

# **Education Amendment Bill**

Government Bill

As reported from the Education and Science  
Committee

## **Commentary**

### **Recommendation**

The Education and Science Committee has examined the Education Amendment Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

This bill would amend the Education Act 1989 in two broad areas: introducing matching of information between the New Zealand Teachers Council and the Ministry of Education to identify people teaching in schools without registration; and reducing compliance costs relating to Police vetting.

It would also amend the Act by aligning the review frequency for private schools with that for State schools; providing that a corporate body may be appointed as a limited statutory manager or commissioner; providing that a combined board may be established for newly established schools; and addressing various minor or technical issues.

This commentary covers the major amendments that we recommend.

## **Police vetting**

### **Within two weeks for non-teaching staff**

We recommend amending clause 21 by inserting new section 78CB(2) and amending clause 70 by inserting new section 319F(2), to require schools and Early Childhood Education (ECE) services to request a Police vet within at least two weeks of the non-teaching staff starting work. We consider that while it is clear in the bill as introduced that a vet would be required before non-teaching staff had unsupervised access to children, it is not clear that a vet would also be required for non-teaching staff who would not have such access. We preferred introducing a time limit on the application for, rather than on the obtaining of, the vet to avoid placing an obligation on the school or ECE service that it must rely on the Police to meet.

### **Renewal after three years**

We recommend amending new section 78CC in clause 21 and amending new section 319FE (formerly new section 319FA) in clause 70, to clarify the circumstances under which a 3-yearly renewal of a Police vet would be required. We consider that the bill as introduced could be read as requiring the 3-yearly renewal of all Police vetting information held by a school or ECE service, and seek to clarify that a repeat vet would not be required either if the person was no longer employed or engaged at the school or ECE service, or if the person's circumstances had changed such that a Police vet would not be required if he or she were, at that time, just beginning work at the school or ECE service.

### **Household members of home-based early childhood education services**

We recommend amending clause 70 by inserting new sections 319FB to 319FD, to require the Police vetting of household members of home-based ECE services (who are 17 years of age or older). Licensed service providers and carers are required by the *Education (Early Childhood Services) Regulations 2008* to exclude from the home, while the care is being provided, anyone who is believed to have a criminal conviction or to pose a safety risk to the children being cared for. Most service providers already use Police vetting as a way to meet this requirement. We consider that extending the re-

quirements for Police vets under the Act to persons in such a household not already covered would bring consistency to this practice, and ensure minimum standards applied across the sector.

### **Transitional provision in relation to Police vetting**

We recommend making amendments to clause 76, to require schools and ECE services to apply for Police vets of affected staff within 4 weeks of the Act coming into force. Under the bill as introduced, the transitional provisions would require schools and ECE services to obtain Police vets within 8 weeks, which would place an obligation on schools and ECE services that they would have to rely on the Police to enable them to meet.

## **School governance**

### **Appointment of natural persons as limited statutory managers or commissioners**

We recommend by majority deleting clauses 22 to 26 and inserting new clauses 22 and 23, to remove the provisions allowing a body corporate to be appointed as a limited statutory manager or commissioner of a school, and to allow a natural person to be appointed “as being of a named body corporate”. An example of a body corporate is a school board of trustees. Under the principal Act, only natural persons may be appointed to these positions, but we understand that in current practice a natural person’s position in a body corporate can be an important factor in favour of choosing that person. We consider that the appointment of a body corporate, as the bill as introduced permits, would impair accountability, and continuity if the makeup of the body corporate were to change.

### **Staggered splitting of combined establishment boards into new school boards**

We recommend inserting new clauses 32A and 32B, to allow the Minister of Education to split one or more schools from a combined establishment board. Under the bill as introduced, the Minister of Education could establish a combined establishment board for two or more new schools. When the schools opened, the Minister could

either split the combined establishment board into one board for each school, or have a combined board continue to govern all the schools. The recommended amendments would allow for the situation where one of a group of new schools was ready to open before the others, and allow the Minister to split a new board off to govern the school that had opened while retaining a combined establishment board for the remaining schools, or a single-school establishment board if only one school was not yet ready to be opened.

### **Green Party minority view**

The Green Party opposes Part 1 because of the use of the term “body corporate”, as this is regarded as a step towards a corporate management model for schools. We support the submitters who opposed this on the same grounds.

The Green Party opposes the clauses that combine boards which may result in decision-making being removed from the parents of one school and result in a board dominated by interests and values that are removed from the school and its particular community.

We support a complete review of Tomorrow’s Schools rather than these piecemeal changes.

## **Appendix**

### **Committee process**

The Education Amendment Bill was referred to the committee on 28 April 2009. The closing date for submissions was 10 June 2009. We received and considered ten submissions from interested groups. We heard seven submissions.

We received advice from the Ministry of Education.

### **Committee membership**

Allan Peachey (Chairperson)

Catherine Delahunty

Hon Sir Roger Douglas

Jo Goodhew

Colin King

Hon Nanaia Mahuta

Hon Trevor Mallard

Sue Moroney

Louise Upston

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Education Amendment Bill

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Anne Tolley*

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Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Education Amendment Act **2009**.

