment or a fine not exceeding \$5,000 if a recipient of a student allowance or student loan knowingly fails to notify a change in circumstances, for the purpose of receiving or continuing to receive a payment to which they are not entitled.

Legal advice is that it is not an offence under section 307AA(1) or section 307AA(2) for a student to knowingly make a false declaration in an application for a student allowance or student loan or in a change in circumstances notification, as these provisions are overly narrow. Section 307AA(1) is only likely to apply in respect of students who make false or misleading statements, or provide false or misleading documents, in response to a requirement to provide information or particulars or in questioning during an investigation. Section 307AA(2) appears to only apply to students who fail to provide any particulars at all.

The current offence provisions then are insufficient with no apparent justification for the distinction between those types of misleading statements or failure to provide legally required information for which prosecution is provided for, and those for which it is not.

*Refusal to provide relevant information*

Section 307(3) of the Act provides that recipients of student allowance and loans may be required to provide papers, documents, etc and information and particulars, and section 307(4) for investigations of recipients' circumstances. Section 307(5) provides that a person (whether or not a recipient) who is asked questions, during an investigation, under section 307(4) must answer those questions.

If a person refuses to comply with section 307(3) or answer questions under section 307(5), the Ministry can, under section 307(6), suspend a student allowance (but not a loan), or may refuse to grant a student allowance or a student loan. This provision is useful when a student or their parent fails to provide information or answer questions relevant to a student's entitlement.

The above power, however, is insufficient if the Ministry needs information from a third party or it has some evidence that past entitlement has been based on inaccurate information and thus it should be seeking to establish and recover overpayments. Suspending or refusing to grant an allowance is unlikely to impact on a third party who has refused to answer statutorily authorised questions from the Ministry about a particular recipient's entitlement. Similarly, the power to suspend a student's allowance may be an ineffective sanction, if the student judges that the historical overpayments are higher than any future payments might be (in particular, when the recipient is no longer receiving a student allowance or loan).

### **Objectives**

Appropriate offence provisions are necessary to better ensure that the Ministry has the right information to calculate correct student allowance and loan entitlements. Offence provisions act as a deterrent as well as a punishment for an offence. The objective of these proposals is to further the above by correcting obvious gaps in the current legislation and helping to ensure that where overpayments have been made, overpayments are better able to be established and recovered.

### **Alternative options**

While there exists the option of utilising the offence provisions under the Crimes Act 1961 for students making fraudulent or misleading statements, this option is not generally appropriate because—

- the maximum penalties for making fraudulent statements under the Crimes Act 1961 are significantly higher (3 years imprisonment under section 111 and 7 years under section 114) than the maximum penalty under the Education Act 1989 (12 months imprisonment) for a similar offence. Potentially this could also lead to a student providing false information

receiving a significantly higher penalty than a beneficiary committing a similar offence and being penalised under the Social Security Act 1964 (maximum penalty 12 months imprisonment). This raises serious issues about proportionality:

- prosecutions under the Crimes Act 1961 should be reserved for the most serious offending;
- a 12 months penalty is likely to provide a sufficient deterrent against most such offending;
- given that offence provisions already exist under the Education Act 1989, it makes sense to ensure that they are comprehensive and gaps in the legislation are plugged.

In relation to the refusal to provide relevant information, there are no viable alternatives that have been considered beyond adopting the enhanced offence provisions or retaining the inadequate status quo.

There could be some alternative amounts considered in substitution for the proposed offence penalty, ie, \$2,000 or \$5,000. These proposed amounts, however, mirror existing penalties in the Act, and similar offence provisions in the Social Security Act 1964, and there is no good reason for suggesting a departure from these sanctions.

### **Preferred option**

The preferred option is to expand current offence provisions to plug the gaps that currently exist in the Act and to make the proposed sanctions consistent with similar provisions in other legislation.

Current compliance by recipients and third parties with requirements to provide information relating to student allowance and loan entitlement is already high. As with current offence provisions, it is envisaged that use of the proposed expansion of offence provisions would be limited, but are nevertheless required, both as a deterrent and to provide for punishment for those who may provide false information or refuse to provide information required to assess student allowance or loan entitlement. StudyLink refers approximately 80 cases annually to the Benefit Control Unit for consideration of prosecution, with resulting prosecutions totalling less than 30 a year. It is not expected that the proposed changes will lead to a significant increase in prosecutions over and above this number.

There are unlikely to be any additional compliance costs for business or for the general public arising from the proposals. Only those that

do not supply information already legally required to assess student allowance and loans entitlement will be affected by the proposed expansion of offence provisions.

*False statement made by students*

Section 307AA(2) of the Act provides for a maximum penalty of up to 12 months imprisonment or a fine not exceeding \$5,000 if a recipient of a student allowance or student loan knowingly fails to notify a change in circumstances, for the purpose of receiving or continuing to receive a payment to which they are not entitled.

The proposal will expand the coverage of section 307AA(2) so that a student allowance or student loan applicant (or recipient), who knowingly makes a false or misleading statement in an application, or in a notification of a change of circumstances, for the purpose of receiving or continuing to receive a payment to which they are not entitled, commits an offence and is liable to the same penalty referred to in the previous paragraph.

This proposal would make section 307AA(2) more consistent with section 127 of the Social Security Act 1964.

*Refusal to supply information*

The proposal will expand the current offence provisions in section 307AA(1) of the Education Act 1989 to include—

- students who refuse to supply requested information required under section 307(3) to assess past entitlement to a student allowance or loan:
- students who refuse to answer questions under section 307(4), during an investigation, required to assess past entitlement to a student allowance or loan:
- third parties (including government departments) who refuse to answer questions, during an investigation, required to assess past or present entitlement to a student allowance or loan.

