Education Amendment Bill (No 2) 2010

Regulatory Impact Statement

Following are Regulatory Impact Statements for the four major areas of policy change in the Education Amendment Bill (No 2) 2010:

- refund provisions for international students enrolled in Private Training Establishments
- secondary/tertiary education interface
- removal of education regulatory requirements for limited attendance centres
- Government response to the Law Commission report, *Private Schools and the Law.*

Refund provisions for international students enrolled in Private Training Establishments

Executive summary

International students changing provider shortly after enrolment have caused a range of issues, especially for Private Training Establishments, which are required by law to refund all fees paid but $500 maximum, when any student withdraws within seven days since the course starts. This means significant financial loss to some Private Training Establishments and their overseas agents, whom they rely on for recruitment of international students.

This Regulatory Impact Statement sets out a proposal to amend the Education Act 1989 to enable the Minister for Tertiary Education to set rules through Gazette Notice, which may allow Private Training Establishments to retain up to twenty-five percent of the fees paid by an international student based on actual expenses incurred, if the student withdraws from this course within ten working days and if the course is longer than three months.

The key impacts of this proposal will be:

- Private Training Establishments will be able to retain more money to recoup at least part of the sunk costs in recruiting a student if the student withdraws shortly after commencing the course.
- International students will face higher financial costs if they withdraw soon after enrolment, which is expected to encourage students to consider the enrolment more carefully, and to reduce the chance of them downgrading their courses once onshore or to use education as an excuse to enter New Zealand for other purposes.
- Overseas recruitment agents will have more sense of security over their commissions[1], and will be more enthusiastic in referring students to New Zealand providers.
- New Zealand export education sector will also benefit, because it depends a lot on overseas agents to refer international students to New Zealand providers in a highly competitive international education market.

This proposal essentially redistributes the financial cost of a student's withdrawal between a Private Training Establishment and a student, so as to strike a better balance between the two parties. The proposal does not affect any public education institutions, because under the Education Act 1989 these institutions can develop their own refund policies without being regulated.

Adequacy statement

This Regulatory Impact Statement has been reviewed by the Ministry of Education. It has been assessed as being adequate according to the objectives defined by Cabinet (Cabinet Office Circular CO (07) 3 refers, dated 3 April 2007).

[1] Usually agents may lose the commission if the student referred to a provider changes provider within the refundable period stipulated by law.

Status quo and problem

Private Training Establishments are required by the Education Act 1989 to comply with the refund provisions, which are designed to protect students' rights as consumers by guaranteeing most of their money back if a student wishes to withdraw.

For courses over three months duration, Section 236A of the Education Act requires that any student - domestic or international - at a Private Training Establishment be entitled to a refund of payments associated with the course (minus ten percent of the amount that the student has paid or $500, whichever is lower) if they withdraw within the first seven days since the course commences.

The key issues with the current refund provisions are:

- The $500 refund provision has not been updated since 1992 when the export education market was new and there were very few foreign students studying in New Zealand. In 1992, $500 was approximately ten percent of the fees paid by domestic students. Currently, international students' average annual fees are approximately $13,500 and so the $500 maximum retainer by Private Training Establishments currently constitutes only about four percent of the total fees paid for one year.
- The sector advises that the sunk costs to the provider, should a foreign student withdraw, considerably exceed the maximum retainer of $500 under the legislation. The marketing, recruitment, and administrative costs to Private Training Establishments for international students are considerably higher than those for domestic students. Many Private Training Establishments rely on overseas agents to refer international students to them, and these agents on average charge a commission of around twenty-five percent of the total fees.
- There are also perverse incentives for international students already enrolled with a provider to transfer to another provider offering lower priced or lower level courses, or to merely use the first provider as a means to enter New Zealand for other purposes. Some Private Training Establishments have reported students withdrawing without attending the class for one day. Some onshore agents and providers have actively recruited foreign students who have already enrolled at other providers by offering cash back to students, so as to avoid the costs of marketing or recruiting directly from overseas. This has caused overseas education agents losing commission when students transfer within New Zealand, which, in a highly competitive international market, reduces agents' incentives to refer students to New Zealand.

