

Departmental Disclosure Statement

Education and Training Amendment Bill (No 2)
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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.

[9th November 2021]

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Part One: General Policy Statement

The Education and Training Act 2020 (the 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The Act was enacted in August 2020 and repealed and replaced previous education and training legislation with a simpler and more user-friendly legislative framework.

The purpose of the Bill is to make amendments across a range of matters in the Act to give effect to new policy decisions and to make other minor and technical changes.

The Bill amends the Act to:

- align the Police vetting provisions in the Education and Training Act more closely with the safety checking requirements in the Children's Act 2014;
- strengthen Teaching Council disciplinary processes;
- provide greater flexibility for Government to regulate compulsory student services fees charged by tertiary education providers;
- enable National Student Numbers (NSNs) to be used when there is funding to support work-based training;
- authorise NSNs to be assigned to students studying for NCEA in overseas jurisdictions with which New Zealand has entered into an arrangement for the teaching and assessment of NCEA, and authorise schools in those jurisdictions to be specified users of NSNs;
- enable the New Zealand Qualifications Authority to exercise discretion about whether to cancel the registration of a private training establishment in relation to immigration breaches;
- simplify qualifications and other credentials;
- amend the Education Review Office's mandate to enable it to review professional learning and development;
- ensure that learner well-being and safety arrangements for international and tertiary students and the disputes resolution schemes for international and tertiary students are fit for purpose, including that the administrator of the learner wellbeing and safety code(s) is able to enter and inspect premises of a provider;
- introduce a new type of casual vacancy on school boards that relates to board members who are removed for breaching a code of conduct;

- amend the Act's regulation-making powers so that regulations can provide for *Gazette* notices to specify the qualifications that must be held by persons controlling, or working as educators within, an early learning service;
- make a number of minor and technical amendments.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
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Impact statements were provided for the following proposals:

- Police vetting – removing the application period for specified employees
- Disciplinary processes for teachers
- Increasing flexibility for Government to set requirements on compulsory student services fees
- Extending the scope of national student numbers
- Changes to Private Training Establishment registration cancellation due to immigration breaches
- Simplifying qualifications and credentials
- Extending ERO's mandate to include the review of professional learning and development (PLD) accessed by schools, kura and early learning services
- Learner wellbeing and safety

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?	NO
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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?	NO
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Extent of impact analysis available

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

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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?

This Bill is not inconsistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

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?

This Bill is not inconsistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

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?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

Teaching Council disciplinary processes

This Bill seeks to streamline the Teaching Council's disciplinary processes by amending the threshold for cases to be considered by the upper-level Disciplinary Tribunal (DT). The Bill will enable the lower-level Complaints Assessment Committee (CAC) to consider more serious matters than it currently can, and resolve matters without the need to reach agreement with all parties.

It also provides for a new right of review of CAC decisions to the DT by either the teacher that is the subject of the case or the person that initiated the complaint.

Learner wellbeing and safety

It is proposed that the scope of the disputes resolution scheme (DRS) is broadened to provide for complaints about breaches of a wellbeing and safety code of practice. For the avoidance of doubt, the Act will be amended to require a disputes resolution scheme operator to apply principles of fairness and reasonableness in resolving disputes and to have regard to the law and, in the case of an adjudication, to determine a dispute on its merits without being constrained by strict legal requirements or precedents. This clarification is consistent with the intention that the DRS should be administered in a pragmatic and cost-effective manner aligned with the principles of alternative dispute resolution.

The Bill amends the DRS to set a 20-day time limit for a provider to apply to modify an adjudication outcome; otherwise any amount required by a resolution must be paid within that timeframe.

NZQA discretion to cancel PTE registration

The Bill proposes giving the New Zealand Qualifications Authority (NZQA) more discretion over cancelling a Private Training Establishment's (PTE) registration if the PTE is convicted, under the Immigration Act 2009, of allowing a student to study when they are not entitled to. Presently, providers in this situation are automatically deregistered. In many cases, deregistration may be disproportionate to the level and circumstances of the offence; it may also have an unreasonable impact on other learners and the international education sector.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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Privacy issues

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?	YES
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The Bill allows National Student Numbers (NSNs), which are a unique identifier, to be used by specified users when funding to support work-based training is not administered through a provider.

To support learner wellbeing and safety, it is proposed that enrolment information be better regulated. This will increase transparency about the nature, use and storage of personal information. The Bill also proposes that the disputes resolution scheme operator may share information with a code administrator and/or a quality assurance agency to enable swift action when an issue is identified. Any sharing of personal information will be subject to an information-matching or information-sharing agreement.