This expansion would make the student or third party liable for a fine not exceeding \$2,000, consistent with that provided under section 11(3) of the Social Security Act 1964, where a person refuses to provide information required for benefit purposes.

Students will continue to be able to avail themselves of the privilege against self-incrimination under section 60 of the Evidence Act 2006.



This section provides that the person cannot, under a statutory power or duty to provide information, be required to provide self-incriminating information and cannot be prosecuted for failing to provide it. Further, applications for student allowances and loans need not be proceeded with by the student and can be discontinued by them at any stage.

#### *Further explanation*

The proposed level of sanction varies as between those who refuse to supply information and those who actively make false or misleading statements to recognise the relative gravity of refusing to comply with an administrative request for information as against effectively committing fraud.

As flagged above, the proposed amendments will complement existing information gathering powers in the Act by filling legislative gaps that currently exist in the offence provisions in respect of those various requirements.

#### **Implementation and review**

The proposed amendments will be incorporated into the Education Act 1989 through the 2008 Education Amendment Bill. This Bill (with requested priority status 3) is expected to be introduced into the House in May 2008, with the proposed expansion of offence provisions effective from January 2009.

The Ministry (StudyLink) will not need to make any changes to existing publications as the proposed changes do not affect existing powers but rather bolster existing powers by providing effective sanctions. StudyLink is planning to advise major stakeholders of the proposed changes at its regular stakeholder meetings, once Cabinet agreement has been gained. These meetings will include student unions, as well as tertiary institutions.

As with current offence provisions, it is envisaged that use of the proposed, expanded offence provisions would be limited. StudyLink refers approximately 80 cases annually to the Benefit Control Unit for consideration of prosecution, resulting in fewer than 30 prosecutions a year. It is not expected that the proposed changes will lead to a significant increase in prosecutions over and above this number.

**Consultation**

The Ministry of Education and the Ministry (including StudyLink) have been involved in the preparation of this RIS and the Cabinet paper attaching it. In addition, the Ministry of Justice, Housing New Zealand Corporation and the Department of Corrections have been consulted on both the RIS and Cabinet paper and have raised no objections. The Tertiary Education Commission has been informed and provided with a copy of the Cabinet paper.

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*Hon Chris Carter*

## **Education Amendment Bill (No 3)**

Government Bill

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## The Parliament of New Zealand enacts as follows:

- 1 Title**  
This Act is the Education Amendment Act (No 3) **2008**.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### Amendments to principal Act

- 3 Principal Act amended**  
This Part amends the Education Act 1989. 10

- 4 Application of Education Amendment Act 2006 to this Act**  
Every reference in this Act to a section in Part 26 of the Education Act 1989 is a reference to that section as substituted by the Education Amendment Act 2006.
- 5 Interpretation** 5
- (1) The definition of **State school** in section 2(1) is amended by omitting “or a **secondary school**” and substituting “a **secondary school**, or a **special school**”.
- (2) Section 2(2) is repealed and the following subsection substituted: 10
- “(2) In this Part, and Parts 2 and 3, unless the context otherwise requires, a **special school**, **special class**, **special clinic**, or **special service** means a school, class, clinic, or service established under section 98(1) of the Education Act 1964 as a special school, special class, special clinic, or special service respectively.” 15
- 6 Enrolment of foreign students**
- Section 4(1)(b) is amended by omitting “concerned; but” and substituting “concerned.”
- 7 Special education** 20
- The compare note for section 9 is repealed.
- 8 Right of reconsideration**
- The compare note for section 10 is repealed.
- 9 How a school defines its home zone**
- Section 11E(2)(c) is amended by omitting “which” and substituting “that”. 25
- 10 Amendment of enrolment scheme**
- Section 11M(3) is amended by omitting “enrolment scheme, in order” and substituting “enrolment scheme in order”.

- 11 Obligation to report to Parliament on enrolment schemes**  
Section 11Q(1) is amended by omitting “sector which” and substituting “sector that”.
- 12 Long term exemptions from enrolment**  
The compare note for section 21 is repealed. 5
- 13 Section 22 repealed**  
Section 22 is repealed.
- 14 Effect of exemption**  
(1) Section 23 is amended by omitting “or section 22 of this Act”.  
(2) The compare note for section 23 is repealed. 10
- 15 Students required to enrol must attend school**  
Section 25 is amended by inserting the following subsection after subsection (2):  
“(2A) Without limiting subsection (2), the reasonable steps a board must take under that subsection include the following: 15  
“(a) monitoring students’ attendance at school (whether within or outside the school); and  
“(b) identifying students’ attendance patterns, including any frequent failure of attendance by any student; and  
“(c) taking all reasonably practicable steps to ensure that a 20  
parent of a student is contacted on the first day that an unexplained failure of the student to attend school is identified; and  
“(d) following up on any persistent, unexplained, or unjustified failure of attendance by any student.” 25
- 16 Penalty for irregular attendance**  
Section 29(1) is amended by omitting “person who—” and substituting “person who,—”.
- 17 Fines to be paid to boards**  
Section 35 is amended by omitting “and shall then become part 30  
of the board fund”.



