

# Departmental Disclosure Statement

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Education Legislation Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 November 2015

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## Part One: General Policy Statement

### *Introduction*

The Education Legislation Bill (the Bill) is an omnibus Bill introduced in accordance with Standing Order 263(a). The amendments in the Bill deal with an interrelated topic that can be regarded as implementing a single broad policy.

Education-related statute law is not set out solely in the Education Act 1989. The diverse and extensive nature of the education sector means that it is subject to multiple legislative regimes. As the first omnibus education bill within the past 26 years, the Bill has an overall theme of improving administrative and governance arrangements for educational entities and funding organisations.

The public policy objectives of the Bill are to -

- strengthen existing legal regimes to make them more effective and efficient:
- modernise out-of-date legislation to ensure that it remains relevant, effective, and fit-for-purpose:
- address specific situations where, over time, the law has become inconsistent with practice or has given rise to practical difficulties:
- address errors and omissions in the law.

### *Early childhood education and compulsory schooling*

To achieve the public policy objectives in the early childhood education and compulsory schooling sectors, the Bill -

- enables a principal to be employed to manage more than 1 school - an option that, since 2000, has been available only where there is a combined board of trustees:
- retains the long-standing requirement for schools to be open for a minimum of 4 hours a day, while enabling school boards of trustees to vary when the 2 blocks of 2 hours that make up the 4 hours can be taken (subject to constraints) without seeking the Minister of Education's prior consent:
- enables the use of the national student number for the purpose of establishing and maintaining student identities to support student access to online learning - an option that provides for a persistent identity and logon that students can continue to use as they progress through the education system and/or change between schools:
- enables the State Services Commissioner to approve generic or specific terms and conditions of employment that are additional to, but not inconsistent with, those in the collective agreement and that have been agreed to by an employer and any of its employees. Since 1997, the Secretary for Education has exercised the State Services Commissioner's power under the State Sector Act 1988 to negotiate every collective employment agreement for employees of the education service (with the exception of employees of tertiary education institutions), including approving additional terms and conditions of employment. The Bill clarifies that such approval is a legitimate exercise of this power:
- retains the requirement for the Secretary for Education to provide for a payroll service for school boards of trustees, but removes redundant operational specifications relating to the establishment and maintenance of sufficient staff and facilities. This acknowledges the increasing trend to remove operational specifications from Acts to avoid

unnecessarily constraining the ability of decision makers to adopt the most efficient and effective arrangements for delivering services:

- enables Tertiary Education Institutions (TEIs) to sponsor partnership schools kura hourua - an option that is not available under the legal regime established in the Education Act 1989. International evidence indicates that the existing partnership schools network would be strengthened if TEIs could act as sponsors or co-sponsors:
- enables licensed home-based education and care (ECE) services to simultaneously provide early childhood education and out-of-school care services (subject to constraints). The Bill addresses a discrepancy in treatment between licensed ECE services and provides another option for supporting workforce participation by parents, especially those in rural communities.

These changes require amendments to the Education Act 1964, the Education Act 1989, and the State Sector Act 1988.

### *Tertiary Education*

Over the past 10 years, TEIs have been increasingly investing in related entities for a variety of purposes, including the commercialisation of research and intellectual property. The expansion in the use and range of such entities and the scale of the investment, which while of considerable benefit to TEIs, has the potential to expose the TEIs and the Crown to financial risk. The Bill strengthens and modernises the regulatory framework governing TEI investment in related entities, which is established across 3 statutes: the Public Finance Act 1989, the Education Act 1989, and the Crown Entities Act 2004.

The main changes to the regulatory framework are -

- the alignment of the law with current practice regarding the application of section 65I of the Public Finance Act 1989 to TEI investments in related entities:
- the reinstatement of a previous requirement under the Crown Entities Act 2004 for TEIs to report at parent level, as well as at group level:
- the creation of a power for the responsible Minister to require additional reporting by a related entity where there are reasonable grounds to believe that the entity poses a risk to a TEI.