The provisions in the Bill allow for students studying in overseas jurisdictions with which New Zealand has entered into an arrangement for the teaching and assessment of NCEA (e.g. the Cook Islands and Niue) to be assigned NSNs, and for schools in those jurisdictions to be specified users of NSNs.

Students in these jurisdictions are already assigned NSNs in order to access NCEA and their schools already collect, use and store NSNs and other personal information about their students in order to provide NCEA. The amendments to the Act explicitly authorise these practices so that NCEA can continue to be provided.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
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The Office of the Privacy Commissioner was consulted on allowing National Student Numbers to be used by specified users when funding to support work-based training is not administered through a provider. The Office of the Privacy Commissioner identified no adverse impacts on the privacy of personal information.

The Office of the Privacy Commissioner was consulted about learner wellbeing and safety matters.

The Office of the Privacy Commissioner was not consulted on the proposal for students in certain jurisdictions to be assigned NSNs or for schools in those jurisdictions to use NSNs as this is a clarification of existing practice, and existing privacy safeguards are in place.

External consultation

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?	YES
<p>The following proposals included in the Bill were publicly consulted on:</p> <ul style="list-style-type: none"> • amending the Police vetting provisions; • strengthening the Teaching Council processes; • providing greater flexibility to set requirements on compulsory student services fees • extending the scope of national student numbers; • allowing NZQA to exercise discretion in relation to cancelling the registration of Private Training Establishments in relation to immigration breaches; • simplifying qualifications and other credentials; • allowing ERO to review professional learning and development; • learner wellbeing and safety. <p>The qualification and credentials proposal was amended following consultation. In general, feedback received was supportive of the other proposals.</p>	

Other testing of proposals

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?	NO
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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?	YES
<p>The Bill changes the mechanism for regulating fees charged to domestic tertiary students or employers for the provision of student services. Currently these fees are regulated through a Ministerial direction that limits what the Minister can require of tertiary education providers that charge a student services fee. The Bill proposes that these fees are regulated as conditions of funding in the same way that other fees, such as tuition fees, are regulated. This will provide Government with greater discretion to regulate these fees and ensure alignment with broader Government objectives.</p> <p>Initially, the existing requirements in the Ministerial direction on student services fees will become conditions of funding. Any future changes to the regulation of these fees as enabled by the Bill will be subject to separate decisions and public consultation requirements.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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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

<p>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?</p>	<p>YES</p>
<p>Teaching Council disciplinary processes</p> <p>The Bill amends the Teaching Council’s disciplinary process. It will remove the requirement for the Complaints Assessment Committee (CAC) to reach agreement with the teacher and the person that made the complaint before making a finding and imposing any penalty on the teacher.</p> <p>It also allows the CAC to make findings in matters of serious misconduct, which it currently cannot.</p> <p>Learner wellbeing and safety</p> <p>The Bill gives the code administrator the ability to gather information and enter and inspect premises, including a provider’s marae, church, or mosque, when investigating a complaint or ensuring that providers and signatory providers are giving effect to the code. This is in addition to the code administrator’s powers to enter and inspect student accommodation. Without these additional powers, unless there was an issue with student accommodation, the code administrator would only be able to consider the self-review report supplied by the provider or signatory provider.</p> <p>Given the significance of these powers, the Bill has appropriate safeguards to ensure that the code administrator does not go beyond its mandate. The powers, functions, duties, and associated safeguards take into account the academic freedom and institutional autonomy of tertiary education institutions.</p>	

Powers to make delegated legislation

<p>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?</p>	<p>NO</p>
<p>4.8. Does this Bill create or amend any other powers to make delegated legislation?</p>	<p>YES</p>
<p>The Bill covers:</p> <ul style="list-style-type: none"> • Learner wellbeing and safety, which enables tailored codes to be issued for particular groups of providers, and clarifies the code and disputes resolution scheme-associated regulation making powers. • Qualifications and other credentials, which provides for New Zealand Qualifications Authority to make rules about a national curriculum. • Compulsory student services fees, which changes the location of the regulation of these fees from a Ministerial direction authorised by the Act to conditions on funding mechanisms • Early childhood education, which clarifies that the Secretary for Education may regulate the qualifications to be held by those controlling, or teaching within, ECE providers by issuing notices recognising qualifications. 	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?

NO