In summary, the status quo poses a risk to the international reputation and the financial sustainability of New Zealand's export education market.

For courses shorter than three months, the minimum refund entitlement for international students is specified by the New Zealand Qualifications Authority according to Section 236(1)(d)(iv) of the Act, which has not been an issue for providers or students.

Objectives

The legislation for Private Training Establishments' refund policy in the Education Act 1989 should be changed to allow these establishments to retain a greater portion of an international student's fees paid, when the student withdraws from a course

longer than three months. This would strike a better balance between meeting Private Training Establishments' needs to recoup some of the costs of recruiting the student and protecting the student's right to change provider when circumstances change.

Alternative options

One option is to repeal the current legislation for Private Training Establishments' refund policy, so that these establishments may develop different refund policies for domestic and international students and under different circumstances. This is not preferred because there is higher business risk associated with Private Training Establishments, which have higher rates of turnover and ownership change than other types of provider, e.g. public education institutions. Without being regulated, Private Training Establishments may develop a refund policy that excessively limits students' right to withdraw and obtain a refund of their fees in protecting their business interests. This would not be fair to students as consumers, and being fair to students is important to the sustainability of this export education sector.

Other options include setting various maximum percentages of fees retainable by Private Training Establishments when an international student withdraws, such as eliminating the $500 cap and allowing these establishments to retain ten percent fees paid, or introducing a phased approach depending on the time of withdrawal (the earlier withdrawal the less retainable by a provider). Consultation with the export education sector indicates that most responses regard ten percent as still too low to recoup the providers' sunk costs of recruiting an international student, and a phased approach too complicated and difficult to administer. Overseas agents charge a commission of around twenty-five percent of the fees paid when a student is referred to and enrolled at a New Zealand Private Training Establishment.

Preferred option

The preferred option, which is also supported by most submitters, is to remove the $500 cap, and set the amount that a Private Training Establishment can retain at up to twenty-five percent of total fees paid based on actual expenses incurred, if the student withdraws within ten working days since the course starts.

This option limits the maximum amount a provider could retain to the percentage that is consistent with the information collated so far on the average commission paid to an agent for recruiting a student. Such commissions make a significant part of the recruitment cost for Private Training Establishments using agents. This option still leaves some flexibility for providers to develop different refund provisions for different scenarios below the maximum. It extends the period permissible for withdrawal from seven days to ten working days, so that students are given sufficient time to consider the suitability of the current provider and course before deciding to change. This option strikes a reasonable balance in meeting the conflicting needs of providers and students.

Implementation and review

There are primarily four options in implementing this legislative change:

- specifying the new refund provision explicitly in the Act
- amending the Act to enable the Governor General to specify the provision in regulation by Order in Council

- amending the Act to enable the Minister to specify the provision by Gazette Notice
- amending the Act to extend the power of the New Zealand Qualifications Authority to specify the provision for courses of all length[2].

The preferred option is to amend the Act to enable the Minister to specify the new refund provisions by Gazette Notice. It should be made subject to the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989. This option is believed to strike the right balance between enhancing the responsiveness of government policy to changing circumstances and ensuring a robust and legally sound policy setting process.

The Ministry of Education and the New Zealand Qualifications Authority will monitor the impact of the new regulation on Private Training Establishments and international students, and report to the Minister as appropriate.

Consultation

The Ministry of Education and the New Zealand Qualifications Authority have jointly developed the proposal, and the Department of Labour, the Ministry of Consumer Affairs, the Ministry of Justice, the Tertiary Education Commission, and Parliamentary Counsel Office have been consulted in the preparation of this Regulatory Impact Statement.

[2] NZQA currently has the power to specify the refund level for Private Tertiary Establishments in relation to international students for courses shorter than three months, as stipulated by Section 236(1)(d)(iv) of the Act. However unlike refund issues for courses greater than three months there have been no problems with this little used provision.

Secondary/Tertiary Education Interface

Executive summary

Government is keen to protect young people against unemployment, both now and in their future. A number of recent government initiatives are aimed at increasing opportunities for young people to stay at school, participate in training or assisting them into work. In addition, Government has a focus on addressing literacy and numeracy, raise achievement, and increase qualification levels.