**2 Commencement**

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

## **Part 1**

### **Amendments to principal Act**

- 3 Principal Act amended**  
This Part amends the Education Act 1989.
- 4 Interpretation** 5
- (1) The definition of **State school** in section 2(1) is amended by omitting “or a secondary school” and substituting “a secondary school, or a special school”.
- (2) Section 2 is amended by repealing subsection (2) and substituting the following subsection: 10
- “(2) In this Part, and Parts 2 and 3, unless the context otherwise requires, a **special school, special class, special clinic, or special service** means a school, class, clinic, or service established under section 98(1) of the Education Act 1964 as a special school, special class, special clinic, or special service respectively.” 15
- 5 Enrolment of foreign students**  
Section 4(1)(b) is amended by omitting “concerned; but” and substituting “concerned.”
- 6 Special education** 20  
The compare note for section 9 is repealed.
- 7 Right of reconsideration**  
The compare note for section 10 is repealed.
- 8 How a school defines its home zone** 25  
Section 11E(2)(c) is amended by omitting “which” and substituting “that”.
- 9 Amendment of enrolment scheme**  
Section 11M(3) is amended by omitting “enrolment scheme, in order” and substituting “enrolment scheme in order”.

- 10 Obligation to report to Parliament on enrolment schemes**  
Section 11Q(1) is amended by omitting “sector which” and substituting “sector that”.
- 11 Long term exemptions from enrolment**  
The compare note for section 21 is repealed. 5
- 12 Effect of exemption**  
The compare note for section 23 is repealed.
- 13 Penalty for irregular attendance**  
Section 29(1) is amended by omitting “person who—” and substituting “person who,—”. 10
- 14 Fines to be paid to boards**  
Section 35 is amended by omitting “and shall then become part of the board fund”.
- 15 Registration and inspection of private schools**  
Section 35A is amended by repealing subsection (9) and substituting the following subsection: 15
- “(9) The Chief Review Officer must ensure that—
- “(a) a school, while registered under this section, is reviewed in accordance with Part 28; and
- “(b) the review officer who conducts a review— 20
- “(i) prepares a written report on the review; and
- “(ii) gives copies of it to the Secretary and the school’s principal (or other chief executive) and managers.”
- 16 Interpretation** 25
- (1) Section 60 is amended by omitting “and Part 8” and substituting “Part 7A, and Part 8”.
- (2) Paragraph (a) of the definition of **board** in section 60 is amended by omitting “school means” and substituting “school, means”. 30
- (3) Section 60 is amended by repealing the definition of **domestic student** and substituting the following definition:

- “**domestic student** has the same meaning as in section 2(1)”.
- (4) Section 60 is amended by repealing the definition of **foreign student** and substituting the following definition:  
 “**foreign student** has the same meaning as in section 2(1)”.
- (5) Section 60 is amended by inserting the following definitions 5  
 in their appropriate alphabetical order:  
 “**Teachers Council** means the New Zealand Teachers Council established under Part 10A  
 “**unsupervised access to students**, in relation to a school, means access to any student on the school’s premises that is 10  
 not access by, or supervised by, or otherwise observed by, or able to be directed (if necessary) by, any 1 or more of the following:  
 “(a) a registered teacher or holder of a limited authority to teach: 15  
 “(b) an employee of the school on whom a satisfactory Police vet has been conducted within the last 3 years:  
 “(c) a parent of the student”.
- 17 Length of school year**  
 Section 65A(2) is amended by omitting “half days” and substituting “half-days”. 20
- 18 Terms**  
 Section 65B(1) is amended by omitting “half days” and substituting “half-days”.
- 19 Exceptions in particular cases** 25  
 Section 65D(3) and (5) are amended by omitting “half day” and substituting in each case “half-day”.
- 20 Restrictions on acquisition of securities**  
 Section 73(2)(c)(ii) is amended by omitting “Finance: or” and substituting “Finance; or”. 30
- 21 New sections 78C to 78CD substituted**  
 Sections 78C to 78CB are repealed and the following sections substituted:

**“78C Police vetting of non-teaching and unregistered employees at schools**

The board of a State school, or the management of a school registered under section 35A, must obtain a Police vet of every person—

- “**(a)** whom the board or the management appoints, or intends to appoint, to a position at the school; and
- “**(b)** who is to work at the school during normal school hours; and
- “**(c)** who is not a registered teacher or holder of a limited authority to teach.

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**“78CA Police vetting of contractors and their employees who work at schools**

“(1) The board of a State school, or the management of a school registered under section 35A, must obtain a Police vet of every contractor, or the employee of a contractor, who has, or is likely to have, unsupervised access to students at the school during normal school hours.

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“(2) In this section, **contractor** means a person who, under contract (other than an employment contract), works at a school.

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**“78CB Police vet must be obtained before person has unsupervised access to students**

“(1) A Police vet required under **section 78C or 78CA** must be obtained before the person has, or is likely to have, unsupervised access to students at the school during normal school hours.

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“(2) The board of a State school, or the management of a school registered under section 35A, that is required under **section 78C** to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the school.

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**“78CC Further Police vets to be obtained under this Part every 3 years**

“(1) The board of a State school, or the management of a school registered under section 35A, must obtain a further Police vet of every person on whom a Police vet has already been ob-

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tained under this Part by that board or management, as the case may be, and who still works at the school.