**18 Interpretation**

- (1) Section 60 is amended by omitting “and Part 8” and substituting “Part 7A, and Part 8”.
- (2) Paragraph (a) of the definition of **board** in section 60 is amended by omitting “school means” and substituting “school, means”.
- (3) Section 60 is amended by repealing the definition of **domestic student** and substituting the following definition:  
“**domestic student** has the same meaning as in section 2(1)”.
- (4) Section 60 is amended by repealing the definition of **foreign student** and substituting the following definition:  
“**foreign student** has the same meaning as in section 2(1)”.
- (5) Section 60 is amended by inserting the following definitions in their appropriate alphabetical order:  
“**functions** includes duties  
“**Teachers Council** means the New Zealand Teachers Council established under Part 10A  
“**unsupervised access to students**, in relation to a school, means access to any student on the school’s premises during normal school hours that is not access by, or in the direct sight of and under the direct supervision of, any 1 or more of the following:  
“(a) a registered teacher or holder of a limited authority to teach:  
“(b) a person employed by a vetting-exempted agency:  
“(c) a person on whom a satisfactory police vet has been conducted within the last 3 years:  
“(d) a parent of the student  
“**vetting-exempted agency** means an agency specified by notice under **section 78CC**”.

**19 New sections 60AA and 60AAB inserted**

The following sections are inserted after section 60:

**“60AA Functions of board**

- “(1) A board must perform the following functions:  
“(a) ensuring the enrolment at the school of all persons who are entitled to be enrolled at the school and apply to be enrolled at it:

- “(b) ensuring that education is provided to each student enrolled at the school:
- “(c) promoting a school environment that supports the highest standards of achievement for all students:
- “(d) actively managing and monitoring the performance of the principal: 5
- “(e) ensuring that the performance of the school’s other staff is actively managed and monitored:
- “(f) actively managing and reporting on the school’s performance against the aims and objectives set out in the school charter: 10
- “(g) ensuring that the school, including its assets, finances, and property, is managed in a financially responsible manner:
- “(h) ensuring the maintenance of proper standards— 15
- “(i) of integrity and conduct appropriate to the board’s status as a Crown entity; and
- “(ii) for the safety and wellbeing of all students enrolled at the school:
- “(i) any other function imposed on it by or under this Act or any other enactment. 20
- “(2) A board may perform the following functions:
- “(a) allowing the school to engage in activities that are incidental and related to, or consequential upon, the board’s functions, other than those functions that are authorised under **section 60AAB**: 25
- “(b) any function authorised under **section 60AAB**:
- “(c) any other function it is authorised to perform by or under this Act or any other enactment.
- “(3) Nothing in this section overrides any provision in this Act or in any other enactment that relates to a particular function of a board. 30

**“60AAB Minister may authorise board functions**

- “(1) By notice in the *Gazette*, the Minister may authorise all boards or classes of boards to perform any function or class of functions— 35
- “(a) not otherwise specified in this Act; and

- “(b) with any condition on the performance of the function, or class of functions, that the Minister considers is necessary or desirable.
- “(2) By written notice to a board, the Minister may authorise it to perform any function— 5
- “(a) that is not otherwise specified in this Act; and
- “(b) with any condition on the performance of the function that the Minister considers is necessary or desirable.
- “(3) Before issuing a notice under **subsection (1)**, or giving notice to a board under **subsection (2)**, the Minister must consider whether or not the proposed function— 10
- “(a) is associated with educational outcomes that will bring educational benefit to the school or its community, or to any other school; and
- “(b) has a community purpose that presents no educational disadvantage to the school; and 15
- “(c) will use or displace resources allocated by the Crown for educational purposes; and
- “(d) may involve significant fiscal risk for the Government or significant financial risk for the board or boards, as the case may be; and 20
- “(e) may involve a high level of reputational risk for the Crown or the board; and
- “(f) may place unwarranted compliance costs on the board or boards, as the case may be. 25
- “(4) The Minister may from time to time, after reconsidering the matters set out in **paragraphs (a) to (f) of subsection (3)**, amend or revoke,—
- “(a) by notice in the *Gazette*, an authorisation notified under **subsection (1)**; or 30
- “(b) by written notice to a board, an authorisation notified to it under **subsection (2)**.
- “(5) A board’s functions authorised under this section must be performed in accordance with the requirements of this Act and any other relevant enactments.” 35

## 20 Length of school year

Section 65A(2) is amended by omitting “half days” and substituting “half-days”.

**21 Terms**

Section 65B(1) is amended by omitting “half days” and substituting “half-days”.

**22 Exceptions in particular cases**

Section 65D(3) and (5) are amended by omitting “half day” 5 and substituting in each case “half-day”.

**23 Courses and visits**

Section 71 is amended by inserting the following subsection after subsection (1):

“(1A) A board must not authorise any of the activities described 10 in paragraphs (a) to (c) of subsection (1) unless it is satisfied that the activity will be of educational benefit to the students concerned.”

**24 Restrictions on acquisition of securities**

Section 73(2)(c)(ii) is amended by omitting “Finance: or” and 15 substituting “Finance; or”.

**25 Guidance and counselling**

Section 77(a) is amended by inserting “, including guidance and counselling on career choices and career pathways” after “counselling”. 20

**26 New sections 78C to 78CC substituted**

Sections 78C to 78CB are repealed and the following sections substituted:

**“78C Police vetting of persons with unsupervised access to students at school”** 25

The board of a State school, or the management of a school registered under section 35A, must obtain a police vet of a person who has unsupervised access to students at the school.

**“78CA When police vet must be obtained”**

A police vet required under **section 78C** must be obtained 30 before the person has access to students at the school.