Some of the initiatives designed to progress these policies require a joint approach between secondary and tertiary institutions.

The legislation that governs the sharing of education responsibilities between secondary and tertiary institutions currently limits school students to very short periods of time in the workplace or in tertiary study. It envisages the student being first and foremost a school student.

The main area for legislative change will:

- allow the Minister of Education to formally recognise a secondary/tertiary partnership
- enable the Minister of Education to enter into an agreement with the secondary/tertiary partnership (including detail on the education that will be provided and pastoral care arrangements for the students enrolled)
- set requirements around planning, reporting and auditing.

In particular, legislation is needed in order to establish at least five trades academies by 2011.

Adequacy statement

The Ministry of Education confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation Regulatory Impact Assessment requirements, have been complied with. A Regulatory Impact Statement was prepared and the Ministry of Education considers it to be adequate. The final Regulatory Impact Statement was circulated with the Cabinet paper for departmental consultation.

Status quo and problem

Many young people leave school without adequate qualifications because they do not find the school system relevant to their needs. In tertiary education they often undertake courses that do not lead to nationally recognised qualifications and therefore successful employment options.

To provide more relevant and worthwhile pathways for these students, changes at the secondary/tertiary interface are needed. At present different legislative and funding frameworks for the school and tertiary sectors create barriers to better integration.

Existing provisions in the Education Act 1989 restrict the time school students can spend at tertiary institutions or in the workplace (particularly for students who are under 16).

Under the Act, the school board of trustees always remains accountable for students enrolled at the school, regardless of where they receive their education. This provision is appropriate for short work experience courses such as 'taster" or shadowing courses and therefore should remain.

The existing provisions are not appropriate for the options being developed where students may spend relatively large amounts of time at tertiary institutions or in the workforce and only a small period in secondary school.

Objectives

Initiatives such as trades academies and school-based apprenticeships are designed to add value to the education system by expanding the range of options open to young people. New legislative arrangements should:

- allow more flexibility for provision of programmes shared between the secondary and tertiary sectors
- ensure that the education, welfare and safety of students are adequately covered at all times
- assure Government that the funding provided is used to further its priorities and policies, and is responsibly accounted for.

Objectives for legislative amendment need to achieve the best balance between these three aspects.

This area is still developing. Other initiatives may yet be included. For this reason, the legislative framework should not be specifically restricted to industry-based initiatives.

Alternative options

The main set of amendments is around establishing partnership arrangements when secondary and tertiary institutions are to work closely together to provide joint programmes for students. Three alternative models were considered.

Model One would create a new form of Crown entity by establishing secondary/tertiary partnerships as a statutory body in the Education Act. This model would use the existing framework set up by the Crown Entities Act for steering, planning, reporting and accountability arrangements. It would set out the responsibilities of the new Crown entity in relation to students.

Setting up new Crown entities is likely to create pressure for separate funding for infrastructure and human resources rather than a sharing of existing resources in the partner institutions. It could result in cumbersome legislation if it tried to provide the necessary flexibility to cover off all the partnership options. It is not consistent with government directions to reduce bureaucracy.

Model Two would amend the Act to clarify the ability for students to dual enrol and to spend longer in tertiary education and work, but leave the relationships between the Crown and the partnership to be the subject of a Memorandum of Understanding or a "gentleman's agreement". This model is used in the education sector for clusters of schools such as Resource Teachers Learning and Behaviour. It has not proved robust for either administration or accountability. It has not been used where significant funding streams have been involved. Although this model could provide

flexibility for individual arrangements, the Crown has less control over outcomes for students.

Model Three would require the partnerships to nominate a lead provider who be responsible for the relationship with the Crown and purchasing responsibility. While this option provides a clear line for accountability, it would be likely to result in one institution dominating the partnership and the others being concerned only with what was being purchased from them. This is unlikely to achieve the shifts in cooperation needed to improve education at the secondary/ tertiary interface.

Preferred Options

The preferred option involves creating a discretion in the Education Act for the Minister to recognise a particular partnership as a "secondary/tertiary partnership". This will provide a mechanism to formalise which relationships will be subject to the relevant requirements of the Act and allow the government to manage the numbers that can be set up and receive funding.

