



Education Amendment Act 2018

Public Act 2018 No 40
Date of assent 23 October 2018
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education Amendment Act 2018.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

3 Principal Act

This Act amends the Education Act 1989 (the **principal Act**).

Part 1

Amendments to principal Act

4 Section 60A amended (Curriculum statements and national performance measures)

Repeal section 60A(1)(ba).

5 Section 61 amended (School charter)

In section 61(4)(a), delete “, including the assessment of students against any national standard published under section 60A(1)(ba)”.

6 Section 71A amended (Off-site locations for schools)

In section 71A(4), replace “in subsection (2),” with “under this Act,”.

7 Section 75A amended (Appointment of principals)

In section 75A(1), replace “section 65” with “clause 6 of Schedule 6”.

8 Section 92 amended (Interpretation)

In section 92(1), definition of **special institution**, replace paragraph (c) with:

- (c) an institution (other than an institution that is part of a school) situated within—
 - (i) an institution under the control of the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; or
 - (ii) a hospital care institution (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001)

9 Section 146 amended (Minister may establish schools)

After section 146(4), insert:

- (5) Despite section 98 or 98A, the Minister may approve an alternative constitution when establishing a school.

10 Section 156AA amended (Process for establishing designated character schools)

- (1) After section 156AA(3), insert:

- (3A) The notice establishing a designated character school that is not a Kura Kaupapa Māori may also name a body that has a special affiliation with the school or has responsibility for the different character of the school.

- (2) Replace section 156AA(4)(b) with:

- (b) for any other type of designated character school,—
 - (i) amend the description of the different character of the school:
 - (ii) name a body that has a special affiliation with the school or has responsibility for the different character of the school:

- (3) After section 156AA(4), insert:

- (5) The Minister must consult any body named under subsection (3A) or (4)(b)(ii) before amending the description of the school's different character.

11 Part 12A repealed

Repeal Part 12A.

12 Section 159 amended (Interpretation)

In section 159(1), insert in its appropriate alphabetical order:

permanent member, in relation to the teaching or general staff of an institution, means a member of the staff who—

- (a) is employed, on either a full-time or part-time basis, for a period ending, unless sooner terminated, on his or her resignation or retirement; or

- (b) has been employed, on either a full-time or part-time basis, whether under an employment agreement for a fixed term or otherwise, for at least 3 months; or
- (c) has been employed, on either a full-time or part-time basis, whether under an employment agreement for a fixed term or otherwise, for less than 3 months and whose employment is, in the opinion of the chief executive of the institution, likely to continue for at least 3 months from the date of commencement of that employment

13 Section 171B amended (Matters to be considered when appointing members)

(1) After section 171B(2), insert:

(2A) When appointing members of a council, the council must ensure that—

- (a) at least—
 - (i) 1 member is a permanent member of the teaching or general staff of the institution that the permanent members of the teaching and general staff of the institution have elected to represent them; or
 - (ii) 1 member is a permanent member of the teaching staff of the institution that the permanent members of the teaching staff of the institution have elected to represent them and 1 member is a permanent member of the general staff of the institution that the permanent members of the general staff of the institution have elected to represent them; and
- (b) at least 1 member is a student—
 - (i) who is enrolled in the institution; and
 - (ii) whom the students of the institution have elected to represent them.

(2B) However, subsection (2A) does not apply to the membership of the council of a wānanga.

(2C) An elected person specified in subsection (2A)—

- (a) is to be treated as meeting any relevant knowledge, skills, or experience requirements; and
- (b) must be appointed unless the person is ineligible for appointment under section 171A(1).

(2D) An institution or its council may not specify who is eligible to stand for election as a representative of—

- (a) the permanent members of the teaching or general staff of the institution; or
- (b) the students of the institution.

- (2E) Before making an appointment under this section, the Minister must seek, and consider, nominations from the relevant council.
- (2) In section 171B(3), replace “Subsections (1) and (2) do” with “This section does”.