- “(2) A further Police vet required under **subsection (1)** must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person. 5
- “(3) The requirement for a further Police vet under this section does not apply to a person on whom a Police vet under **section 78C or 78CA** would not be required if he or she were about to be appointed to a position at the school or to work at the school at the time that the further Police vet would otherwise be required. 10

“**78CD Procedures relating to Police vets**

The board of a State school, or the management of a school registered under section 35A, that applies for a Police vet of a person— 15

“(a) must ensure that strict confidentiality is observed for Police vets; and

“(b) must not take adverse action in relation to a person who is the subject of a Police vet until—

“(i) the person has validated the information contained in the vet; or 20

“(ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.”

**22 Limited statutory manager** 25

(1) Section 78M is amended by inserting the following subsection after subsection (3):

“(3A) A limited statutory manager appointed under subsection (3) may be a natural person, a body corporate (including the board of another school), or a corporation sole.<sup>22</sup> 30

(2) Section 78M(4) is amended by omitting “his or her” and substituting “his, her, or its”.

(3) Section 78M(4)(b) is amended by omitting “he or she” and substituting “he, she, or it”.

**23 Dissolution of board and appointment of commissioner**

(1) Section 78N(3) is amended by omitting “it its place” and substituting “in its place”.

(2) Section 78N is amended by adding the following subsection:

“(4) A commissioner appointed under subsection (2) or (3) may be a natural person, a body corporate (including the board of another school), or a corporation sole.”<sup>22</sup> 5

**24 Commissioners**

(1) Section 78O(1) is amended by omitting “he or she” and substituting “he, she, or it”. 10

(2) Section 78O(2) is amended by adding “(in the case of a commissioner who is a natural person) or by a person authorised by the commissioner to sign on its behalf (in any other case)”.

(3) Section 78O(3) is amended by omitting “the commissioner” and substituting “a commissioner who is a natural person, and the fees and expenses of any other commissioner.” 15

**25 Commissioner sets date for election of trustees**

Section 78P(3) is amended by omitting “he or she” and substituting “he, she, or it”.

**26 Protection of limited statutory managers and commissioners** 20

(1) Section 78Q is amended by inserting “who is a natural person” after “commissioner.”

(2) Section 78Q is amended by adding the following subsection as subsection (2): 25

“(2) No body corporate or corporation sole that is a limited statutory manager or commissioner, and no director, manager, secretary, or other similar officer of the body corporate or corporation sole, is liable for any act done or omitted by him, her, or it, or for any loss arising out of any act done or omitted by him, her, or it, if the act or omission was in good faith and occurred in the course of carrying out his, her, or its functions as a limited statutory manager or commissioner.”<sup>22</sup> 30

**22 Limited statutory manager**

Section 78M is amended by inserting the following subsection after subsection (3):

- “(3A) A notice under subsection (3) appointing a person to be the limited statutory manager for the board may refer to the person appointed—
- “(a) by his or her own name; and
- “(b) as being of a named body corporate.”

**23 Dissolution of board and appointment of commissioner**

Section 78N is amended by adding the following subsection: 10

- “(4) A notice under subsection (2) or (3) appointing a commissioner for a school may refer to the person appointed—
- “(a) by his or her own name; and
- “(b) as being of a named body corporate.”

**27 Interpretation** 15

- (1) The definition of **board** in section 92(1) is amended by omitting “Part; and—” and substituting “Part; and,—”.
- (2) The definition of **principal** in section 92(1) is amended by omitting “94(c)” and substituting “94(1)(c)”.
- (3) Paragraph (c) of the definition of **special institution** in section 92(1) is amended by omitting “a hospital” and substituting “or a hospital”. 20
- (4) The definition of **State school** in section 92(1) is amended by omitting “secondary school; and—” and substituting “secondary school; and,—”. 25

**28 Boards of newly established schools**

Section 98(1) is amended by omitting “members shall be—” and substituting “members are,—”.

**29 Elections of trustees**

- (1) Section 101(4) is amended by repealing paragraph (a) and substituting the following paragraph: 30
- “(a) in the case of a school that is not a correspondence school,—

- “(i) on a date fixed by the board that is within the range of dates for those elections in that election year that is specified by the Minister by notice in the *Gazette*; or
- “(ii) if the Minister has not, by notice in the *Gazette* published on or by 31 October in any year, specified a range of dates for those elections in that election year, on a date fixed by the board that is within the range of dates for those elections in the previous election year; and”.
- (2) Section 101 is amended by inserting the following subsection after subsection (4):
- “(4A) The notice referred to in **subsection (4)(a)** may specify different ranges of dates, for elections under subsection (3), for boards that have, and for schools that have not, adopted staggered election cycles under section 101A.”
- (3) Section 101(10) is amended by adding “, and to **section 101AB** (which provides that elections are not to be held when a school is under notice of closure)”.
- 30 New section 101AB inserted**
- The following section is inserted after section 101A:
- “101AB Election not to be held when school under notice of closure**
- Nothing in this Act requires or permits the board of any school or special institution to hold an election for a student representative or other elected trustee if the date for the election calculated in accordance with section 101 or 101A (as the case may be) is after the date of any notice in the *Gazette* that, in accordance with section 154(2), specifies a day for the school’s closure.”
- 31 Term of office**
- Section 102(2) is amended by omitting “commissioner goes out of office” and substituting “commissioner’s appointment ends”.