A discretion is more appropriate than something like an accreditation system where any body that meets preset criteria receives the designation (and therefore accesses any benefits that accrue). Because there will be funding implications that follow such recognition, the Minister is the appropriate person to hold the discretion.

Recognition does not create the partnership as a legal entity, although any individual partnership could choose to become an incorporated society or a charitable trust. We considered making this a requirement before recognition could be granted. It could be an onerous requirement for those partnerships where the partners turn-over fairly quickly as a new deed would need to be executed. The partners should all be pre-existing bodies corporate.

The Minister and the secondary/tertiary partnership would then enter into an agreement. The Act would specify some matters that would apply to all partnerships. These would include:

- a mechanism for the government of the day to set out its policies and priorities for the different types of partnership
- a planning document from the partnerships that sets out short-term and long-term goals
- an annual report
- auditing by the Controller and Auditor-General.

The agreement would specify matters that might vary from partnership to partnership. Such an agreement has a precedent in the agreements signed with integrated schools. It could specify:

- curriculum, courses and qualifications
- governance and management, including which organisation would be responsible for being the fund-holder
- allocation of responsibility for students
- selection of students
- attendance requirements

- pastoral care and career guidance
- funding
- roll numbers.

Students will be enrolled in the secondary/tertiary partnership. They also enrol part-time in a secondary school and a tertiary institution according to the particular course the student is undertaking. The enrolment in the secondary/tertiary partnership should be full-time – the intention is that the student's whole programme will relate to the chosen education pathway.

Enrolment in secondary/tertiary partnerships is restricted to students in Years 11 to13 but the partnerships should be able to provide taster or shadowing courses for students in Years 9 and 10.

This model provides enough flexibility to accommodate different types of secondary/tertiary partnerships but allows the Crown to be satisfied that arrangements for students and accountability requirements are met.

The model does impose compliance costs on the partnerships. Firstly, all partners must develop and negotiate the agreement with the Minister of Education. This will, however, consist of items that would have had to be addressed in some form and discussed with the Ministry of Education. The extra work is in consolidating this into a formal document. The second potential area of increased compliance cost is around the separate planning and reporting requirements. Planning for and reporting on their contributions to a secondary/tertiary partnership would potentially have had to have been in the documentation for both schools and tertiary institutions in any case.

Implementation and review

Interim legislation has already been introduced to allow the first tertiary high school to open at the beginning of 2010 at Manukau Institute of Technology (MIT). The Ministry of Education, MIT and South Auckland schools are working towards implementation of the tertiary high school by the beginning of 2010, with an intake of up to 80 Year 11 students in Term 1. The outcomes from the tertiary high school will be monitored and evaluated in order to inform the possible establishment of any further such institutions.

Southern Cross Campus has already been chosen as a trades academy site but as this has no tertiary partner it does not require additional governance arrangements. Five trades academies are currently preparing implementation planning for possible opening in 2010 and a potential six others have been asked to revise their business case proposals.

Consultation

The Government's objectives in providing wider options to encourage young people to stay at school, or assisting them into work or further education were set out in its election documents. Trades academies and school-based apprenticeships were specifically mentioned.

In May 2009, the Ministry called for Expressions of Interest from institutions interested in establishing the first trades academies by 2011 and 114 were received. This process has initiated consultation and discussions at the local level as institutions prepared their proposals.

Trades academies have been discussed with the Secondary Principals Association of New Zealand and the Principals Advisory Council of the Post Primary teachers Association. There has been limited, informal consultation with schools on school-based apprenticeships and trades academies. School-based apprenticeships have been discussed with officials, schools and tertiary institutions in Australia.

The Department of Labour, the Treasury, Department of the Prime Minister and Cabinet, the State Services Commission, the Tertiary Education Commission, the Education Review Office and the New Zealand Qualifications Authority have been consulted. The Ministry of Economic Development, Ministry of Social Development, Ministry of Agriculture and Forestry, Te Puni Kōkiri, Ministry of Pacific Island Affairs, Ministry of Women's Affairs, and the Ministry of Youth Development have been informed.