14 Section 222AA amended (Constitution of polytechnic councils)

- (1) Replace section 222AA(1) with:
- (1) The council of a designated polytechnic must have a total of 8, 9, or 10 members, as provided in its constitution, comprising—
- (a) 4 members appointed by the Minister; and
 - (b) enough members appointed by the council by resolution, in accordance with its statutes, to bring the membership up to that total number.
- (2) After section 222AA(1), insert:
- (1A) However, once the council of a designated polytechnic is established, it may, in accordance with its statutes, vary its size provided that the council has at least 8 members and no more than 10 members.

15 Section 222AD amended (Matters to be considered when appointments made)

- (1) After section 222AD(2), insert:
- (2A) Before making an appointment under this section, the Minister must seek, and consider, nominations from the relevant council.
- (2) After section 222AD(3), insert:
- (4) When appointing members of a council, the council must ensure that—
- (a) at least—
 - (i) 1 member is a permanent member of the teaching or general staff of the designated polytechnic that the permanent members of the teaching and general staff of the designated polytechnic have elected to represent them; or
 - (ii) 1 member is a permanent member of the teaching staff of the designated polytechnic that the permanent members of the teaching staff of the designated polytechnic have elected to represent them and 1 member is a permanent member of the general staff of the designated polytechnic that the permanent members of the general staff of the designated polytechnic have elected to represent them; and
 - (b) at least 1 member is a student—
 - (i) who is enrolled in the designated polytechnic; and
 - (ii) whom the students of the designated polytechnic have elected to represent them.

- (5) An elected person specified in subsection (4)—
 - (a) is to be treated as meeting any relevant knowledge, skills, or experience requirements; and
 - (b) must be appointed unless the person is ineligible for appointment under section 222AA(2).
- (6) A designated polytechnic or its council may not specify who is eligible to stand for election as a representative of—
 - (a) permanent members of the teaching or general staff of the designated polytechnic; or
 - (b) students of the designated polytechnic.

16 Section 222AM amended (Constitution of combined councils)

Replace section 222AM(2) with:

- (2) The Minister must ensure that at least 50%, but no more than 60%, of the members of the combined council are members appointed by the council.

17 Section 292A amended (Offences relating to false representations)

- (1) In section 292A(2), replace “this section” with “subsection (1)”.
- (2) After section 292A(2), insert:
- (3) A person commits an offence who, without reasonable excuse, makes a false representation for the purpose of receiving, or continuing to receive, free tertiary education from a tertiary education organisation.
- (4) A person who commits an offence against subsection (3) is liable on conviction to a fine not exceeding \$5,000.
- (5) For the purposes of subsection (3),—

free tertiary education means any tuition or training—

 - (a) that a tertiary education organisation provides to, or arranges for, eligible students; and
 - (b) that has costs (which would otherwise be payable by those students) that are (in whole or in part) met by funds appropriated by Parliament

tertiary education organisation has the same meaning as organisation in section 159B.

18 Section 310 amended (Meaning of early childhood education and care centre)

Replace section 310(2)(f) with:

- (f) children’s health camps operated by an organisation funded by a state service to provide an education service to children attending health camps:

19 Section 319B amended (Powers of entry and inspection without warrant)

(1) Replace section 319B(1)(a) with:

- (a) enter and inspect—
 - (i) any premises that are or contain a licensed early childhood education and care centre or that are used to provide a licensed home-based education and care service or a licensed hospital-based education and care service, or that are used by a certificated play-group:
 - (ii) any offices of a service provider that are related to those premises:

(2) In section 319B(1)(b), replace “disk” with “a storage device”.

20 Schedule 1 amended

In Schedule 1, after Part 5B, insert:

Part 6**Provisions relating to partnership schools kura hourua****12 Transitional provision for existing partnership schools kura hourua**

- (1) In respect of any partnership school kura hourua in existence immediately before the commencement of this clause, this Act applies as if sections 11, 22, and 24 of the Education Amendment Act 2018 had not come into force.
- (2) Despite subclause (1), section 158C does not apply.
- (3) This clause ceases to apply in respect of a partnership school kura hourua on the earlier of—
 - (a) the expiry of the partnership school contract for the school; and
 - (b) the termination of the partnership school contract for the school.