**“78CB Procedures relating to police vets**

The board of a school, or the management of a school registered under section 35A, that applies for a police vet of a person—

- “(a) must ensure that strict confidentiality is observed for police vets; and 5
- “(b) must not take adverse action in relation to a person who is the subject of a police vet until—
  - “(i) the person has validated the information contained in the vet; or 10
  - “(ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

**“78CC Vetting-exempted agencies identified by *Gazette* notice**

The Minister may, by notice in the *Gazette*, identify an agency as an agency in respect of whose employees, or a class or classes of whose employees (as specified in the notice), police vets are not required for unsupervised access to students at schools.” 15

**27 New section 78H substituted** 20

Section 78H is repealed and the following section substituted:

**“78H Purpose of Part**

The purpose of this Part is to provide for a range of interventions that may be used—

- “(a) to address risks to— 25
  - “(i) the operation of a school; or
  - “(ii) the welfare or educational performance of a school’s students; or
- “(b) if a school’s board does not—
  - “(i) perform the functions set out in **section 60AA(1)**; or 30
  - “(ii) comply with any condition under **section 60AAB(1)(b) or (2)(b)**.”

**28 Application of interventions**

Section 78I is amended by repealing subsection (2) and substituting the following subsection: 35

- “(2) The Minister or Secretary (as the case may be) may apply any of the interventions described in subsection (1)(b) to (e) to a school if he or she has reasonable grounds to believe that—
- “(a) there is a risk to—
    - “(i) its operation; or 5
    - “(ii) the welfare or educational performance of its students; or
  - “(b) its board is not performing the functions set out in **section 60AA(1)** or complying with any condition under **section 60AAB(1)(b) or (2)(b)**.” 10
- 29 Requirement to provide information**  
Section 78J is amended by repealing subsection (2) and substituting the following subsection:
- “(2) The Secretary may give a notice under subsection (1) only if he or she has reasonable grounds for concern about— 15
- “(a) the school’s operation; or
  - “(b) the welfare or educational performance of its students; or
  - “(c) the board’s performance of the functions set out in **section 60AA(1)**; or 20
  - “(d) the board’s compliance with any condition under **section 60AAB(1)(b) or (2)(b)**.”
- 30 Dissolution of board and appointment of commissioner**  
Section 78N(3) is amended by omitting “it its place” and substituting “in its place”. 25
- 31 Interpretation**  
Section 91A(1) is amended by repealing the definition of **application period**.
- 32 Salaries of teachers at certain schools to be paid by the Crown** 30  
Section 91C is amended by omitting “(in respect of employment during the application period)”.

- 33 Restrictions on payment of salaries of regular teachers by boards of payrolled schools**  
Section 91F is amended by omitting “in respect of employment during the application period”.
- 34 Boards to comply with limitations** 5  
Section 91J is amended by omitting “during the application period”.
- 35 Section 91M and heading above section 91M repealed**  
Section 91M and the heading above section 91M are repealed.
- 36 Interpretation** 10
- (1) The definition of **board** in section 92(1) is amended by omitting “Part; and—” and substituting “Part; and,—”.
- (2) The definition of **principal** in section 92(1) is amended by omitting “94(c)” and substituting “94(1)(c)”.
- (3) Paragraph (c) of the definition of **special institution** in section 92(1) is amended by omitting “a hospital” and substituting “or a hospital”. 15
- (4) The definition of **State school** in section 92(1) is amended by omitting “secondary school; and—” and substituting “secondary school; and,—”. 20
- 37 Boards of newly established schools**  
Section 98(1) is amended by omitting “members shall be—” and substituting “members are,—”.
- 38 Elections of trustees**
- (1) Section 101(4) is amended by repealing paragraph (a) and substituting the following paragraph: 25
- “(a) in the case of a school that is not a correspondence school,—
- “(i) on a date fixed by the board that is within the range of dates for those elections in that election year that is specified by the Minister by notice in the *Gazette*; or 30

- “(ii) if the Minister has not, by notice in the *Gazette* published on or by 31 October in any year, specified a range of dates for those elections in that election year, on a date fixed by the board that is within the range of dates for those elections in the previous election year; and” 5
- (2) Section 101 is amended by inserting the following subsection after subsection (4):
- “(4A) The notice referred to in **subsection (4)(a)** may specify different ranges of dates, for elections under subsection (3), for boards that have, and for schools that have not, adopted staggered election cycles under section 101A.” 10
- (3) Section 101(10) is amended by adding “, and to **section 101AB** (which provides that elections are not to be held when a school is under notice of closure)” 15
- 39 New section 101AB inserted**
- The following section is inserted after section 101A:
- “101AB Election not to be held when school under notice of closure**
- Nothing in this Act requires or permits the board of any school or special institution to hold an election for a student representative or other elected trustee if the date for the election calculated in accordance with section 101 or 101A (as the case may be) is after the date of any notice in the *Gazette* that, in accordance with section 154(2), specifies a day for the school’s closure.” 20
- 40 Minister may approve alternative constitution in certain cases**
- Section 105A(1) is amended by repealing subsection (1) and substituting the following subsections: 30
- “(1) The Minister may from time to time, by notice in the *Gazette*, approve an alternative constitution under this section for the board of a State school, or a combined board of State schools, if—
- “(a) the circumstances set out in **subsection (1A)** exist; and 35
- “(b) the Minister has consulted such persons or organisations as the Minister considers appropriate about



whether an alternative constitution is in the best interest of the school or schools.