**32 New section 110A inserted**

The following section is inserted after section 110:

**“110A Minister may combine boards at establishment**

“(1) A Minister may, by notice in the *Gazette*, establish a combined board for 2 or more schools that are newly established under section 146. 5

“(2) The combined board is the board of a newly established school for the purposes of section 98.”

**32A Minister may split combined board**

Section 112(3) is amended by omitting “subsection (4) of this section” and substituting “subsection (4) and **section 112A**”. 10

**32B New section 112A inserted**

The following section is inserted after section 112:

**“112A Splitting boards that were combined at establishment**

“(1) A Minister who, under section 112(1), is splitting a board that was combined under **section 110A** at establishment for 2 or more schools may designate 1 of the boards established under section 112(1) as being identical to the board that was established under **section 110A**, except that it need not be a combined board. 15 20

“(2) A board that is designated under **subsection (1)** is to be treated, for the purposes of section 98, as if it were the board of a newly established school.

“(3) This section overrides section 112(3)(b) and (4)(a).”

**33 Applications for registration as teacher**

The compare note for section 121 is repealed. 25

**34 Full registration**

The compare note for section 122 is repealed.

**35 Teachers Council to keep register**

The compare note for section 128 is repealed. 30

**36 New section 128A inserted**

The following section is inserted after section 128:

**“128A Matching of register information and information about payment of teacher salaries at payrolled schools**

- “(1) The purpose of this section is to facilitate the exchange of information between the Ministry and the Teachers Council for the purposes of enabling— 5
- “(a) the Teachers Council, in regard to people employed in teaching positions, to identify—
- “(i) the person’s employer; and
- “(ii) the person’s registration status; and
- “(b) the Ministry, in regard to regular teachers in receipt of salaries at payrolled schools, to identify their salary entitlement or eligibility, if any, for an allowance on the basis of their registration, if any. 10
- “(2) For the purpose set out in **subsection (1)(a)**, the Teachers Council may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teachers Council,— 15
- “(a) require the Secretary to supply all or any of the following information in regard to all or any regular teachers in receipt of salaries at payrolled schools: 20
- “(i) surname:
- “(ii) first name:
- “(iii) date of birth:
- “(iv) gender:
- “(v) address: 25
- “(vi) the school at which the person is employed:
- “(vii) payroll number:
- “(viii) registration number; and
- “(b) compare the information supplied under **paragraph (a)** with the information contained in the register. 30
- “(3) For the purpose set out in **subsection (1)(b)**, the Secretary may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teachers Council,—
- “(a) require the Teachers Council to supply all or any of the following information in regard to all or any people registered as teachers: 35
- “(i) surname:
- “(ii) first name:

- “(iii) date of birth:  
“(iv) gender:  
“(v) address:  
“(vi) the school at which the person is employed:  
“(vii) registration number: 5  
“(viii) registration expiry date:  
“(ix) registration classification; and  
“(b) compare the information supplied under **paragraph (a)** with the information held by the Ministry in regard to teachers. 10
- “(4) In this section, **Ministry, payrolled school, regular teacher, school,** and **Secretary** have the same meanings as in section 91A.”
- 37 Offences**  
The compare note for section 137 is repealed. 15
- 38 Functions of Teachers Council**  
Section 139AE(k) is amended by omitting “and other people employed in schools and early childhood services”.
- 39 Powers of Complaints Assessment Committee**  
Section 139AT(2) is amended by repealing paragraph (c) and substituting the following paragraph: 20  
“(c) refer the teacher concerned to an impairment process which may involve either or both of the following:  
“(i) assessment of an impairment:  
“(ii) assistance with an impairment.”. 25
- 40 Interim suspension to enable investigation**  
(1) The heading to section 139AU is amended by omitting “**to enable investigation**” and substituting “**until complaint of possible serious misconduct concluded**”.  
(2) Section 139AU(1) is amended by inserting “chairperson of the” before “Disciplinary Tribunal”. 30  
(3) Section 139AU is amended by inserting the following subsection after subsection (1):

- “(1A) The Complaints Assessment Committee may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of a teacher’s practising certificate or authority, if—
- “(a) a complaint of possible serious misconduct about the teacher has been referred to the Complaints Assessment Committee under section 139AS; and 5
- “(b) the alleged misconduct is the subject of an investigation by—
- “(i) the New Zealand Police; or
- “(ii) the teacher’s employer.” 10
- (4) Section 139AU is amended by repealing subsection (2) and substituting the following subsection:
- “(2) On an application under subsection (1) or **(1A)** for an interim suspension, the chairperson of the Disciplinary Tribunal may, either with or without a hearing, suspend the teacher’s practising certificate or authority.” 15

#### **41 New section 139AUA inserted**

The following section is inserted after section 139AU:

##### **“139AUA Duration of interim suspension**

- “(1) The duration of an interim suspension under section 139AU is initially until the earliest of the following occurs: 20
- “(a) the expiry of a period, specified by the chairperson of the Disciplinary Tribunal, that is less than 3 months;
- “(b) the expiry of a period of 3 months after the interim suspension commences: 25
- “(c) any conditions specified by the chairperson of the Disciplinary Tribunal are met;
- “(d) the interim suspension is otherwise lifted or revoked, for example, as the result of a review under **subsection (2)**. 30
- “(2) The chairperson of the Disciplinary Tribunal must review his or her initial interim suspension decision, if the teacher—
- “(a) requests him or her to do so at any time during the initial interim period of suspension; and
- “(b) provides a written explanation or statement in support of the request. 35
- “(3) The Disciplinary Tribunal may renew an interim suspension under section 139AU for further successive periods of no more

than 3 months each, if, at the end of the relevant period of interim suspension,—

“(a) the matter has not been concluded; and

“(b) the interim suspension has not been otherwise lifted or revoked, for example, as the result of an appeal against it under **subsection (4)**. 5

“(4) A teacher whose practising certificate or authority is subject to an interim suspension under section 139AU that is renewed under **subsection (3)** may, at any time during a further period of interim suspension, make representations in respect of the interim suspension to the Disciplinary Tribunal at a hearing, if he or she believes that there is an unreasonable delay in concluding the matter. 10

“(5) A hearing under **subsection (4)** is a hearing before the Disciplinary Tribunal, and sections 139AX to 139AZB apply to it. 15

“(6) For the purposes of this section, a matter is concluded when the latest of the following occurs in relation to the complaint:

“(a) the Complaints Assessment Committee has carried out whatever action it decides to take under section 139AT(2)(a) to (d): 20

“(b) the Complaints Assessment Committee has carried out whatever action it decides to take under section 139AV(2)(a) to (d):

“(c) the Disciplinary Tribunal has carried out whatever action it decides to take under section 139AW(1)(a) to (i), if the Complaints Assessment Committee has referred the matter to the Disciplinary Tribunal under any of sections 139AT(3) or (4) or 139AV(3).” 25

#### **42 Investigation by Complaints Assessment Committee of reports of convictions 30**

Section 139AV(2) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) refer the teacher concerned to an impairment process which may involve either or both of the following: 35

“(i) assessment of an impairment:

“(ii) assistance with an impairment.”

**43 Complaints about competence**

- (1) Section 139AZC(8) is amended by omitting “may—” and substituting “may do any of the following:”.
- (2) Section 139AZC(8) is amended by repealing paragraph (b) and substituting the following paragraph: 5
- “(b) refer the teacher to an impairment process which may involve either or both of the following:
- “(i) assessment of an impairment:
- “(ii) assistance with an impairment.”.

**44 Teachers Council must co-ordinate Police vetting** 10

- (1) Section 139AZD is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The Teachers Council must establish a system for co-ordinating Police vetting, in relation to—
- “(a) teacher registration and the issue of practising certificates; and 15
- “(b) the granting of limited authorities to teach.”
- (2) Section 139AZD(3) is repealed.
- (3) Section 139AZD(4) is amended by omitting “purposes and for those requested by boards and managements” and substituting “purposes,”. 20

**45 Interpretation**

Section 159 is amended by repealing the definition of **New Zealand apprenticeship committee**.

**46 Minister may dissolve council and appoint commissioner** 25

Section 195D(7) is amended by omitting “is it” and substituting “it is”.

**47 Transfer of Crown assets and liabilities to institutions**

Section 206(10) is amended by—

(a) inserting “, or under section 168 of the Resource Management Act 1991,” after “the Town and Country Planning Act 1977” in the first place where it appears; and 30

- (b) inserting “, or in the Resource Management Act 1991, (as the case may be)” after “the Town and Country Planning Act 1977” in the second place where it appears.

- 48 Provisions relating to transfer of land** 5  
Section 207(5) is amended by adding the following paragraphs:  
“(f) sections 10 and 11 of the Crown Minerals Act 1991:  
“(g) section 354 of the Resource Management Act 1991.”
- 49 Annual report** 10  
Section 220(2A)(e)(ii) is amended by omitting “institution:” and substituting “institution; and”.
- 50 Disclosure of enrolment information by institutions**  
Section 226A(9) is amended by omitting “section 226A of the Education Act 1989” and substituting “this section”.
- 51 Heading after section 229D repealed** 15  
The heading after section 229D is repealed.
- 52 Export education levy**  
Section 238H(2)(d) is amended by omitting “provider; and” and substituting “provider.”
- 53 Definitions** 20
- (1) The definition of **secondary school** in section 246 is repealed.
- (2) Section 246 is amended by inserting the following definition in its appropriate alphabetical order:  
“**relevant school** means—  
“(a) a secondary school (as that term is defined in section 25 2(1)); or  
“(b) a composite school (as that term is defined in section 2(1)); or  
“(c) a school that is registered under section 35A, but does not include any school registered under that section only 30 as a primary school (as that term is defined in section 2(1)); or

“(d) a special school (as that term is defined in **section 2(2)**, except that a special school is not deemed to be a primary school for the purposes of this Part, despite the proviso to section 98(1) of the Education Act 1964)”.