Removal of education regulatory requirements for limited attendance centres

Executive summary

This statement relates to the proposal for childcare services operating under certain specified conditions to be defined as limited attendance centres (LACs) in the Education Act 1989 (the Act) and to be specifically exempted from the definition of an early childhood education (ECE) centre and therefore the requirement to be licensed contained in that Act.

LACs are early childhood centres where the premises are being used to provide care for three or more children under six and where:

- no child attends for more than two hours on any day
- a parent or caregiver is in close proximity and able to be easily contacted and to resume responsibility for their child at short notice.

ECE centres are defined as 'premises used regularly for the education or care of three or more children (not being the children of the persons providing the education or care, or children enrolled at a school being provided with education or care before or after school) under the age of six'. The Act requires ECE centres to be licensed, and requires licensed centres to meet regulatory standards such as implementing curriculum requirements where prescribed.

Requiring LACs to be licensed as ECE centres has caused compliance problems for providers and some have chosen to close and others to continue to operate illegally. Some LACs have met licensing requirements and now function as licensed ECE centres.

Adequacy statement

This Regulatory Impact Statement has been reviewed by the Ministry of Education. It has been assessed as being adequate according to the objectives defined by Cabinet [Cabinet Office Circular CO (07) 3 refers, dated 3 April 2007].

Objective

The objective of removing the licensing requirements for LACs is to enable recreation facilities, shopping centres and similar organisations to provide short-term childcare for parents undertaking activities nearby, without having to meet the minimum standards required for licensed early childhood education (ECE) centres.

Status quo and problem

The Education Act 1989 (the Act) requires ECE centres to be licensed. Being licensed requires the centre provider to meet a number of standards (specified by regulation) including having the required adult/child staffing ratios, having qualified teachers, having appropriate facilities and implementing any curriculum requirements.

Options considered

Option i) Status quo. Currently LAC providers have to meet the full licensing requirements for an ECE centre. Continuing this requirement would mean high compliance costs for these centres and would risk centres closing or providers operating non-compliant centres. For those LACs that do choose to become licensed, children's welfare and education are protected by the ECE regulatory requirements. Licensed centres receive a grant under the Act and parents could apply to receive the childcare subsidy.

Option ii) Light-handed regulation. Under this option, a less onerous regulatory regime would be introduced to create a new category of ECE licence for LACs that focuses primarily on children's health and safety. Licensed LACs would be entitled to a grant under section 311 of the Act. The ECE sector may see this as reducing the standards for ECE while some LAC providers may see even a light-handed regulation regime as onerous. Under this option, there would be regulated health, safety and wellbeing protection standards for children under the administrative responsibility of the Ministry of Education.

Option iii) No education regulation (preferred option). This option would see the Act amended to exclude LACs from the requirement to be licensed. These centres would not be subject to ECE regulatory requirements but would continue to be subject to arrangements with facility providers, local government requirements, and other general legislative requirements administered by a range of Government Departments. Centres would not be entitled to receive Government funding nor would parents be able to receive the childcare subsidy.

Implementation, risks and advantages

Under option (iii) childcare services operating under certain specified conditions would be defined as limited attendance centres (LACs) in the Education Act 1989 and be specifically exempted from the definition of an early childhood education centre (ECE) and therefore the requirement to be licensed contained in that Act.

The amendment could be included in the next Education Amendment Bill or a Regulatory Reform Bill both of which are planned for early 2010.

Services already registered as licensed providers could choose to remain registered and receive financial assistance as licensed ECE centres or could decide not to continue to meet licensing standards.

There are a range of legislative requirements administered by Government Departments that will impact on LACs and the premises in which they are based. Such legislation generally focuses on adult health and safety, or building and environment safety with few of the regulations designed and used to ensure the safety and wellbeing of children. Few of the regulations administered by other regulatory authorities provide for proactive inspections or audits.

The Ministry of Education would no longer have a regulatory role although it would still investigate when necessary to ensure that a LAC was continuing to qualify for exemption from licensing requirements. In addition the Ministry will work with Fitness NZ, Recreation NZ and other providers to encourage them to develop guidelines for the provision of LACs.

Concerns that parents might have would need to be addressed by the centre in the first instance and the relevant regulatory authority if problems continue.