The Bill also amends the Education Act 1989 to streamline the process for setting conditions that place limits on the tuition fees that tertiary education organisations may charge domestic students. The Act requires that 2 months must elapse before conditions that would set limits on fees can be finalised in a funding determination. This can create considerable uncertainty for tertiary education organisations and their business planning process. The Bill retains the requirement for a 3 week consultation period but removes the 2 month constraint.

### *Modernisation of Acts*

Two Acts are being modernised through the Bill to ensure both their continued relevance in the 21<sup>st</sup> century and that they remain fit-for purpose.

The Ngarimu VC and 28<sup>th</sup> (Māori) Battalion Memorial Scholarship Fund Act 1945 commemorates the service of the 28<sup>th</sup> (Māori) Battalion and the awarding of the Victoria Cross to Second Lieutenant Te Moananui a Kiwa Ngārimu. The Act has not been substantially revised since 1945. The Bill updates and revises the Act so that -

- the efforts of Second Lieutenant Te Moananui a Kiwa Ngārimu and those who served in the 28<sup>th</sup> (Māori) Battalion in the war against Germany continue to be remembered in an appropriate manner:

- the Ngarimu VC and 28<sup>th</sup> (Maori) Battalion Memorial Scholarship Fund continues to support and celebrate Māori educational achievement:
- the ongoing function and administration of the Fund and the Ngarimu VC and 28<sup>th</sup> (Maori) Battalion Memorial Scholarship Fund Board are not limited or hindered by out of date legislation.

The Pacific Islands Polynesian Education Foundation Act 1972 establishes a Foundation that has the purpose of promoting and encouraging the better education of Polynesians, and providing financial assistance for this purpose. The Act has not been substantially revised since 1972. The Bill updates and revises the Act to ensure that -

- the Foundation continues to be representative of Pacific peoples in New Zealand:
- the Foundation's Board can operate more flexibly and efficiently.

#### *Miscellaneous*

The Bill includes a number of miscellaneous amendments to the Education Act 1989. These -

- address procedural matters relating to the establishment of partnership schools that were identified for inclusion in the Education Amendment Act 2013:
- make minor technical changes, such as removing from the Act references to Learning Media Limited, which was placed into liquidation in 2013.

The Bill also addresses the practical issues arising from the inability of the Minister of Education to delegate her or his power to vary the terms of an integration agreement by way of a supplementary agreement under section 7 of the Private Schools Conditional Integration Act 1975.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	YES
<i>Schooling</i> - Minimum School Opening Hours “Considering Education Regulation in New Zealand – Report of the Taskforce on Regulations Affecting School Performance”, 20 May 2014. <a href="http://www.education.govt.nz/assets/Documents/Ministry/Initiatives/Taskforce-on-Regulations-Affecting-School-Performance/TaskforceReport.pdf">http://www.education.govt.nz/assets/Documents/Ministry/Initiatives/Taskforce-on-Regulations-Affecting-School-Performance/TaskforceReport.pdf</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	NO
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	YES
<i>ECE</i> “Enabling licensed home-based early childhood education and care (ECE) services to simultaneously provide ECE and out-of-school care”; Ministry of Education; 23 July 2015.  <i>Schooling</i> “Enabling a principal to manage more than one school”; Ministry of Education; 23 July 2015.  “Minimum school opening hours”; Ministry of Education; 23 July 2015.  “Establishing and managing verified student identities to support students’ access to online services”; Ministry of Education; 23 July 2015.  “Options for strengthening Partnership Schools   Kura Hourua”; Ministry of Education; 23 July 2015.  <i>Tertiary Education</i> “Strengthening and modernising the framework for tertiary education institution investment in related entities”; Ministry of Education; 21 October 2015.  All of the regulatory impact statements can be found at: <a href="http://www.education.govt.nz/ministry-of-education/regulatory-impact-statements">http://www.education.govt.nz/ministry-of-education/regulatory-impact-statements</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	NO
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<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	NO
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#### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	NO
<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	YES
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	NO

See Appendix One.

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	YES
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	YES
See Appendix One.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The policies to be given effect by the Education Legislation Bill do not affect New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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*Modernisation of Acts*

- The Ngārimu VC and 28<sup>th</sup> (Māori) Battalion Memorial Scholarship Fund Act 1945

Officials at the Ministry of Education with expertise in Māori and legal matters were involved in the development of the amendments to the Act. Te Puni Kōkiri was consulted throughout the process of identifying the necessary amendments.

