

Departmental Disclosure Statement

Education and Training Amendment Bill

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.

1 April 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 repeals and replaces all 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 Act. Proposed amendments are intended to:

- ensure provisions best suited for inclusion in a Parliamentary enactment remain in the Act, rather than being repealed or moved to regulations. This is achieved by amending the application of the ‘sunset’ provision so that specified schedules remain in the Act rather than being automatically repealed;
- clarify that education workers who meet the definition of “children’s worker” in the Children’s Act 2014, must be safety checked under the Children’s Act rather than the Education and Training Act, and that all other Early Childhood Centre or school employees must meet the relevant Police vetting requirements in the Education and Training Act 2020;
- fix inadvertent drafting errors made when the provisions in section 171 (relating to interventions in State schools) were moved from the now repealed Education Act 1989 to the new Education and Training Act 2020, to ensure there is no change to the effect of these provisions;
- extend the timeframe (in a transitional provision) that precludes tertiary education providers from charging trainees a compulsory student services fee. Due to 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 one year;
- ensure 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 power to ensure that regulations can be made in relation to both applications for approval to apply for a licence and for a new licence. The Bill clarifies the regulation-making power to reflect the new licencing framework introduced in the Act;
- amend section 6 to specify the agencies for which any Ministerial statement of expectations would apply, to ensure it is consistent with the original policy intent for this provision.

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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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	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
The proposals in the Bill were exempt from the regulatory impact analysis requirements because they were expected to have no or minor impacts on businesses, individuals or not for profit entities. Therefore, no impact analysis was undertaken.	

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 does not affect 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?

The Bill includes minor and technical amendments to a variety of sections in the Act. At the time the Act was being developed, policy analysts considered whether each proposal was consistent with the principles of the Treaty of Waitangi, and Ka Hikitia. Consultation on proposals for inclusion in this Bill was undertaken with Te Puni Kōkiri and Te Arawhiti.

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?

YES

Advice provided to the Attorney-General by the Ministry of Justice is expected to be made available on the Ministry of Justice's website at:

www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rightd/bill-of-rights/

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)?

NO

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

NO

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?

NO

The Bill clarifies that the Police vetting requirements in the Act apply to persons employed or engaged at service providers or schools who are not/will not be children's workers (and are therefore not subject to the safety checking requirements in the Children's Act).

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?

NO

The Bill contains only minor and technical amendments and prior public consultation was not required.

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
The proposals in the Bill have not been tested because they clarify and extend the implementation of existing government policy, rather than introduce a new approach.	

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 extends the timeframe for transitional provisions that prevents tertiary education providers from charging trainees a compulsory student services fee (CSSF), which includes Goods and Services Tax. The provisions prevent trainees that shift from a transitional industry training organisation (ITO) to a provider from having to pay a new fee that they would not have anticipated at the start of their training. The transitional provision does not prevent providers from charging fees to trainees who choose to access student services on a user pays basis.</p> <p>These transitional provisions are already in effect and the proposal is to extend their application by one year. The amendment would not affect existing revenue for providers and would not significantly reduce future revenue that providers generate from taking on trainees, given the time-limited nature of the proposal. We anticipate that some transitional ITOs will shift their responsibility for arranging training to providers in 2021, with the remainder transitioning by 2023. This would mean those trainees that transition to a tertiary provider during this period, and new trainees, cannot be charged a CSSF.</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

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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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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Clause 9 of the Bill clarifies the regulation-making power for early childhood services to ensure that regulations can be made for all stages of the licensing process, including applications for Ministerial approval to apply for a licence, which is a pre-licence requirement set out in section 17 of the Act. Section 17 has a delayed commencement of up to two years from Royal assent to the Act (31 July 2020) to allow time for the policy work on implementation and any necessary regulations to be developed and consulted on.

The first stage of consultation on options for implementation will start in August 2021 as part of the Early Learning Regulatory Review. This will be followed by public consultation on draft regulations early in 2022 ahead of section 17 coming into force by 1 August 2022.

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
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