

Education and Training Amendment Bill

Government Bill

Explanatory note

General policy statement

The Education and Training Act 2020 (the **principal Act**) establishes and regulates an education system that—

- provides New Zealanders with the skills, knowledge, and capabilities that they need to fully participate in the labour market and their communities; and
- supports their health, safety, and well-being; and
- assures the quality of the education provided; and
- honours Te Tiriti o Waitangi and supports Māori–Crown relationships.

The principal Act was enacted in August 2020 and repealed and replaced former education and training legislation with a simpler and more user-friendly legislative framework.

This Bill makes a number of small and non-controversial, but relatively urgent, amendments to the principal Act. The proposed amendments—

- ensure provisions that are best suited for parliamentary enactment remain in the principal Act, rather than being repealed and moved to regulations. This is achieved by amending the sunset provisions in section 669 so that certain schedules remain in the principal Act rather than being automatically repealed;
- clarify that education workers who meet the definition of a children’s worker in the Children’s Act 2014 must be safety checked under that Act rather than Police vetted under the principal Act, and that all other early childhood centre or school employees must meet the relevant Police vetting requirements in the principal Act;
- ensure that section 171(2), which relates to interventions in State schools by the Secretary for Education, mirrors the corresponding provision of the Education Act 1989 to address an inadvertent change in the effect of the provision:

- extend the time frame in a transitional provision that prohibits tertiary education providers from charging trainees a compulsory student services fee. Due to the impact of COVID-19, it has not been possible to engage with learners and providers on the on-going arrangements to be developed. The Bill extends the prohibition for 1 year:
- ensure that former teachers are not automatically enabled to use physical restraint in schools, but rather must first be approved to use physical restraint by the school that employs them:
- clarify the early childhood education regulation-making powers in section 636 to ensure that regulations can be made in relation to applications for approval to apply for a licence and applications for a new licence in order to reflect the new licensing framework introduced by the principal Act:
- amend section 6 to specify the agencies to which any ministerial statement of expectations could apply, to ensure that it reflects the policy intent of the provision.

Departmental disclosure statement

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=32>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Education and Training Act 2020 (the **principal Act**).

Part 1

Substantive amendments

Clause 4 replaces section 6(1), which enables the Minister of Education (the **Minister**) and the Minister for Māori Crown Relations: Te Arawhiti to jointly issue a statement of expectations to agencies “serving the education system” for which the Minister is responsible. The effect of the amendment is to specify the agencies to which the statement may be issued.

Clauses 5 to 7 amend sections 99(1) and (2)(b), 100(1), and 101(4), which relate to the use of physical restraint at registered schools, including by teachers. The amend-

ments clarify that only persons holding a teaching position can use physical restraint in accordance with the provisions.

Clause 8 amends section 171(2), which authorises interventions in State schools by the Secretary for Education (the **Secretary**) or the Minister. The amendment ensures that the provision directly corresponds with section 78I(1A) of the repealed Education Act 1989, which relates to interventions that may be used by the Secretary.

Clause 9 amends section 636, which empowers regulations relating to early childhood services. The amendments reorganise the regulation-making powers relating to the licensing of early childhood service providers to better reflect the new licensing process under the principal Act, which requires ministerial approval to apply for a licence to be granted before an application for a licence may be made.

Clause 10 amends section 667, which consequentially amends the principal Act after the repeals set out in section 669(1) and (2) take effect, to take account of the amendments in *clause 11*.

Clause 11 amends section 669, which is a sunset provision that automatically repeals certain schedules of the principal Act at future dates. The amendments repeal section 669(1)(b) and (d) and (2) so that—

- Schedule 20 (which relates to enrolment schemes) and Schedule 23 (which relates to electing and co-opting board members to boards of State schools, term of office of board members, and eligibility) are no longer automatically repealed on 1 January 2023; and
- Schedule 24 (which relates to national student numbers) is no longer automatically repealed on 1 January 2022.

Clause 12 amends the definition of specified period in clause 60(3) of Schedule 1, which relates to a transitional provision that prohibits a provider from charging a compulsory student services fee during the period beginning on 1 April 2020 and ending with the close of 31 December 2021. The amendment extends the end date of the specified period to the close of 31 December 2022.

Clause 13 amends Schedule 4, which provides for Police vetting of persons who carry out work with children. The amendments clarify that the Police vetting requirements set out in clauses 1, 2, 9, and 10 of that schedule apply in respect of persons who carry out work with children but who do not fall within the definition of a children's worker set out in section 23(1) of the Children's Act 2014.

Part 2

Other amendments

Clause 14 and the *Schedule* make other amendments to the principal Act that are consequential on the changes in *Part 1* and to correct, clarify, and ensure consistency within the principal Act.

Hon Chris Hipkins

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Schedule
Consequential and minor amendments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education and Training Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Education and Training Act 2020.