The other policies to be given effect to by the Education Legislation Bill do not affect Māori rights or interests protected by the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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YES
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Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at
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<a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</a>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	YES
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	YES
<p><i>Miscellaneous</i></p> <p>(a) The Education Legislation Bill amends the existing offence of intentionally insulting, abusing or intimidating a teacher or staff member of a school, to apply it in the context of both partnership schools and schools registered under Part 35A of the Education Act 1989 (for example, private schools).</p> <p>(b) Under Part 3 of the Education Act 1989, proceedings may be taken against parents whose child is truant from a school. Any fines must be paid to the relevant school board of trustees. The Education Legislation Bill amends section 35 of the Act so that where the child has been truant from a partnership school, the fine will be paid to the sponsor of the partnership school.</p> <p><i>Modernisation of Acts</i></p> <p>- The Ngarimu VC and 28<sup>th</sup> (Maori) Battalion Memorial Scholarship Fund Act 1945</p> <p>The Education Legislation Bill removes the requirement for the Judge of the Māori Land Court for the Tairāwhiti District to recommend to the Governor-General the appointment of the Ngārimu whānau representative to the Board of the Ngarimu and VC 28<sup>th</sup> (Māori) Battalion Memorial Scholarship Fund Board.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	YES
<p><i>Miscellaneous</i></p> <p>The Ministry of Justice was consulted on the Cabinet paper entitled “Education Amendment Bill 2015: Education Portfolio Policy Proposals”, which included the legislative changes set out in 3.4 above.</p> <p><i>Modernisation of Acts</i></p> <p>- The Ngarimu VC and 28<sup>th</sup> (Maori) Battalion Memorial Scholarship Fund Act 1945</p> <p>As the Department with oversight of the Māori Land Court, Te Puni Kōkiri was consulted on the amendment of the Ngarimu VC and 28<sup>th</sup> (Maori) Battalion Memorial Scholarship Fund Act 1945. This included the proposal to remove the requirement for the Ngārimu whānau representative to be appointed on the recommendation of the Judge of the Māori Land Court for the Tairāwhiti District.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	NO
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	YES
<p><i>Schooling</i></p> <ul style="list-style-type: none"> <li>- Establishing and maintaining verified student identities</li> </ul> <p>A draft privacy impact statement, which was focused on identifying the privacy risks associated with implementing a sector student identity and management system, was reviewed by the Office of the Privacy Commissioner and the Government Chief Privacy Officer.</p> <p>The Office of the Privacy Commissioner and the Government Chief Privacy Officer were consulted on options to establish a verified and persistent student identity and associated logon.</p>	

### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	YES
See Appendix Two.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	YES
<p><i>Tertiary Education</i></p> <p>The details of the Tertiary Education policies have been tested with the Treasury.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<i>Tertiary Education</i> The Bill reinstates a requirement for tertiary education institutions to prepare financial statements. This will apply to the 2016-2017 financial year, which for such institutions commences on 1 January 2016. This makes the requirement retrospective in its application.	

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	YES
<p><i>Technical Amendment</i></p> <p>The Bill makes a technical amendment to section 253 of the Education Act 1989, which enables the New Zealand Qualifications Authority to make rules. The Bill updates the references to the status of the rules as disallowable instruments.</p>	

#### **Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	NO
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## Appendix One: Further information relating to Part Two

### Extent of Impact analysis available – question 2.5(a)

#### *ECE*

Refer to the Regulatory Impact Statement entitled “Enabling licensed home-based early childhood education and care (ECE) services to simultaneously provide ECE and out-of-school care”. This RIS discusses both impacts, and fiscal and other effects.

#### *Schooling*

Refer to the Regulatory Impact Statement entitled “Establishing and managing verified student identities to support students’ access to online services”. This RIS provides indicative establishment and operating costs.

Refer to the Regulatory Impact Statement entitled “Enabling a principal to manage more than one school”. This RIS notes that minor additional costs are likely to be balanced out by modest savings.

