

Impact Summary: Prohibiting the awarding of NCEA offshore

Section 1: General information

Purpose

The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet on proposals to prohibit the awarding of National Certificate of Educational Achievement (NCEA) offshore.

The proposed prohibition was approved in principle by the Social Wellbeing Cabinet Committee on 1 May 2019 when it agreed to release the proposal for public consultation [SWC-19-MIN-0041 and CAB-19-MIN-0023].

If final policy proposals are approved by Cabinet, the prohibition will be incorporated into the Education and Training Bill (the Bill). The Bill will repeal and replace the Education Acts 1989 and 1964, and the Industry Training and Apprenticeships Act 1992, with new education and training legislation.

The Bill is scheduled for introduction later this year.

Key Limitations or Constraints on Analysis

The groups most directly affected by the proposal are private schools and tertiary education providers (TEPs) who will no longer be allowed to award NCEA offshore. We are not aware of any private schools or TEPs offering NCEA offshore currently and have assumed this to be the status quo for the purposes of this analysis.

We tested this assumption through the public consultation process that ran from 14 May to 14 June 2019. We wrote directly to each TEP informing them about the proposal and submissions process. We provided the same information to private schools through the School Bulletin (a national publication sent out regularly to all schools) and their peak body, Independent Schools New Zealand. The Ministry's social media platforms also advertised the consultation on the proposed change.

We did not receive any submissions from TEPs and only received one submission from a private school (based in Fiji).


Responsible Manager (signature and date):

Andrea Schöllmann

Deputy Secretary

Education System Policy

Ministry of Education



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Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

NCEA is New Zealand's main national qualification for senior secondary school students. The Education Act 1989 prevents State¹ schools from awarding NCEA offshore. The only exceptions are correspondence schools (New Zealand currently has only one established correspondence school, Te Aho o Te Kura Pounamu | the Correspondence School) and schools in Pacific Realm countries (such as the Cook Islands and Niue) with which New Zealand has cross-government agreements enabling secondary schools in those countries to award NCEA.

Currently, there are no legislative barriers to private schools and TEPs assessing standards which could lead to the award of NCEA to students living offshore. Those private schools or TEPs that wish to assess standards leading to the award of NCEA to students based offshore must have consent to assess from NZQA. The current NZQA consent to assess rules apply to all students of the provider. Using the consent process to stop a school or TEP from offering NCEA offshore would also prevent them from offering NCEA in New Zealand.

There are risks with awarding NCEA offshore:

- NCEA has been developed for a New Zealand context, and is not readily transferable to other educational systems and contexts;
- NCEA is based on standards-based assessment with a significant proportion of internal assessment. This means high levels of quality assurance and moderation are needed;
- When NCEA is offered offshore, the school or provider's connection with the broader educational system could become weaker, creating risks to the quality and consistency of teaching and assessment;
- The delivery of NCEA offshore could create a risk to New Zealand's educational reputation and perceptions of the quality and robustness of the NCEA qualification, both in New Zealand and offshore.

It is therefore proposed that the awarding of NCEA offshore be prohibited through an amendment to the Education Act 1989. This would mean that State schools, private schools

¹ The definition of State schools includes State integrated schools.

and TEPs would not be able to offer NCEA offshore. TEPs would be permitted to offer unit standards offshore that lead to qualifications other than NCEA, and which can also contribute to NCEA, where this provision is not aimed at NCEA.

There will be two exceptions to the prohibition:

- correspondence schools would be able to continue awarding NCEA to domestic students based offshore;
- NCEA could continue to be awarded in Pacific Realm countries (such as the Cook Islands and Niue) with which New Zealand has cross-government agreements enabling secondary schools in those countries to award NCEA.

Breaching the prohibition will be an offence carrying a penalty of a maximum fine of \$10,000 for an institution.

2.2 Who is affected and how?

The proposed prohibition would prevent private schools and TEPs from assessing standards which could lead to the award of NCEA to students living offshore. While the Ministry of Education and NZQA are not aware of any private schools and TEPs currently offering NCEA offshore, several State and private schools and TEPs have expressed interest in doing so.

Prohibiting private schools and TEPs from being able to award NCEA offshore would preserve the standard and reputation of NCEA. It would also ensure that State schools are not disadvantaged in relation to private schools, in terms of their ability to gain income through awarding NCEA offshore.

The Ministry of Education and NZQA have an interest in protecting the reputation of NCEA by closing the legislative loophole which currently enables private schools and TEPs to award NCEA offshore.

2.3 Are there any constraints on the scope for decision making?

There are no constraints on the scope for decision making and there are no interdependencies or connections to existing issues or ongoing work.

Section 3: Options identification

3.1 What options have been considered?

Options for prohibition

The key objective of the proposed prohibition is to protect the quality and reputation of NCEA. To enable this to happen the legislative loophole that currently allows private schools and TEPs to award NCEA offshore must be closed. Three options have been considered in line with the objective.