- “(1A) The circumstances are that the Minister either—
- “(a) thinks it is in the best interest of the school or schools to approve an alternative constitution; or 5
  - “(b) has reasonable cause to believe that an alternative constitution is in the best interests of the school or schools governed by the board, and—
    - “(i) the Chief Review Officer, in a written report, recommends the Minister consider devising an alternative constitution; or 10
    - “(ii) 20% or more of the parents of children enrolled at the school or schools have requested an alternative constitution; or
    - “(iii) the board has requested an alternative constitution.” 15

**41 New section 110A inserted**

The following section is inserted after section 110:

**“110A Minister may combine boards at establishment**

- “(1) A Minister may, by notice in the *Gazette*, establish a combined board for 2 or more schools that are newly established under section 146. 20
- “(2) The combined board is the board of a newly established school for the purposes of section 98.”

**42 Applications for registration as teacher 25**  
The compare note for section 121 is repealed.

**43 Full registration**  
The compare note for section 122 is repealed.

**44 Teachers Council to keep register 30**  
The compare note for section 128 is repealed.

**45 New section 128A inserted**  
The following section is inserted after section 128:

**“128A Matching of register information and information about payment of teacher salaries at payrolled schools**

- “(1) The purpose of this section is to facilitate the exchange of information between the Ministry and the Teachers Council for the purposes of enabling— 5
- “(a) the Teachers Council, in regard to people employed in teaching positions, to identify—
- “(i) the person’s employer; and
- “(ii) the person’s registration status; and
- “(b) the Ministry, in regard to regular teachers in receipt of salaries at payrolled schools, to identify their salary entitlement or eligibility, if any, for an allowance on the basis of their registration, if any. 10
- “(2) For the purpose set out in **subsection (1)(a)**, the Teachers Council may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teachers Council,— 15
- “(a) require the Secretary to supply all or any of the following information in regard to all or any regular teachers in receipt of salaries at payrolled schools: 20
- “(i) surname:
- “(ii) first name:
- “(iii) date of birth:
- “(iv) gender:
- “(v) address: 25
- “(vi) the school at which the person is employed:
- “(vii) payroll number:
- “(viii) registration number; and
- “(b) compare the information supplied under **paragraph (a)** with the information contained in the register. 30
- “(3) For the purpose set out in **subsection (1)(b)**, the Secretary may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teachers Council,—
- “(a) require the Teachers Council to supply all or any of the following information in regard to all or any people registered as teachers: 35
- “(i) surname:
- “(ii) first name:

- “(iii) date of birth:  
“(iv) gender:  
“(v) address:  
“(vi) the school at which the person is employed:  
“(vii) registration number: 5  
“(viii) registration expiry date:  
“(ix) registration classification; and  
“(b) compare the information supplied under **paragraph (a)** with the information held by the Ministry in regard to teachers. 10
- “(4) In this section, **Ministry, payrolled school, regular teacher, school, and Secretary** have the same meanings as in section 91A.”
- 46 Offences**  
The compare note for section 137 is repealed. 15
- 47 Functions of Teachers Council**  
Section 139AE(k) is amended by omitting “and other people employed in schools and early childhood services”.
- 48 Powers of Complaints Assessment Committee**  
Section 139AT(2) is amended by repealing paragraph (c) and substituting the following paragraph: 20  
“(c) refer the teacher concerned to an impairment process which may involve either or both of the following:  
“(i) assessment of an impairment:  
“(ii) assistance with an impairment:” 25
- 49 Interim suspension to enable investigation**  
(1) The heading to section 139AU is amended by omitting “**to enable investigation**” and substituting “**until complaint of possible serious misconduct concluded**”.  
(2) Section 139AU(1) is amended by inserting “chairperson of the” before “Disciplinary Tribunal”. 30  
(3) Section 139AU is amended by inserting the following subsection after subsection (1):

- “(1A) The Complaints Assessment Committee may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of a teacher’s practising certificate or authority, if—
- “(a) a complaint of possible serious misconduct about the teacher has been referred to the Complaints Assessment Committee under section 139AS; and 5
- “(b) the alleged misconduct is the subject of an investigation by—
- “(i) the New Zealand Police; or
- “(ii) the teacher’s employer.” 10
- (4) Section 139AU(2) is repealed and the following subsection substituted:
- “(2) On an application under subsection (1) **or (1A)** for an interim suspension, the chairperson of the Disciplinary Tribunal may, either with or without a hearing, suspend the teacher’s practising certificate or authority.” 15

#### 50 New section 139AUA inserted

The following section is inserted after section 139AU:

##### “139AUA Duration of interim suspension

- “(1) The duration of an interim suspension under **section 139AU** is initially until the earliest of the following occurs: 20
- “(a) the expiry of a period, specified by the chairperson of the Disciplinary Tribunal, that is less than 3 months:
- “(b) the expiry of a period of 3 months after the interim suspension commences: 25
- “(c) any conditions specified by the chairperson of the Disciplinary Tribunal are met:
- “(d) the interim suspension is otherwise lifted or revoked, for example, as the result of a review under **subsection (2)**. 30
- “(2) The chairperson of the Disciplinary Tribunal must review his or her initial interim suspension decision, if the teacher—
- “(a) requests him or her to do so at any time during the initial interim period of suspension; and
- “(b) provides a written explanation or statement in support of the request. 35
- “(3) The Disciplinary Tribunal may renew an interim suspension under **section 139AU** for further successive periods of no

more than 3 months each, if, at the end of the relevant period of interim suspension,—

“(a) the matter has not been concluded; and

“(b) the interim suspension has not been otherwise lifted or revoked, for example, as the result of an appeal against it under **subsection (4)**. 5