Refer to the Regulatory Impact Statement entitled “Options for strengthening Partnership Schools | Kura Hourua”. This RIS outlines potential benefits to partnership schools, alongside potential financial risks to tertiary education institutions.

#### *Tertiary Education*

Refer to the Regulatory Impact Statement entitled “Strengthening and modernising the framework for tertiary education institution investment in related entities”. This RIS analyses the options for better regulating tertiary education institution investment in related entities (for example, subsidiary companies) and reporting on those investments.

### Extent of Impact analysis available – question 2.6

#### *ECE*

Refer to the Regulatory Impact Statement entitled “Enabling licensed home-based early childhood education and care (ECE) services to simultaneously provide ECE and out-of-school care”.

**For the policy to be given effect by this Bill, are the potential costs or benefits:**

- |   |            |
|---|------------|
| <b>(a) likely to be impacted by the level of effective compliance or non-compliance with applicable obligations or standards?</b> | <b>YES</b> |
| <b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>                                  | <b>NO</b>  |

#### *Schooling*

Refer to the Regulatory Impact Statement entitled “Establishing and managing verified student identities to support students’ access to online services”.

**For the policy to be given effect by this Bill, are the potential costs or benefits:**

- (a) likely to be impacted by the level of effective compliance or**

**non-compliance with applicable obligations or standards? YES**

**(b) the nature and level of regulator effort put into encouraging or securing compliance? YES**

Refer to the Regulatory Impact Statement entitled "Options for strengthening Partnership Schools | Kura Hourua".

**For the policy to be given effect by this Bill, are the potential costs or benefits:**

**(a) likely to be impacted by the level of effective compliance or non-compliance with applicable obligations or standards? YES**

**(b) the nature and level of regulator effort put into encouraging or securing compliance? YES**

*Tertiary Education*

Refer to the Regulatory Impact Statement entitled "Strengthening and modernising the framework for tertiary education institution investment in related entities".

**For the policy to be given effect by this Bill, are the potential costs or benefits:**

**(a) likely to be impacted by the level of effective compliance or non-compliance with applicable obligations or standards? YES**

**(b) the nature and level of regulator effort put into encouraging or securing compliance? YES**

## Appendix Two: Further Information Relating to Part Three

### External consultation – question 3.6

#### *Education Policies*

Government departments and agencies: the Treasury; the State Services Commission; the Ministry of Justice; the Ministry of Social Development; Te Puni Kōkiri; the Ministry of Pacific Island Affairs; and the Tertiary Education Commission.

The Department of the Prime Minister and Cabinet was informed of the policies.

Others Consulted: The Office of the Privacy Commissioner; the Government Chief Information Privacy Officer; the Government Chief Information Officer; the New Zealand Home-Based Early Childhood Education Association; and the Home Early Learning Organisation.

The policies relating to principals managing more than one school and minimum school opening hours were discussed at the Ministerial Cross-Sector Forum on Raising Student Achievement (20-21 May 2015).

#### *Tertiary Education Policies*

Government departments and agencies: The Treasury and the Tertiary Education Commission.

The Department of the Prime Minister and Cabinet was informed of the policies.

Others Consulted: The Office of the Auditor-General New Zealand and Education New Zealand.

#### *Modernisation of Acts*

Government departments and agencies: The Treasury; the Ministry of Justice; the Ministry of Culture and Heritage; the Ministry of Defence; Te Puni Kōkiri; and the Ministry of Pacific Island Affairs.

The Department of the Prime Minister and Cabinet was informed of the policies to modernise both the Ngarimu VC and 28<sup>th</sup> (Maori) Battalion Memorial Scholarship Fund Act 1945 and the Pacific Islands Polynesian Education Foundation Act 1972.

Others Consulted: The Office of the Auditor-General; Te Tumu Paeroa (the Māori Trustee); Te Taura Whiri i te Reo Māori (the Maori Language Commission); the Ngarimu VC and 28<sup>th</sup> (Maori) Battalion Memorial Scholarship Fund Board; Kahui Legal; and the Board of Trustees of the Pacific Islands Polynesian Education Foundation.