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Part 1
Substantive amendments

4 Section 6 amended (Statement of expectations)

Replace section 6(1) with:

- (1) The Minister and the Minister for Māori Crown Relations: Te Arawhiti may, for the purposes of providing equitable outcomes for all students, jointly issue a statement that sets out expectations for the following agencies: 15
- (a) the Ministry:
 - (b) TEC:
 - (c) NZQA:
 - (d) the Education Review Office:
 - (e) Education New Zealand. 20

5 Section 99 amended (Limits on use of physical restraint at registered schools)

- (1) In section 99(1), replace “teacher or” with “person holding a teaching position or an”. 25
- (2) In section 99(2)(b), replace “teacher” with “person holding a teaching position”.

6 Section 100 amended (Rules on use of physical restraint at registered schools)

In section 100(1), replace “teachers,” with “persons holding a teaching position,”. 30

- 7 Section 101 amended (Guidelines on use of physical restraint and behaviour management at registered schools)**
- In section 101(4), replace “teachers, and authorised staff members” with “persons holding a teaching position, and authorised staff members at registered schools”. 5
- 8 Section 171 amended (Interventions in State schools by Secretary or Minister)**
- In section 171(2), replace “The Secretary or the Minister may use an intervention” with “The Secretary may use an intervention described in subsection (1)(a) to (f)”. 10
- 9 Section 636 amended (Regulations relating to early childhood services)**
- (1) Replace section 636(1)(a) with:
- (a) prescribing matters relating to applications for approval to apply for a licence, including (without limitation)— 15
- (i) prescribing fees and charges payable for an application:
- (ii) specifying any conditions for approval that must be met:
- (aa) providing for the licensing of service providers to provide early childhood services of any kind, including (without limitation) providing for the transfer of licences:
- (2) Repeal section 636(1)(e). 20
- (3) In section 636(2), replace “The regulations” with “Without limiting subsection (1), the regulations”.
- 10 Section 667 amended (Consequential amendments to this Act)**
- Repeal section 667(1) and (2).
- 11 Section 669 amended (Repeals and revocations)** 25
- (1) Repeal section 669(1)(b) and (d).
- (2) Repeal section 669(2).
- 12 Schedule 1 amended**
- In Schedule 1, clause 60(3), definition of **specified period**, replace “31 December 2021” with “**31 December 2022**”. 30
- 13 Schedule 4 amended**
- In Schedule 4, after the heading, insert:

*Preliminary***1AAA Application of certain provisions**

- (1) The Police vetting requirements in clauses 1, 2, 9, and 10 apply in respect of a person who, in the course of their work for the service provider or school, does not fall within the definition of a children's worker in section 23(1) of the Children's Act 2014 and, as a result, is not required to be safety checked under Part 3 of that Act. 5
- (2) To avoid doubt, nothing in this schedule limits Part 3 of the Children's Act 2014 or regulations made under that Act in relation to the safety checking of children's workers. 10

Police vetting in respect of licensed early childhood services

Part 2**Other amendments****14 Consequential and minor amendments to principal Act**

Amend the principal Act as set out in the **Schedule**. 15

Schedule

Consequential and minor amendments

s 14

Section 9

In section 9(1)(c), replace “agencies serving the education system, and for which the Minister is responsible,” with “Ministry, TEC, NZQA, the Education Review Office, and Education New Zealand”. 5

Section 171

In section 171(1)(i), replace “dismissal” with “dissolution”.

Replace section 171(1)(j) with: 10

- (j) the dissolution of a board by the Secretary and the appointment of a commissioner in accordance with section 181(3).

Section 430

In section 430(1), replace “this Act” with “this subpart”.

Section 433

In section 433(1)(g), replace “this Part” with “this subpart”. 15

New cross-heading above section 439

After section 438, insert:

Approval of programmes

Cross-heading above section 445

In the cross-heading above section 445, delete “and consents to assess against standards”. 20

Section 510

In section 510(1), replace “this Act” with “this subpart”.

Section 638

In section 638(2), replace “Regulations made under subsection (1)” with “Without limiting subsection (1), the regulations”. 25

In section 638(2)(d), delete “, including (without limitation) the extent to which boards may contribute to their design”.

Section 640

Repeal section 640(1)(a). 30

In section 640(2), replace “Regulations made under subsection (1)” with “Without limiting subsection (1), the regulations”.

Section 649

Replace section 649(1) with:

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations identifying any agency or body as a specified user of national student numbers.

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Schedule 1

In Schedule 1, repeal clause 7(2).

In Schedule 1, clause 7(3), replace “regulations under section 648 are made that deal with the matter addressed in the provision” with “regulations made under section 648 that deal with the matter addressed in the provision come into force”.

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Schedule 4

In Schedule 4, clause 8(1)(a), replace “this schedule” with “clause 1, 2, or 5”.

In Schedule 4, heading to clause 13, after “vets”, insert “**under clause 9 or 10**”.

In Schedule 4, clause 13, replace “person—” with “person under clause 9 or 10—”.

In Schedule 4, repeal clause 14 and the cross-heading above clause 14.

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Schedule 26

In Schedule 26, Part 1 heading, replace “**on Royal assent**” with “**on day after date of Royal assent**”.