13 Transitional arrangements for employees of specified partnership schools kura hourua

- (1) This clause applies to an employee—
 - (a) who is employed by a sponsor at a specified partnership school kura hourua that is or is to be replaced by a specified State school; and
 - (b) who applies in writing for an equivalent position at the specified State school.
- (2) The employee must be offered the equivalent position unless—
 - (a) another employee to whom this clause applies is appointed to that position; or
 - (b) the employee’s appointment would contravene section 349 or 350.

- (3) An employee appointed to an equivalent position is not entitled to receive any payment or other benefit on the ground that the position held by the employee in the specified partnership school kura hourua has ceased to exist.
- (4) This clause overrides anything to the contrary in—
- (a) an employment agreement;
 - (b) Part 6A of the Employment Relations Act 2000;
 - (c) sections 77G and 77H of the State Sector Act 1988.
- (5) In this clause,—
- equivalent position** means employment that, relative to the employee's current position,—
- (a) involves comparable duties and responsibilities; and
 - (b) is in the same general locality or a locality within reasonable commuting distance; and
 - (c) is on terms and conditions that are no less favourable than those applying to the employee immediately before the specified partnership school kura hourua is replaced by the specified State school; and
 - (d) is on terms that treat the period of service with the sponsor of the specified partnership school kura hourua (and every other period of service recognised for the purposes of the previous position as continuous service) as if it were continuous service with the education service (as that service is defined in section 2 of the State Sector Act 1988)

specified partnership school kura hourua means a partnership school kura hourua specified by the Minister by notice in the *Gazette* under clause 14 as a partnership school kura hourua to which this clause applies

specified State school means a State school (including a State integrated school) specified by the Minister by notice in the *Gazette* under clause 14 as a State school to which this clause applies.

14 Minister may specify schools for purposes of clause 13

The Minister may, by notice in the *Gazette*, specify—

- (a) a partnership school kura hourua that is replaced by a State school as a partnership school kura hourua to which clause 13 applies; and
- (b) the State school that replaces the partnership school kura hourua as a State school to which clause 13 applies.

Part 7

Provisions relating to tertiary education institutions

15 Interpretation

- (1) For the purposes of this Part, unless the context otherwise requires,—

council means the council of an institution

transition period, in relation to a council, means the period—

- (a) commencing on the commencement of this Part; and
 - (b) ending on the close of the date that is 12 months after the commencement of this Part.
- (2) Terms defined in section 159(1) have the meanings given by that section.

16 Appointing members to existing councils

Despite the Education Amendment Act 2018, a council in existence immediately before the commencement of this clause is not required to comply with section 171B(2A), 222AA(1) (as amended), 222AD(4), and 222AM(2) until—

- (a) the date that new members must be appointed in accordance with a new constitution (*see* clause 21(2)); or
- (b) the date that new members must be appointed in accordance with a constitution amended under clause 17(3), if earlier.

17 Existing councils to update constitutions

- (1) Every council must, if necessary to comply with section 171B(2A), 222AA(1)(b), or 222AD(4),—
- (a) prepare a new draft constitution for the council for its institution; and
 - (b) give a copy to the Minister.
- (2) The copy must be given to the Minister at least 2 months before the close of the transition period.
- (3) Alternatively, in the case of an institution that is not a designated polytechnic, the institution may have its constitution amended in accordance with section 170 so that it complies with section 171B(2A) and, in that case, clauses 18 to 24 do not apply.
- (4) The recommendation required by section 170(1) must be given to the Minister at least 2 months before the end of the transition period.

18 Draft constitutions to be approved by Minister

The Minister must, by notice in the *Gazette* setting out the draft constitution, establish it as a new constitution if—

- (a) the council has given a copy to the Minister at least 2 months before the close of the transition period; and
- (b) the Minister is satisfied that it complies with the requirements of this Act.

19 Minister may establish new constitution if council does not act in time

The Minister may, by notice in the *Gazette* setting out the constitution, establish a new constitution if the council has not given a copy of a new draft constitution to the Minister at least 2 months before the close of the transition period.

20 When new constitution established and comes into effect

The new constitution—

- (a) is established when a notice under clause 18 or 19 is published in the *Gazette*; and
- (b) comes into effect at the close of the transition period.