Risks can be mitigated by providers taking more responsibility to be self regulating and by providing useful information to parents about their service. If issues cannot be resolved parents have to decide whether they wish to continue to use the service.

There are advantages for parents and children in having short-term care arrangements available when parents are using a recreational facility, or shopping centre. If LACs are deregulated those facility owners wanting to provide a childcare service for their customers will be able to do so without having to meet licensing regulations and standards.

Financial implications

If the decision is made to remove the requirement for LACs to be licensed, these services would not be entitled to a grant under section 311 of the Education Act 1989. The previous Government appropriated $0.624 million yearly to fund LACs at $0.68 per child per hour (GST incl.) [CAB Min (08) 14/1(17) initiative 5114 refers].

The previous Government also decided that Childcare Assistance should be available for LACs [SDC Min (08) 17/2 refers], and appropriated $2.519 million over the five year period from 2008/09 to 2012/13 (and $0.519m yearly in outyears). The Ministry of Social Development will provide separate advice to the Minister for Social Development and Employment on the fiscal and legal impact of deregulation.

There may be further offsetting savings from LACs that currently operate as licensed ECE centres. These LACs receive funding of between $3.19 and $12.94 per child per hour (GST incl.), and some may choose not to continue to meet the full licensing requirements. LACs that become fully licensed ECE centres would be able to continue to receive funding.

Consultation

The following agencies have been consulted during the development of the Cabinet Paper: the Ministries of Health, Justice, Social Development, Women's Affairs, Pacific Island Affairs, and for the Environment, the Departments of Labour, Building and Housing, Internal Affairs, and Child Youth and Family, the Treasury, Te Puni Kōkiri and the Education Review Office.

Government response to the Law Commission report, *Private Schools and the Law*

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Education. It provides an analysis of options to update the legislation affecting private schools.

In recommending change to the law affecting private schools, this regulatory impact statement notes that private schools operate largely without problem in New Zealand. They are private organisations that carry out their business satisfactorily with minimal Government intervention. However, there are gaps in the legislation that leave Government with insufficient power to deal with potentially serious problems, should they ever arise. The proposed legislative change addresses these gaps. No further work is required before any policy decisions can be implemented.

None of the policy options are likely to impose additional costs on private schools; impair private property rights, market competition, or the incentives on private schools to innovate and invest; or override fundamental common law principles.

Status quo and problem definition

The Education Act requires all schools in New Zealand to be registered and all students, excluding those permitted to be homeschooled, must attend a registered school. There are currently 97 private schools operating in New Zealand. Private schools are private businesses that operate with very few problems. They are subject to a different regulatory system than state schools. New Zealand legislation has placed some minimum standards for registration on private schools since 1914. As well as ensuring minimum education standards, the legislation affecting private schools recognises that private schools are entitled to operate according to their own philosophies. They can only employ registered teachers, but they may choose their own curriculum, qualifications frameworks and assessment methods, and they may offer education within an educational environment of their own design.

In 2007, the then Government asked the Law Commission to review the legislation affecting private schools. At the time, the Government was concerned about three major areas of weakness in the private schooling legal system:

- A lack of any means to decline applications to register a private school from individuals whose previous conduct or character makes registration inappropriate. Examples had arisen of people who had committed offences against children applying to register a private school.
- The absence of any sanctions if a private school breaches any of its registration criteria.
- Archaic and outdated language, especially relating to Parliament's expectations regarding the role of private schools in protecting New Zealand's interests.

The Law Commission released an issues paper in November 2008 setting out its preliminary views on the appropriate relationship between the state and private schools. The Law Commission invited submissions on these views and incorporated this feedback into its final report, *Private Schools and the Law.* In September 2009, the Law Commission tabled this report in the House. It contained 31 recommendations for updating the legislation affecting private schools by amending the Education Act 1989.

Cabinet guidelines require Government to respond to a Law Commission report within six months [Cabinet Office Circular (09) 1 refers]. It does this by considering a Cabinet paper submitted by the relevant portfolio Minister.