- 54 Functions of Authority** 5
- (1) Section 253(1)(a) is amended by omitting “secondary” and substituting “relevant”.
- (2) Section 253(1)(b) is amended by—
- (a) omitting “secondary” and substituting “relevant”; and
- (b) omitting “or private training establishment”. 10
- (3) Section 253(1)(c) is amended by omitting “secondary” and substituting “relevant”.
- (4) Section 253(1)(d) is amended by omitting “and private training establishments”.
- (5) Section 253(1)(e) is amended by omitting “, secondary schools, and private training establishments”. 15
- (6) Section 253(1)(f) is amended by omitting “, secondary schools, or private training establishments”.
- (7) Section 253 is amended by inserting the following subsection after subsection (1): 20
- “(1A) In this section, **institution** means an institution, government training establishment, registered establishment, or relevant school.”
- 55 Power to obtain information**
- Section 255(1AA) is amended by omitting “secondary” and substituting “relevant”. 25
- 56 Compliance notices**
- Section 255A(1) is amended by omitting “secondary” and substituting “relevant”.
- 57 Approval of courses** 30
- Section 258(1A) is amended by omitting “secondary” and substituting “relevant”.

**58 Conditions on course approvals**

Section 258A is amended by inserting the following subsection before subsection (1):

“(1AA) In this section, **institution** includes institutions, government training establishments, registered establishments, relevant schools, and other bodies.” 5

**59 Accreditation to provide approved courses**

Section 259(1A) is amended by omitting “secondary” and substituting “relevant”.

**60 Conditions on accreditation to provide approved courses** 10

Section 259A is amended by inserting the following subsection before subsection (1):

“(1AA) In this section, **institution** means an institution, government training establishment, registered establishment, or relevant school.” 15

**61 Fees**

Section 266(2) is amended by omitting “secondary” and substituting “relevant”.

**62 Powers of Minister**

Section 268(1) is amended by omitting “secondary” and substituting “relevant”. 20

**63 Continuation of Board**

Section 281(2)(b) is amended by omitting “members; and” and substituting “members.”

**64 New section 283C substituted** 25

Section 283C is repealed and the following section substituted:

**“283C Contents of statement of intent**

In addition to the information required under section 141 of the Crown Entities Act 2004, every statement of intent must specify— 30

“(a) the services that the Board is to provide; and

“(b) the persons for whom or which the services are to be provided.”

**65 Recipients of allowances or student loans may be required to provide information**

(1) The heading to section 307 is amended by inserting “, and **other persons,**” after “**loans**”. 5

(2) Section 307(1) is amended by inserting “and sections **307AAA** and 307AA” after “this section”.

(3) Section 307(1) is amended by inserting the following definitions in their appropriate alphabetical order: 10

“**change in the recipient’s circumstances** includes a change in another person’s circumstances that—

“(a) the recipient knows about; and

“(b) the recipient knows materially affects his or her entitlement to a statutory allowance or student loan, or a particular rate of statutory allowance or a particular amount of a student loan 15

“**non-recipient** means a person who is not a recipient, and—

“(a) includes a person who is acting in his or her official capacity as an officer or employee of a department of State or public body; but 20

“(b) does not include a person acting in his or her capacity as an officer of a court”.

(4) Section 307(5) is amended by omitting “person (whether or not a recipient)” and substituting “recipient or non-recipient”. 25

(5) Section 307 is amended by repealing subsections (6) to (7) and substituting the following subsection:

“(6) A recipient must notify the Secretary, as soon as practicable, of any change in the recipient’s circumstances that materially affects his or her entitlement at any time— 30

“(a) to a statutory allowance or student loan; or

“(b) to be paid a statutory allowance at a particular rate or a particular amount of a student loan.”

**66 New section 307AAA inserted**

The following section is inserted after section 307: 35

**“307AAA Suspension or refusal for not providing information**

- “(1) The Secretary may do whichever of the following the case requires, if he or she is satisfied that a recipient or non-recipient has, without reasonable cause, failed or refused to comply with a requirement under section 307(3) or to comply with section 307(5) and, in the case of a recipient, that the recipient has been warned of the consequence of the failure or refusal and given the opportunity to show reasonable cause or answer the question:
- “(a) suspend any statutory allowance held by the recipient, whether granted before or after the failure or refusal:
- “(b) refuse to grant any statutory allowance, or refuse to advance any student loan, to the recipient, whether or not the recipient may appear to be entitled to be granted the allowance or advanced the loan.
- “(2) Despite **subsection (1)**, the recipient must be given an opportunity to provide the information sought before any action is taken in respect of him or her under **subsection (1)**, if the failure or refusal to comply is by a non-recipient.
- “(3) Payments must not be made under a statutory allowance while it is suspended under **subsection (1)**.”

**67 Offences concerning allowances**

- (1) Section 307AA(1) is amended by omitting “(4)” and substituting “(5)”.
- (2) Section 307AA is amended by repealing subsections (2) and (2A) and substituting the following subsections:
- “(2) A recipient or non-recipient commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$2,000 who refuses to comply with section 307(5).
- “(2A) A recipient commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 if he or she, for the purpose of receiving or continuing to receive a statutory allowance or student loan, or a statutory allowance at a particular rate or any amount of a student loan, other than that to which he or she is entitled,—
- “(a) knowingly makes a false or misleading statement in an application for a statutory allowance or student loan; or