Option A - Status quo

Under this option, private schools and TEPs would continue to be allowed to award NCEA offshore and no measures would be put in place to address the concerns and risks identified in 2.1. This option was discarded because it would not address those concerns and risks. In

addition to this, State schools would be at a competitive disadvantage to private schools, in terms of their ability to gain income and enhance their reputation through awarding NCEA offshore. Creating a level playing field by allowing State schools to award NCEA offshore would exacerbate the risks in 2.1.

Option B – Amend the 1989 Act to prohibit the awarding of NCEA offshore

Under this option the 1989 Act would be amended to prohibit the awarding of NCEA to students based offshore with two exceptions:

- Correspondence schools could continue to award NCEA to domestic students based offshore
- NCEA could continue to be awarded in Pacific Realm countries (such as the Cook Islands and Niue) with which New Zealand has cross-government agreements enabling secondary schools in those countries to award NCEA.

The prohibition would be supported by a new offence carrying a maximum penalty of a \$10,000 fine for an institution.

Option C – Amend the 1989 Act to restrict the awarding of NCEA offshore

Under this option, the 1989 Act would be amended to empower NZQA to make rules setting requirements that private schools and TEPs would have to meet in order to be approved by NZQA to award NCEA offshore. The rules would be aimed at addressing the risks and concerns in 2.1. Providers that did not meet the requirements would be prohibited from awarding NCEA offshore.

This option was discarded because we do not consider that private schools and TEPs could adequately mitigate the risks identified in 2.1. NZQA should therefore not be empowered to permit any of these entities to award NCEA offshore.

Options for sanctions

We proposed to support the prohibition with a new offence provision or other sanction to be determined following consideration of feedback from the public consultation. We did not consult on a specific sanction or options for sanctions. Only one submitter commented on the proposal to create a sanction, recommending that the fine should be more than a year's tuition fees.

We identified two options for a sanction to support the prohibition.

Option A – status quo

Under this option, existing sanctions under the 1989 Act would be used to enforce compliance with the prohibition. There are several offences that could apply to aspects of the prohibited conduct, including:

- offences relating to the use of certain terms under section 292 could apply in some circumstances where a provider purports to be approved by NZQA to award NCEA offshore;
- offences relating to false representations under section 292A could apply where breaching the prohibition involves false advertising.

However, none of these offences cover all aspects of the prohibited conduct so there would be gaps in coverage. For example, prosecution could be used under section 292, but not if the provider had an existing consent to assess that allowed them to award NCEA in NZ (since the offence does not distinguish between New Zealand and anywhere else), and not if they awarded NCEA without using the terms “national” or “New Zealand” (“NCEA” is not one of the terms provided for in that offence provision.). In relation to section 292A, prosecution would not be possible where prohibition breaches involve false representations but not false advertising. It is therefore possible that in some circumstances, existing offences under the 1989 Act will not apply when the prohibition is breached.

As an alternative, NZQA could withdraw a consent, under section 252 of the 1989 Act, for a provider to assess students against standards leading to NCEA. As current consent to assess rules apply to all NCEA provision by that provider, this would prevent them from offering NCEA on shore as well as offshore. This could impact existing New Zealand students of that provider and could, in some cases, be a disproportionately harsh response to the nature and severity of the breach. We therefore consider existing sanctions under the 1989 Act inadequate for incentivising and enforcing compliance with the prohibition.

Option B – new offence with a maximum penalty of \$10,000

This is our preferred option. Under this option, the 1989 Act would be amended to provide that it is an offence to breach the prohibition punishable by a maximum fine of \$10,000 for an institution. The proposed penalty is the same as existing penalties for the above offences under the 1989 Act that target similar types of wrongdoing. Those offence provisions provide for a maximum fine of \$10,000 on conviction.

Compliance with the prohibition will be enforced by NZQA. The new offence will complement NZQA’s existing enforcement powers to enable a flexible and proportionate response to non-compliance. In addition to the power to withdraw a consent, NZQA also has powers to issue compliance notices and to vary or impose new conditions in relation to a consent. Depending on the nature and severity of the breach, in some cases it may be appropriate to use one or more of these existing powers. But as outlined above, there will likely be situations where prosecuting the proposed new offence will be the more appropriate response.

3.2 Which of these options is the proposed approach?

Preferred option to prohibit the awarding of NCEA offshore

Our preferred option is Option B. The Education Act 1989 would be amended to explicitly prohibit the awarding of NCEA to students based offshore, with two exceptions:

- correspondence schools will continue awarding NCEA to domestic students based offshore;
- NCEA could continue to be awarded in Pacific Realm countries (such as the Cook Islands and Niue) with which New Zealand has cross-government agreements enabling secondary schools in those countries to award NCEA.