Objectives

Government wants to encourage a thriving private school sector because private schools encourage choice, educational innovation and competition. Therefore, Government requires a regulatory framework to support that goal, to ensure the barriers to establishing and running private schools are minimised. A clear framework will ensure private schools can easily understand and follow the legislation. Within this framework, Government requires powers to enforce disciplinary action on any private school that breaches the law or its registration criteria.

Regulatory impact analysis

This regulatory impact statement responds to the Law Commission's recommendations. The 31 recommendations are quite specific and deal with four distinct aspects of the law affecting private schools:

- criteria for registering private schools (21 recommendations)
- sanctions on private schools (six recommendations)
- disciplinary procedures (two recommendations)
- miscellaneous matters (two recommendations).

Private school registration criteria options:

Status quo: The current registration criteria are unclear and contain archaic language. They do not provide clear standards against which a private school and its managers can be assessed for suitability. Under this option, the Ministry of Education would continue to be unable to decline applications to register a private school from individuals whose previous conduct or character makes registration inappropriate.

Implement the Law Commission recommendations as proposed: The Law Commission proposed the following changes to the legislation:

- removing outdated provisions
- clarifying and updating current registration requirements
- requiring student welfare polices and procedures
- clarifying the requirements on private schools that establish a new campus.

The Ministry of Education has analysed these recommendations and agrees with the majority, however it disagrees with three areas. Therefore, the Ministry of Education recommends that the Law Commission's recommendations be amended before implementation.

Requiring private schools to establish student welfare policies and procedures would impose costs on private schools that do not already have written policies in place. Three of the private schools that provided feedback stated they would need to spend in excess of $5000 to establish formal written policies. Smaller schools expressed concern that they may need to hire consultants to assist them to establish written

policies. The Ministry of Education is unaware of any problems existing within private schools that would justify imposing such expense.

Requiring a private school that establishes a new campus catering for a different body of students to undergo the same registration process as a new private school may inhibit the growth and expansion of the sector. While a private school completes the registration process, it receives no state subsidy. Therefore, establishing a new campus and completing the entire registration process will put an unnecessary financial burden on private schools attempting to expand. If the school retained the same curriculum and management structures, only the new property needs to be inspected. The Ministry of Education can request that the Education Review Office inspect a private school to assess its suitability if there were any concerns.

The registration requirement that private schools provide suitably "for the inculcation in the minds of students of sentiments of patriotism and loyalty", dates back to 1921, and is outdated and difficult to assess schools against. The Law Commission recommends replacing this with a requirement that private schools support and promote the principles and practices of New Zealand democracy, including respect for the law and the rights of others. The Law Commission anticipates this would be an "attitude" that colours the teaching throughout private schools. The ERO cannot measure this criterion; therefore, it will be difficult to assess schools against.

Amend the Law Commission's recommendations before implementing: This option would remove the "patriotism and loyalty" requirement completely and not implement the recommended alternative as assessing private schools against this criterion would be difficult and the criterion is not necessary to ensure the suitability of a private school.

The recommendations to amend the registration criteria in the Education Act will clarify and simplify the language and the process for registering a private school. This will provide much clearer standards against which to assess a private school for its suitability.

The recommendation to establish a "fit and proper person" requirement for manager of a private school provides a means to decline an application to register a private school if an individual's previous conduct or character makes registration inappropriate.

Sanctions available on private schools options:

Status quo: Under this option, no means exist for the Government to place any sanctions on a private school, other than deregistration, if a private school breaches any of its registration criteria. Deregistration is a drastic action, that does not suit if a private school has committed a minor breach of its registration criteria. For example, private schools must employ registered teachers. If the Ministry of Education discovered a school employing an unregistered teacher, deregistration is an unrealistic punishment that the Ministry would not consider.

Implement the Law Commission recommendation as proposed: In summary the Law Commission proposed the following changes to the legislation:

- empowering the Secretary for Education to take action against a private school that breaches its registration criteria or the law
- establishing a step-process for deregistration of a private school

- establishing a list of sanctions the Secretary may use when taking action against a private school.

The Ministry of Education has analysed these recommendations and agrees with the majority, however it disagrees with one area.