- “(b) knowingly makes a false or misleading statement in a notification of a change in the recipient’s circumstances that materially affects his or her entitlement at any time—
- “(i) to a statutory allowance or student loan; or 5
- “(ii) to be paid a statutory allowance at a particular rate or a particular amount of a student loan; or
- “(c) wilfully fails to comply with **section 307(6)**.”
- 68 Use of student allowance information for purposes of Social Security Act 1964** 10
- Section 307A(2)(e) is amended by omitting “information, about” and substituting “information about”.
- 69 Interpretation**
- (1) Section 309 is amended by repealing the definition of **hospital-based education and care service** and substituting the following definition: 15
- “**hospital-based education and care service** means the provision of education or care to 3 or more children under the age of 6 who are receiving hospital care within the meaning of section 4(1) of the Health and Disability Services (Safety) Act 2001”. 20
- (2) Section 309 is amended by repealing the definition of **playgroup** and substituting the following definition: 25
- “**playgroup** means a group that meets on a regular basis to facilitate children’s play and in respect of which—
- “(a) no child attends for more than 4 hours on any day; and
- “(b) more than half the children attending on any occasion have a parent or caregiver present in the same play area at the same time; and
- “(c) the total number of children attending on any occasion is not greater than 4 times the number of parents and caregivers present in the same play area at the same time”. 30
- (3) Section 309 is amended by inserting the following definition in its appropriate alphabetical order: 35

“**unsupervised access to children**, in relation to a licensed early childhood service, means access to any child that is not access by, or supervised by, or otherwise observed by, or able to be directed (if necessary) by, any 1 or more of the following:

- “(a) a registered teacher or holder of a limited authority to teach: 5
- “(b) an employee of the service on whom a satisfactory Police vet has been conducted within the last 3 years:
- “(c) a parent of the child”.

**70 New sections 319D to ~~319FB~~ 319FE substituted** 10  
Sections 319D to 319F are repealed and the following sections substituted:

“**319D Police vetting of non-teaching and unregistered employees at licensed early childhood services**

The service provider of a licensed early childhood service must obtain a Police vet of every person— 15

- “(a) whom the service provider appoints, or intends to appoint, to a position at the early childhood service; and
- “(b) who is to work at the service during normal opening hours; and 20
- “(c) who is not a registered teacher or holder of a limited authority to teach.

“**319E Police vetting of contractors and their employees who work at licensed early childhood services**

“(1) The service provider of a licensed early childhood service must obtain a Police vet of every contractor, or the employee of a contractor, who has, or is likely to have, unsupervised access to children at the service during normal opening hours. 25

“(2) In this section, **contractor** means a person who, under contract (other than an employment contract), works at a licensed early childhood service. 30

“**319F Police vet must be obtained before person has unsupervised access to children**

“(1) A Police vet required under **section 319D or 319E** must be obtained before the person has, or is likely to have, unsuper- 35

vised access to children at the service during normal opening hours.

“(2) The service provider of a licensed early childhood service that is required under **section 319D** to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the service. 5

~~“319FA Further Police vets to be obtained every 3 years~~

~~“(1) The service provider of a licensed early childhood service must obtain a further Police vet of every person on whom a Police vet has already been obtained by that service provider. 10~~

~~“(2) A further Police vet required under **subsection (1)** must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person.~~

~~“319FB Procedures relating to Police vets~~

~~The service provider of a licensed early childhood service that applies for a Police vet of a person— 15~~

~~“(a) must ensure that strict confidentiality is observed for Police vets; and~~

~~“(b) must not take adverse action in relation to a person who is the subject of a Police vet until— 20~~

~~“(i) the person has validated the information contained in the vet; or~~

~~“(ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period. 25~~

~~“319FA Procedures relating to Police vets under section 319D or 319E~~

~~The service provider of a licensed early childhood service that applies for a Police vet of a person under **section 319D or 319E**— 30~~

~~“(a) must ensure that strict confidentiality is observed for Police vets; and~~

~~“(b) must not take adverse action in relation to a person who is the subject of a Police vet until—~~

~~“(i) the person has validated the information contained in the vet; or 35~~

“(ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

“Police vetting of household members for home-based services” 5

**“319FB Police vetting of adult members of household where licensed home-based education and care service provided**

“(1) The service provider of a licensed home-based education and care service must obtain a Police vet of every adult who lives in a home— 10

“(a) where the service is being provided; but

“(b) that is not the home of every child to whom the service is being provided.

“(2) In this section, **adult** means a person who is of or over the age of 17 years. 15

**“319FC When Police vet under section 319FB must be obtained**

A Police vet required under **section 319FB** must be obtained before the adult is, or is likely to be, present when the service is being provided.

**“319FD Procedures relating to Police vets under section 319FB” 20**

The service provider of a licensed home-based education and care service that applies for a Police vet of a person under **section 319FB**—

“(a) must ensure that strict confidentiality is observed for Police vets; and 25

“(b) must not take adverse action in relation to the person providing the education or care until the person who is the subject of the Police vet has—

“(i) validated the information contained in the vet; or

“(ii) been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period. 30

“Service provider to obtain further Police vets  
under this Part every 3 years”

**“319FE Further Police vets to be obtained every 3 years**

- “(1) The service provider of a licensed early childhood service must obtain a further Police vet of every person— 5
- “(a) on whom a Police vet has already been obtained under this Part by that service provider; and
- “(b) who still works at the service, or lives in the home, as the case may be.
- “(2) A further Police vet required under **subsection (1)** must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person. 10
- “(3) The requirement for a further Police vet under this section does not apply to a person on whom a Police vet under **section 319D or 319E** would not be required if he or she were about to be appointed to a position at the licensed early childhood service or to work at the service at the time that the further Police vet would otherwise be required.” 15

- 71 Powers of review officers for purposes of sections 328A to 328D** 20
- Section 328C(2) is amended by omitting “dwelling house” and substituting “dwellinghouse”.