21 New members to be appointed

- (1) A council must appoint new members if necessary to give effect to the new constitution.
- (2) The council must appoint the new members in accordance with the Act—
 - (a) as soon as practicable after the new constitution comes into effect; and
 - (b) no later than 6 months after the close of the transition period.

22 Council continues to be same body and membership of council continues

- (1) A council constituted under a new constitution—
 - (a) is the same body as it was immediately before the close of the transition period; and
 - (b) continues to have the rights and obligations it had before the close of the transition period.
- (2) Members of the council appointed before the close of the transition period continue as members of the council after the close of the transition period, unless otherwise required by the new constitution.

23 No compensation for loss of office

Neither the Crown nor a council is liable to compensate a member of the council who ceases to hold office after the close of the transition period as a consequence of a new constitution taking effect.

24 Temporary power of direction

- (1) During the transition period, the Minister may, by written notice to the chief executive of the institution concerned, give any directions the Minister thinks reasonably necessary to ensure that the council can deal effectively with business before it after the close of the transition period.
- (2) The council must comply with the directions.
- (3) The Minister must consult the council before giving the directions.

21 Schedule 5A amended

In Schedule 5A, item relating to section 168(1) and (2), replace “section 87(3)” with “regulations made under section 118A”.

22 Consequential amendments to principal Act

Amend the principal Act as set out in Schedule 1.

Part 2**Amendments to other enactments****23 Amendments to Education (Update) Amendment Act 2017**

- (1) This section amends the Education (Update) Amendment Act 2017.
- (2) In section 2(5)(b), replace “1 January 2019” with “1 January 2020”.
- (3) In section 43, repeal new section 61(b) of the principal Act.
- (4) In section 43, replace new section 62(2) of the principal Act with:
 - (2) Monitoring and evaluating must include, but is not limited to, monitoring and evaluating the performance of the students in relation to—
 - (a) any foundation curriculum policy statements and national curriculum statements in force under section 60A; and
 - (b) any qualification systems referred to in section 61(c) that are offered at the school.
- (5) In section 68, replace new section 87(3) of the principal Act with:
 - (3) In addition, a board that is a parent in a Crown entity group must, to the extent required to do so by generally accepted accounting practice, prepare consolidated financial statements in relation to the group for that financial year.
 - (4) The annual financial statements must be in the form (if any) determined by the Secretary after consultation with the Auditor-General.
 - (5) The annual financial statements must be accompanied by a statement of responsibility that complies with section 155 of the Crown Entities Act 2004 but that is signed by the chair of the board and principal instead of 2 members.
 - (6) The requirements of this section and section 87A as to annual financial statements also apply to a Crown entity subsidiary of a board as if the subsidiary were a board and with all necessary modifications.
 - (7) The rest of the amendments made to this section by Schedule 6 of the Crown Entities Act 2004 apply as provided in section 198 of that Act.
 - (8) In this section,—

statement of variance means a statement that details—

- (a) any variance between the school’s performance and the achievement of the school’s objectives set out in its strategic plan and annual implementation plan; and
- (b) any matters required by regulations made under section 118A

trustee and **employee** include a person who was a trustee or an employee at any time during the applicable financial year but who is no longer a trustee or an employee.