“(4) A teacher whose practising certificate or authority is subject to an interim suspension under **section 139AU** that is renewed under **subsection (3)** may, at any time during a further period of interim suspension, make representations in respect of the interim suspension to the Disciplinary Tribunal at a hearing, if he or she believes that there is an unreasonable delay in concluding the matter. 10

“(5) A hearing under **subsection (4)** is a hearing before the Disciplinary Tribunal, and sections 139AX to 139AZB apply to it. 15

“(6) For the purposes of this section, a matter is concluded when the latest of the following occurs in relation to the complaint:

“(a) the Complaints Assessment Committee has carried out whatever action it decides to take under section 139AT(2)(a) to (d): 20

“(b) the Complaints Assessment Committee has carried out whatever action it decides to take under section 139AV(2)(a) to (d):

“(c) the Disciplinary Tribunal has carried out whatever action it decides to take under section 139AW(1)(a) to (i), if the Complaints Assessment Committee has referred the matter to the Disciplinary Tribunal under any of sections 139AT(3) or (4) or 139AV(3).” 25

## **51 Investigation by Complaints Assessment Committee of reports of convictions 30**

Section 139AV(2) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) refer the teacher concerned to an impairment process which may involve either or both of the following: 35

“(i) assessment of an impairment:

“(ii) assistance with an impairment.”.

**52 Complaints about competence**

- (1) Section 139AZC(8) is amended by omitting “may—” and substituting “may do any of the following:”.
- (2) Section 139AZC(8) is amended by repealing paragraph (b) and substituting the following paragraph: 5
- “(b) refer the teacher to an impairment process which may involve either or both of the following:
- “(i) assessment of an impairment:
- “(ii) assistance with an impairment:”.

**53 Teachers Council must co-ordinate police vetting** 10

- (1) Section 139AZD is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The Teachers Council must establish a system for co-ordinating police vetting, in relation to—
- “(a) teacher registration and the issue of practising certificates; and
- “(b) the granting of limited authorities to teach.”
- (2) Section 139AZD(3) is repealed.
- (3) Section 139AZD(4) is amended by omitting “purposes and for those requested by boards and managements” and substituting “purposes,”. 15 20

**54 Interpretation**

Section 159 is amended by repealing the definition of **New Zealand apprenticeship committee**.

**55 Transfer of Crown assets and liabilities to institutions** 25

- Section 206(10) is amended by—
- (a) inserting “, or under section 168 of the Resource Management Act 1991,” after “the Town and Country Planning Act 1977” in the first place where it appears; and
- (b) inserting “, or in the Resource Management Act 1991, (as the case may be)” after “the Town and Country Planning Act 1977” in the second place where it appears. 30

- 56 Provisions relating to transfer of land**  
 Section 207(5) is amended by adding the following paragraphs:  
 “(f) sections 10 and 11 of the Crown Minerals Act 1991:  
 “(g) section 354 of the Resource Management Act 1991.” 5
- 57 Annual report**  
 Section 220(2A)(e)(ii) is amended by omitting “institution.” and substituting “institution; and”.
- 58 Disclosure of enrolment information by institutions**  
 Section 226A(9) is amended by omitting “section 226A of the Education Act 1989” and substituting “this section”. 10
- 59 Heading after section 229D repealed**  
 The heading after section 229D is repealed.
- 60 Export education levy**  
 Section 238H(2)(d) is amended by omitting “provider; and” and substituting “provider.” 15
- 61 Definitions**
- (1) The definition of **secondary school** in section 246 is repealed.
- (2) Section 246 is amended by inserting the following definition in its appropriate alphabetical order: 20  
 “**relevant school** means—  
 “(a) a secondary school (as that term is defined in section 2(1)); or  
 “(b) a composite school (as that term is defined in section 2(1)); or 25  
 “(c) a school that is registered under section 35A, but does not include any school registered under that section only as a primary school (as that term is defined in section 2(1)); or  
 “(d) a special school (as that term is defined in section 2(1), except that a special school is not deemed to be a primary school for the purposes of this Part, despite the proviso to section 98(1) of the Education Act 1964)”. 30

**62 Functions of Authority**

- (1) Section 253(1)(a) is amended by omitting “secondary” and substituting “relevant”.
- (2) Section 253(1)(b) is amended by—
- (a) omitting “secondary” and substituting “relevant”; and 5
- (b) omitting “or private training establishment”.
- (3) Section 253(1)(c) is amended by omitting “secondary” and substituting “relevant”.
- (4) Section 253(1)(d) is amended by omitting “and private training establishments”. 10
- (5) Section 253(1)(e) is amended by omitting “, secondary schools, and private training establishments”.
- (6) Section 253(1)(f) is amended by omitting “, secondary schools, or private training establishments”.
- (7) Section 253 is amended by inserting the following subsection 15 after subsection (1):
- “(1A) In this section, **institution** means an institution, government training establishment, registered establishment, or relevant school.”

**63 Power to obtain information** 20

Section 255(1AA) is amended by omitting “secondary” and substituting “relevant”.

**64 Compliance notices**

Section 255A(1) is amended by omitting “secondary” and substituting “relevant”. 25

**65 Approval of courses**

Section 258(1A) is amended by omitting “secondary” and substituting “relevant”.

**66 Conditions on course approvals**

Section 258A is amended by inserting the following subsection before subsection (1): 30

“(1AA) In this section, **institution** includes institutions, government training establishments, registered establishments, relevant schools, and other bodies.”