**72 Schedule 5A amended**

- (1) The Schedule 5A heading is amended by omitting “s 5” and substituting “s 65H”. 25
- (2) The item relating to section 119 in Schedule 5A is amended by omitting “ss 84–84B” and substituting “sections 84 to 84B”.

**73 Schedule 6 amended**

- Clause 8 of Schedule 6 is amended by repealing subclause (3) and substituting the following subclause: 30
- “(3) When a casual vacancy occurs, the person for the time being appointed under clause 7 or, where there is no such person, the principal must fix a place for a meeting of the board to deal with the vacancy, and a time for the meeting that is—

- “(a) within 28 days of the vacancy occurring, if it occurs during any period of 6 months commencing on 1 October in a year before an election year; or  
 “(b) within 8 weeks of the vacancy occurring, if it occurs at any other time.”

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**74 Schedule 10 amended**

- (1) The item relating to the Education Lands Act 1949 in Schedule 10 is amended by omitting “(RS Vol 6, p 237)” and substituting “(1949 No 24)”.
- (2) The item relating to the Local Government Official Information and Meetings Act 1987 in Schedule 10 is amended by inserting “(1987 No 174)” after “1987”.
- (3) The item relating to the Official Information Act 1982 in Schedule 10 is amended by inserting “(1982 No 156)” after “1982”.
- (4) The item relating to the Ombudsmen Act 1975 in Schedule 10 is amended by inserting “(1975 No 9)” after “1975”.
- (5) The item relating to the State Sector Act 1988 in Schedule 10 is amended by inserting “(1988 No 20)” after “1988”.

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**75 Schedule 13A amended**

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- (1) The Schedule 13A heading is amended by omitting “s 6” and substituting “s 203”.
- (2) The item relating to section 119 in Schedule 13A is amended by omitting “ss 84–84B” and substituting “sections 84 to 84B”.
- (3) The item relating to section 154 in Schedule 13A is amended by—
- (a) omitting “s 220(2)–(2B)” and substituting “section 220(2) to (2B)”; and
- (b) omitting “Sch 6” and substituting “Schedule 6”.

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## Part 2

### Transitional provision, validations, and consequential amendments

#### *Transitional provision in relation to Police vetting*

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#### 76 Transitional provision in relation to Police vetting

Despite ~~sections 21 and 70~~ of this Act, **sections 78C, 78CA, 319D, and 319E** of the Education Act 1989 (as substituted by **sections 21 and 70** of this Act), and **section 319FB** of the Education Act 1989 (as inserted by **section 70** of this Act), the board of a State school, or the management of a school registered under section 35A, or a service provider of a licensed early childhood service (as the case may be) must, within ~~8~~ 4 weeks after the date on which this Act comes into force, ~~obtain~~ apply for a Police vet of any person in respect of whom—

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- (a) a Police vet is required under **section 78C, 78CA, 319D, or 319E** of the Education Act 1989 (as substituted by this Act) or under **section 319FB** of the Education Act 1989 (as inserted by this Act); and
- (b) no Police vet has been obtained within a period of 3 years immediately before the commencement of this Act, by—
  - (i) that board, management, or service provider; or
  - (ii) the New Zealand Teachers Council, at the request of that board, management, or service provider.

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#### *Validations*

#### 77 Validation in respect of Part 20

The validity of any action of the Authority must be determined as if at all material times—

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- (a) section 246 of the Education Act 1989—
  - (i) contained the definition of **relevant school** inserted by **section 53** of this Act; and
  - (ii) did not contain the definition of **secondary school**, as repealed by **section 53** of this Act; and

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- (b) every other reference in Part 20 of the Education Act 1989 to a **secondary school** were a reference to a **relevant school**, within the meaning of that term as inserted in section 246 of that Act by **section 53** of this Act.

**78 Validation in respect of change of proprietor of integrated school** 5

- (1) For the purposes of the Education Act 1989, actions done under that Act or under the Private Schools Conditional Integration Act 1975 before the commencement of this Act are not invalid solely because of a defect or error in the processes relating to a change of proprietor of an integrated school. 10
- (2) In this section, **integrated school** and **proprietor** have the same meanings as in section 2(1) of the Private Schools Conditional Integration Act 1975.

*Consequential amendments to Privacy Act 1993* 15

**79 Consequential amendments to Privacy Act 1993**

- (1) This section amends the Privacy Act 1993.
- (2) The definition of **specified agency** in section 97 is amended by adding the following paragraph:
- “(1) the New Zealand Teachers Council established under Part 10A of the Education Act 1989.” 20
- (3) The item relating to the Education Act 1989 in Schedule 3 is amended by inserting “**128A**,” after “Sections”.

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**Legislative history**

9 April 2009  
28 April 2009

Introduction (Bill 25-1)  
First reading and referral to Education and Science  
Committee

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