The Law Commission recommends establishing a list of actions available to the Secretary for Education when applying a sanction on a private school. This option includes sanctions such as requesting the school produce an action plan and withdrawing the government subsidy. Requiring an action plan (effectively directing the management of a private institution) is not an appropriate role for Government and withdrawing funding implies wealthy schools can buy their way out of complying with the law. Also, some private schools decline any Government funding. Courts should impose financial penalties, not Government Ministries.

Amend the Law Commission's recommendations before implementing: This option would establish a fair and open process for when and how the Secretary for Education should act if a private school breaches the law or its registration criteria. The amendment would provide a graded system to ensure any action taken is proportionate to the circumstances of the case and the school in question. This would also ensure that when the Secretary for Education imposes sanctions on a school, the process used is transparent and a check is placed on the level of Government intervention. Any additional costs to the Government, for example, Ministry of Education staff issuing a notice to comply, would be minimal and absorbed as business as usual for the Ministry.

Disciplinary procedures options:

Status quo: Under this option, private schools administer disciplinary action in their own schools in line with agreed contractual arrangements with parents. Suspensions and expulsions affect less than one percent of the private school student population and the Ministry of Education is not aware of any evidence that any problems exist with private school disciplinary procedures. The principles of natural justice also apply to private schools when disciplining students.

Implement the Law Commission recommendations as proposed: This option would establish procedural requirements for private schools when dealing with the suspension or expulsion of a student. Private schools would also be required to provide details of their disciplinary procedures when requested. In its feedback to the Ministry of Education, one private school indicated it would have to change substantially its already well-established disciplinary procedures at considerable cost and inconvenience. Nine other private schools that provided feedback to the Ministry of Education indicated they already have polices and procedures in place. Requiring schools to follow set procedural requirements when disciplining a student would impose extra burden on schools.

Miscellaneous matters: options

Status quo: Section 162 of the Education Act 1964 requires all teachers in private schools to swear an oath of allegiance to Her Majesty and New Zealand. The Government can fine private schools if they employ a teacher who has not sworn the oath. The Government no longer enforces this requirement nor intends to.

Implement the Law Commission recommendation as proposed: This option would repeal an outdated and unused provision in the Act. As teachers are no longer

required to swear an oath, repealing this section would have no effect on private schools or the Government.

Consultation

The Ministry of Education has consulted with the Education Review Office, which supports the Ministry's advice. The Ministry of Education also consulted with the private school sector by sending a letter to all private schools inviting principals and boards to send in any feedback on the Law Commission's report. The Ministry of Education received 12 responses from private schools.

Independent Schools of New Zealand, an independent body representing 43 private schools in New Zealand, expressed its support for the Law Commission's report to the Ministry of Education. The Independent Schools Education Association Inc, which represents teaching and non-teaching staff at private schools, advised it would support the implementation of all of the recommendations.

Conclusions and recommendations

Private school registration criteria
The Ministry of Education recommends amending the legislation to clarify and simplify the language and the process for registering a private school. This will provide much clearer standards against which to assess a private school for its suitability. These amendments will impose no extra burden or financial cost on private schools.

Sanctions available on private schools
The Ministry of Education recommends establishing a fair and open process for when and how the Secretary for Education should act if a private school breaches the law or its registration criteria. This would ensure that when the Secretary places sanctions on a school, the process is transparent and places a check on the level of Government intervention. These recommendations will not impose a cost on private schools who comply with their registration criteria.

Disciplinary procedures
The Ministry of Education recommends maintaining the status quo and continuing to allow private schools to manage their own disciplinary procedures. Suspensions and expulsions affect a very small number of private school students; private schools manage this process without any known problems; and these arrangements are currently subject to statutory private arrangements.

Miscellaneous matters
The Ministry of Education recommends repealing the outdated and unused provision that teachers swear an oath of allegiance.

Implementation

Subject to the Government's agreement to the Law Commission's recommendations, these amendments will be included in a future Education Amendment Bill.

Monitoring, evaluation and review

The Education Review Office will play an important role in evaluating the effectiveness of the updated registration criteria as they assess provisionally registered private schools against the criteria.

The Ministry of Education Schools and Student Support team will monitor the clarified sanctions as they will support and monitor private schools on behalf of the Secretary for Education.