- 67 Accreditation to provide approved courses**  
Section 259(1A) is amended by omitting “secondary” and substituting “relevant”.
- 68 Conditions on accreditation to provide approved courses**  
Section 259A is amended by inserting the following subsection before subsection (1):  
“(1AA) In this section, **institution** means an institution, government training establishment, registered establishment, or relevant school.”
- 69 Fees**  
Section 266(2) is amended by omitting “secondary” and substituting “relevant”.
- 70 Powers of Minister**  
Section 268(1) is amended by omitting “secondary” and substituting “relevant”.
- 71 Continuation of Board**  
Section 281(2)(b) is amended by omitting “members; and” and substituting “members.”
- 72 New section 283C substituted**  
Section 283C is repealed and the following section substituted:  
**“283C Contents of statement of intent**  
In addition to the information required under section 141 of the Crown Entities Act 2004, every statement of intent—  
“(a) must specify—  
    “(i) the services that the Board is to provide; and  
    “(ii) the persons for whom or which the services are to be provided; and  
    “(iii) the financial performance that the Board is to achieve; and  
    “(iv) the kinds of report that the Board is to give the Minister, and the frequency with which they are to be given; and

- “(v) the kinds of monitoring to which the Board is to be subject, and the assistance and co-operation that the Board is to provide to the persons carrying it out; and
- “(vi) procedures for negotiating the preparation of amendments to the statement of intent; and 5
- “(vii) procedures for resolving disagreements between the Minister and the Board in relation to the exercise of the Board’s powers or the performance of the Service’s functions; and 10
- “(viii) the day on which it is to take effect; and
- “(b) may specify any other matters.”

### 73 Recipients of allowances may be required to provide information

- (1) The heading to section 307 is amended by inserting “**or loans, and other persons**” after “**allowances**”. 15
- (2) Section 307(1) is amended by—
  - (a) inserting “, and sections 307AAA and 307AA” after “this section”; and
  - (b) inserting the following definitions in their appropriate alphabetical order: 20
    - “**change in the recipient’s circumstances** includes a change in another person’s circumstances that—
    - “(a) the recipient knows about; and
    - “(b) the recipient knows materially affects his or her entitlement to an allowance or student loan, or a particular rate of allowance or a particular amount of a student loan” 25
    - “**non-recipient** means a person who is not a recipient, and—
    - “(a) includes a person who is acting in his or her official capacity as an officer or employee of a department of State or public body; but 30
    - “(b) does not include a person acting in his or her capacity as an officer of a court”.
- (3) Section 307(5) is amended by omitting “person (whether or not a recipient)” and substituting “recipient or non-recipient”. 35
- (4) Section 307 is amended by repealing subsections (6) to (7) and substituting the following subsection:

- “(6) A recipient must notify the Secretary, as soon as practicable, of any change in the recipient’s circumstances that materially affects his or her entitlement at any time—
- “(a) to a statutory allowance or loan; or
  - “(b) to be paid a statutory allowance at a particular rate or a particular amount of a student loan.”

**74 New section 307AAA inserted**

The following section is inserted after section 307:

**“307AAA Suspension or refusal for not providing information**

- “(1) The Secretary may do whichever of the following the case requires, if he or she is satisfied that a recipient or non-recipient has, without reasonable cause, failed or refused to comply with a requirement under section 307(3) or to comply with section 307(5) and, in the case of a recipient, that the recipient has been warned of the consequence of the failure or refusal and given the opportunity to show reasonable cause or answer the question:
- “(a) suspend any statutory allowance held by the recipient, whether granted before or after the failure or refusal:
  - “(b) refuse to grant any statutory allowance, or refuse to advance any student loan, to the recipient, whether or not the recipient may appear to be entitled to be granted the allowance or advanced the loan.
- “(2) Despite **subsection (1)**, the recipient must be given an opportunity to provide the information sought before any action is taken in respect of him or her under **subsection (1)**, if the failure or refusal to comply is by a non-recipient.
- “(3) Payments must not be made under a statutory allowance while it is suspended under **subsection (1)**.”

**75 Offences concerning allowances**

- (1) Section 307AA(1) is amended by omitting “(4)” and substituting “(5)”.
- (2) Section 307AA is amended by repealing subsections (2) and (2A) and substituting the following subsections:

- “(2) A recipient or non-recipient commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$2,000 who refuses to comply with section 307(5).
- “(2A) A recipient commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 if he or she, for the purpose of receiving or continuing to receive a statutory allowance or student loan, or a statutory allowance at a particular rate or any amount of a student loan, other than that to which he or she is entitled,—
- “(a) knowingly makes a false or misleading statement in an application for a student allowance or student loan; or
- “(b) knowingly makes a false or misleading statement in a notification of a change in the recipient’s circumstances that materially affects his or her entitlement at any time—
- “(i) to a statutory allowance or loan; or
- “(ii) to be paid a statutory allowance at a particular rate or a particular amount of a student loan; or
- “(c) wilfully fails to comply with **section 307(6)**.”

**76 Use of student allowance information for purposes of Social Security Act 1964**

Section 307A(2)(e) is amended by omitting “information, about” and substituting “information about”.

**77 Interpretation**

Section 309 is amended by inserting the following definitions in their appropriate alphabetical order:

“**unsupervised access to children**, in relation to an early childhood service, means access to any child during the service’s opening hours that is not access by, or in the direct sight of and under the direct supervision of, any 1 or more of the following:

- “(a) a registered teacher or holder of a limited authority to teach:
- “(b) a person employed by a vetting-exempted agency:
- “(c) a person on whom a satisfactory police vet has been conducted within the last 3 years:

“(d) a parent of the child  
 “vetting-exempted agency means an agency specified by notice under **section 319FA**”.