This is the preferred option as it is the only option that will prohibit private schools and TEPs from awarding NCEA offshore and will eliminate the risks associated with that. A prohibition

that is located in primary legislation provides clarity for the public on the law and makes it more accessible for an institution that is trying to determine what its obligations are.

This option also most effectively mitigates the risks with awarding NCEA offshore identified in 2.1.

Preferred option for sanctions

Our preferred option for the sanction is Option B. It addresses gaps in the existing range of sanctions available under the 1989 Act and complements these to enable a graduated and proportionate response depending on the level of risk and harm related to the conduct. For some breaches, it may be sufficient to issue a compliance notice but for others, it may be necessary to withdraw a consent to award NCEA and/or prosecute the new offence.

There are no areas of incompatibility with the Government's 'Expectations for the design of regulatory systems'.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts
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Additional costs of proposed approach, compared to taking no action

Regulated parties	There may be a loss of opportunity for future income for the private schools and TEPs that expressed an interest in offering NCEA offshore.	Nil
Regulators	There may be marginal additional costs for NZQA in enforcing the prohibition	Low
Wider government	N/A	N/A
Other parties	N/A	N/A
Total Monetised Cost	N/A	N/A
Non-monetised costs	Marginal additional costs for NZQA.	Low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	N/A	N/A
Regulators	The prohibition may save NZQA resources that would be spent on quality assurance and	Low

	protecting the reputation of NCEA.	
Wider government	As NCEA is New Zealand's main national qualification for senior secondary school students, the wider government would benefit from the prohibition as this would protect the reputation of NCEA.	Low
Other parties	State schools will no longer be disadvantaged in relation to private schools, in terms of their ability to gain income and enhance reputational status through awarding NCEA offshore.	Low
Total Monetised Benefit	N/A	N/A
Non-monetised benefits	There could be minimal savings for NZQA who would otherwise have to expend resource to protect the reputation of NCEA that Could be put at risk by offshore provision.	Low
4.2 What other impacts is this approach likely to have?		
None.		

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

The Ministry of Education, as the owner of NCEA, and NZQA, as the Crown entity tasked with providing leadership in assessment and qualifications, have an interest in protecting the reputation of NCEA. The Ministry of Education has consulted NZQA throughout the policy development process. Both consider that in order to protect the reputation of NCEA, private schools and TEPs should be prohibited from offering NCEA offshore.

TEPs and private schools are key stakeholders. As part of the public consultation on this proposal, we wrote directly to all TEPs and contacted private schools through the School Bulletin informing them of the proposal and inviting them to make a submission. We also contacted their peak bodies. We received eight submissions on this proposal. Six of these were in favour of the proposal, one did not express a view, and one was opposed. We did not receive any submissions from TEPs and only received one submission from a private school (based in Fiji). The private school opposed the proposal.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Legislative vehicle

The prohibition will be implemented through the Education and Training Bill.

Communications

There will be a communications strategy for publicly announcing the commencement of the new legislation (Education and Training Bill) that will give effect to this proposal. This will likely include communicating to all schools through the School Bulletin, informing relevant peak bodies and emailing TEPs individually. The Ministry of Education and NZQA's social

media platforms will also publicise the law change.

Transitional arrangements

The Ministry of Education and NZQA are not aware of any offshore students currently expecting to be awarded NCEA that do not fall into one of the exception categories. We used the public consultation process to see if there were any students in this situation and had proposed to set up transitional arrangements to enable the students to complete the NCEA level that they are currently enrolled in. We did not receive any information indicating that there is a need for transitional arrangements and are therefore not proposing to provide for this in the Bill.

Enforcement strategy

NZQA will enforce compliance with the prohibition. This is consistent with its existing mandate and experience under the 1989 Act which includes the prosecution of related offences and the use of other incentives and deterrents aimed at enabling a flexible, graduated and proportionate approach to obtaining compliance.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The Ministry of Education uses a range of monitoring, evaluating and reviewing mechanisms to find out about the impact of regulatory changes on education providers. These mechanisms occur in the context of regular and ongoing relationships between education providers and the Ministry of Education. Additionally, there are regular meetings with a range of advisory groups and peak bodies, which are both topic and sector specific, which are used to collect feedback on the impacts of regulatory changes.

As previously mentioned, the likelihood of any providers or students being impacted by this prohibition is very low. The Ministry of Education and NZQA are not aware of any TEPs or private schools currently offering NCEA offshore and none have come to our attention through the consultation process. While officials do not consider that formal evaluations are necessary to determine the impact of the proposed prohibition, monitoring is expected to occur in the context of regular and ongoing relationships that both NZQA and the Ministry of Education have with education providers.

7.2 When and how will the new arrangements be reviewed?

If, as a result of monitoring and feedback, it becomes apparent that the prohibition has unintended or unexpected consequences, the new arrangements would be reviewed. Stakeholders will continue to be able to provide feedback and bring up any concerns with the new prohibition in the context of regular and ongoing relationships that both NZQA and the Ministry of Education have with education providers.