- (9) However, in relation to a 2019 school charter, **statement of variance** means the statement referred to in section 87(2)(e) immediately before the commencement of subsection (8).
- (6) In section 95, new section 118A(2)(c) of the principal Act, replace “prepared, submitted, or updated” with “prepared or submitted”.
- (7) In section 95, after new section 118A(2)(d) of the principal Act, insert:
 - (da) requirements for how and when plans are amended or expire:
- (8) In section 95, replace new section 118A(2)(h) of the principal Act with:
 - (h) the form and contents of annual reports, including financial statements:
- (9) In section 98(1), repeal new section 144A(1AAA)(b) of the principal Act.
- (10) In section 158(2), new clause 7(1)(a) of Schedule 6 of the principal Act, replace “for each 4-year period” with “, for each 3-year period or for a shorter period determined by the Secretary,”.
- (11) In section 158(2), after new clause 7(2) of Schedule 6 of the principal Act, insert:
 - (2A) If, at the commencement of this clause, a board has a charter in effect for the 2019 year, the charter will be treated as the board’s first strategic plan.
 - (2B) If a board’s strategic plan is its 2019 school charter, the statement of variance is not required to include a comparison with an annual implementation plan.
 - (2C) However, a board with a 2019 school charter as its strategic plan must continue to update the annually updated sections of its charter until its first annual implementation plan is required under regulations made under section 118A.
 - (2D) The annually updated sections of a 2019 school charter must be updated no later than a date fixed by the Secretary.
- (12) In section 158(2), new clause 8(1) of Schedule 6 of the principal Act, replace “4-year period” with “3-year period, or for a shorter period determined by the Secretary,”.
- (13) In section 158(2), after new clause 8(4) of Schedule 6 of the principal Act, insert:
 - (5) This clause is subject to clause 7(2A).

- (14) In section 158(2), new clause 9(4) of Schedule 6 of the principal Act, replace “must” with “must, by giving written notice to the board,”.
- (15) In section 158(2), after new clause 9 of Schedule 6 of the principal Act, insert:

9A Amending strategic plan

- (1) A board may amend its strategic plan, but if a proposed amendment is significant the board must obtain the Secretary’s approval of the amendment before amending the plan.
- (2) Before approving an amendment, the Secretary may require the board to consult the school community, staff, students, or any other person or body the Secretary considers should be consulted.
- (3) The Secretary may require a board to amend its strategic plan.

9B Expiry of strategic plan

- (1) A strategic plan expires 3 years after the plan takes effect.
- (2) However, a 2019 school charter (which is a document that is to be treated as a board’s first strategic plan) expires when replaced by a strategic plan adopted in accordance with regulations made under section 118A.
- (3) If there is no new plan to replace the expired plan, the expired plan will continue to apply for a period approved by the Secretary.

- (16) In section 158(2), after new clause 10 of Schedule 6 of the principal Act, insert:

10A Amending annual implementation plan

A board may amend its annual implementation plan.

24 Amendments to other enactments

Amend the enactments specified in Schedule 2 as set out in that schedule.

Schedule 1

Consequential amendments to principal Act

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Section 2

In section 2(1), repeal:

- (a) definition of **partnership school contract**;
- (b) definition of **partnership school kura hourua**;
- (c) definition of **primary partnership school kura hourua**;
- (d) definition of **sponsor**.

In section 2(1), definition of **registered school**, delete “a partnership school kura hourua,”.

Section 3

In section 3, delete “or partnership school kura hourua”.

Section 5A

In section 5A(1), replace “State school, State integrated school, or partnership school kura hourua” with “State school or State integrated school”.

Section 16

Repeal section 16(1)(ba), (2A), and (5).

Section 17D

In section 17D(2), delete “or a partnership school kura hourua”.

Repeal section 17D(3A) and (5).

Section 25

In section 25(2), delete “and every sponsor of a partnership school kura hourua”.

In section 25(7), delete “or a sponsor”.

Section 31

Repeal section 31(1A), (3A), and (8A).

In section 31(2), delete “or sponsors, or a board and a sponsor jointly”.

In section 31(7),—

- (a) replace “officer, a sponsor,” with “officer,”;
- (b) replace “a board, a sponsor, or the Secretary” with “a board or the Secretary”.

Section 31B

Repeal section 31B(1)(a)(ia).

Section 31F

Repeal section 31F(ab).

Section 31G

Repeal section 31G(2)(ab).

Section 31I

Repeal section 31I(1)(ba).

Section 35

In the heading to section 35, delete “**or sponsor (as applicable)**”.

In section 35, delete “or sponsor (as applicable)”.

Section 77A

Repeal section 77A(5) and (6).

Section 78A

In section 78A(1)(b), replace “manager, or sponsor” with “or manager”.

Section 79

In the heading to section 79, delete “**or sponsors**”.

In section 79(1), delete “and sponsors”.

In section 79(2), delete “, or operated by the sponsor,”.