**78 New sections 319D to 319FA substituted**

Sections 319D to 319F are repealed and the following sections 5 substituted:

**“319D Police vetting of persons with unsupervised access to children at early childhood service**

The management of an early childhood service must obtain a police vet of a person who has unsupervised access to children 10 at the service.

**“319E When police vet must be obtained**

A police vet required under **section 319D** must be obtained before the person has access to children at the service.

**“319F Procedures relating to police vets**

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The management of an early childhood service that applies for a police vet of a person—

“(a) must ensure that strict confidentiality is observed for police vets; and

“(b) must not take adverse action in relation to a person who 20 is the subject of a police vet until—

“(i) the person has validated the information contained in the vet; or

“(ii) the person has been given a reasonable opportunity to validate the information, but has failed to 25 do so within a reasonable period.

**“319FA Vetting-exempted agencies identified by *Gazette* notice**

The Minister may, by notice in the *Gazette*, identify an agency as an agency in respect of whose employees, or a class or classes of whose employees (as specified in the notice), police vets are not required for unsupervised access to children 30 at early childhood services.”

- 79 Powers of review officers for purposes of sections 328A to 328D**  
 Section 328C(2) is amended by omitting “dwelling house” and substituting “dwellinghouse”.
- 80 Schedule 5A amended** 5  
 (1) The Schedule 5A heading is amended by omitting “s 5” and substituting “s 65H”.  
 (2) The item relating to section 119 in Schedule 5A is amended by omitting “ss 84–84B” and substituting “sections 84 to 84B”.
- 81 Schedule 6 amended** 10  
 Clause 8 of Schedule 6 is amended by repealing subclause (3) and substituting the following subclause:  
 “(3) When a casual vacancy occurs, the person for the time being appointed under clause 7 or, where there is no such person, the principal must fix a place for a meeting of the board to deal with the vacancy, and a time for the meeting that is— 15  
 “(a) within 28 days of the vacancy occurring, if it occurs during any period of 6 months commencing on 1 October in a year before an election year; or  
 “(b) within 8 weeks of the vacancy occurring, if it occurs at any other time.” 20
- 82 Schedule 10 amended**  
 (1) The item relating to the Education Lands Act 1949 in Schedule 10 is amended by omitting “(RS Vol 6, p 237)” and substituting “(1949 No 24)”. 25  
 (2) The item relating to the Local Government Official Information and Meetings Act 1987 in Schedule 10 is amended by inserting “(1987 No 174)” after “1987”.  
 (3) The item relating to the Official Information Act 1982 in Schedule 10 is amended by inserting “(1982 No 156)” after “1982”. 30  
 (4) The item relating to the Ombudsmen Act 1975 in Schedule 10 is amended by inserting “(1975 No 9)” after “1975”.  
 (5) The item relating to the State Sector Act 1988 in Schedule 10 is amended by inserting “(1988 No 20)” after “1988”. 35

**83 Schedule 13A amended**

- (1) The Schedule 13A heading is amended by omitting “s 6” and substituting “s 203”.
- (2) The item relating to section 119 in Schedule 13A is amended by omitting “ss 84–84B” and substituting “sections 84 to 84B”.
- (3) The item relating to section 154 in Schedule 13A is amended by omitting “s 220(2)–(2B)” and substituting “section 220(2) to (2B)”.

**Part 2**

10

**Transitional provision, validations, and consequential amendments***Transitional provision in relation to section 22 certificates***84 Certificates issued under section 22 of Education Act 1989 revoked**

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- (1) Every certificate of exemption issued under section 22(1) of the Education Act 1989 in respect of a person who is under the age of 16 years on the day on which **section 13** of this Act comes into force remains in force, despite the repeal of section 22 of the Education Act 1989 by **section 13** of this Act, unless the certificate is revoked under **subsection (2)**.
- (2) If satisfied that it is in the best interests of any person to do so, the Secretary may revoke a person’s certificate given under section 22(1) of the Education Act 1989.
- (3) In this section, **Secretary** has the same meaning as in section 2(1) of the Education Act 1989.

*Validations***85 Validation in respect of Part 20**

The validity of any action of the Authority must be determined as if at all material times—

- (a) section 246 of the Education Act 1989—
  - (i) contained the definition of **relevant school** inserted by **section 61** of this Act; and

- (ii) did not contain the definition of **secondary school**, as repealed by **section 61** of this Act; and
- (b) every other reference in Part 20 of the Education Act 1989 to a **secondary school** were a reference to a **relevant school**, within the meaning of that term as inserted in 246 of that Act by **section 61** of this Act. 5

**86 Validation in respect of change of proprietor of integrated school**

- (1) For the purposes of the Education Act 1989, actions done under that Act or under the Private Schools Conditional Integration Act 1975 before the commencement of this Act are not invalid solely because of a defect or error in the processes relating to a change of proprietor of an integrated school. 10
- (2) In this section, **integrated school** and **proprietor** have the same meanings as in section 2(1) of the Private Schools Conditional Integration Act 1975. 15

*Consequential amendments to Privacy Act 1993*

**87 Consequential amendments to Privacy Act 1993**

- (1) This section amends the Privacy Act 1993. 20
- (2) The definition of **specified agency** in section 97 is amended by adding the following paragraph:
  - “(1) the New Zealand Teachers Council established under Part 10A of the Education Act 1989.”
- (3) The item relating to the Education Act 1989 in Schedule 3 is amended by inserting “128A,” after “Sections”. 25