In section 79(3), delete “or sponsor”.

Section 139A

Repeal section 139A(1)(ba) and (2)(ba).

Section 139AB

Repeal section 139AB(2)(c) and (f)(iii).

Section 139AC

In section 139AC(2), definition of **employer**, repeal paragraph (c).

Section 144A

Repeal section 144A(1)(ab).

In section 144A(1), delete “sponsor,” in each place.

Section 144C

In section 144C(1)(f), replace “boards, or sponsors” with “or boards”.

Section 158

In section 158(1), delete “or sponsors”.

Section 158—*continued*

In section 158(1), replace “specified school” with “State school”.

In section 158(1A), replace “or sponsor of the specified school” with “of the State school” in each place.

Repeal section 158(3A).

Section 192

Repeal section 192(2)(ab).

Section 246

In section 246, definition of **relevant school**, repeal paragraph (ba).

Section 348

In section 348, definition of **employer**, repeal paragraph (b).

In section 348, repeal the definition of **partnership school kura hourua**.

In section 348, definition of **professional leader**, replace paragraphs (a) and (b) with:

(a) the principal:

Section 349

In section 349(2), delete “, other than a sponsor,”.

Section 350

In section 350(2) and (3), delete “, other than a sponsor,”.

Section 374

In section 374(1)(j), delete “(other than a sponsor)”.

Section 383

In section 383(8), delete “or the sponsor of any partnership school kura hourua”.

Schedule 2

Amendments to other enactments

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Part 1

Amendments to other Acts

Accident Compensation Act 2001 (2001 No 49)

In section 6(1), definition of **place of education**, replace paragraph (a)(i) with:

- (i) a composite school or a secondary school as defined by section 2(1) of the Education Act 1989 or a secondary school registered under section 35A of that Act; and

Health Act 1956 (1956 No 65)

In section 125(1), repeal the definition of **partnership school kura hourua**.

In section 125(2), replace “public school, partnership school kura hourua, or early childhood education and care centre” with “public school or early childhood education and care centre”.

Immigration Act 2009 (2009 No 51)

In section 4, definition of **compulsory education**, paragraph (a), delete “, or at a partnership school kura hourua”.

In section 4, definition of **course of study**, paragraph (a)(i), delete “, or by a partnership school kura hourua”.

Income Tax Act 2007 (2007 No 97)

Repeal section CW 55BB(1)(b)(ia).

Local Government (Rating) Act 2002 (2002 No 6)

In Schedule 1, repeal clause 6(b)(vi).

Official Information Act 1982 (1982 No 156)

In section 2(1), definition of **organisation**, replace paragraph (a) with:

- (a) an organisation named in Part 2 of Schedule 1 of the Ombudsmen Act 1975 (other than the Parliamentary Service or mortality review committees):

Ombudsmen Act 1975 (1975 No 9)

Repeal section 2(5).

In Schedule 1, Part 2, delete “Sponsors (within the meaning of section 2(1) of the Education Act 1989) when performing a standing-down, suspension, exclusion, or expulsion function”.

State Sector Act 1988 (1988 No 20)

In section 2, definition of **education service**, paragraph (a)(iii), delete “(unless the institution is a sponsor within the meaning of section 2(1) of the Education Act 1989 and the employment relates to its functions as a sponsor under that Act or to a partnership school contract (as defined in Part 12A of that Act))”.

Vulnerable Children Act 2014 (2014 No 40)

In section 15(1), definition of **school board**, repeal paragraph (b).

Part 2

Amendments to legislative instrument

Education (Surrender, Retention, and Search) Rules 2013 (SR 2013/469)

In rule 3, definition of **board**, paragraph (a), delete “; or”.

In rule 3, definition of **board**, revoke paragraph (b).

Legislative history

8 February 2018	Introduction (Bill 15–1)
15 February 2018	First reading and referral to Education and Workforce Committee
31 August 2018	Reported from Education and Workforce Committee (Bill 15–2)
13 September 2018	Second reading
16 October 2018	Committee of the whole House
18 October 2018	Third reading
23 October 2018	Royal assent

This Act is administered by the Ministry of Education.