



Report: Feedback on the draft Cabinet paper 'Approval to Introduce the Education and Training Amendment Bill (No 2)'

To:	Hon Erica Stanford, Minister of Education		
Cc:	Hon Dr Shane Reti, Minister for Universities Hon David Seymour, Associate Minister of Education Hon Penny Simmonds, Minister for Vocational Education		
Date:	10/03/2025	Deadline:	13/03/2025
Security Level:	In-Confidence	Priority:	High
From:	Casey Pickett, Senior Policy Manager	Phone:	9(2)(a)
Drafter:	Nikhil Prakash	METIS No:	1343448

Why are we sending this to you?

- You are receiving this:
 - to provide you with a summary of feedback on the draft Cabinet LEG paper 'Approval to Introduce the Education and Training Amendment Bill (No 2)' (Annex 1);
 - to provide you with the final draft LEG paper (Annex 2 and 3) including draft disclosure statement (Annex 2.2), the latest version of the Bill (Annex 4) and talking points for Cabinet Legislation Committee (Annex 5); and
 - because we need you to confirm the date to seek Cabinet approval to introduce the Education and Training Amendment Bill (No 2) (the Bill);

What action do we need, by when?

- Please return the signed paper by 13 March 2025 (before you go away overseas) so we can confirm the date for Cabinet Legislation Committee and finalise the LEG paper and Bill for lodging.

Key facts, issues and questions

- Joint Ministerial and agency consultation was undertaken from 20 – 28 February 2025. A summary of the feedback and how we addressed it in the LEG paper is attached in Annex 1.
- Minister Reti has agreed that the phrase 'freedom of speech' should be replaced by 'freedom of expression' throughout the Bill for consistency across the New Zealand statute book.
- You have decided to repeal section 5(4) which sets out the education and learning objectives for early childhood, primary and secondary education.
- You will progress this change through an oral item at Cabinet Social Outcomes Committee on 11 March 2025.

Alignment with Government priorities

1. The Bill is a key pillar in the Government's efforts to: progress its student achievement and attendance objectives, develop a workforce of the future and establish a knowledge-rich curriculum. The Bill also progresses amendments that maintain the health of the education system and gives effect to the National-ACT Coalition agreement.

Background

2. You agreed to undertake joint Ministerial and agency consultation, and the draft LEG paper was circulated from 20 – 28 February 2025 [METIS 1342214 refers]. Annex 1 summarises the feedback from this consultation and how it has been incorporated into the revised draft LEG paper and the Bill.

We have made key changes to the draft LEG paper following Ministerial and agency consultation

3. Following Ministerial and agency consultation, key changes to the Bill and/or the LEG paper are:
 - 3.1. incorporation of feedback from the Ministry of Justice about whether the freedom of speech/expression proposal is consistent with the New Zealand Bill of Rights Act 1990;
 - 3.2. replacing the phrase 'freedom of speech' to 'freedom of expression' to have consistency in language across the New Zealand statute book;
 - 3.3. repealing all of section 5, including provisions on the education and learning objectives for early childhood, primary and secondary education (section 5(4) of the Act);
 - 3.4. 9(2)(g)(i) [REDACTED];
 - 3.5. clarifying the thresholds and triggers for schools' actions and interventions relating to attendance management plans, following discussion with Minister Seymour's office;
 - 3.6. clarifying the actions the Teaching Council will take to mitigate identified privacy risks;
 - 3.7. clarifications relating to Performance-Based Research Funds by amending the definition to capture the full scope of individuals eligible to be assigned a National Student Number; and
 - 3.8. other minor and technical drafting errors.
4. We have provided you with a clean version as well as a tracked-changes version of the LEG paper for your reference and to enable you to review the changes. This copy of the LEG paper should be largely ready to lodge subject to receiving a Cabinet Minute for the decision to repeal section 5(4) of the Act and any final matters you raise with us and minor editorial checks.

Substantive feedback was received on the freedom of speech/freedom of expression proposal

5. During consultation, agencies raised some concerns including:

You have decided to repeal section 5(4)

15. You have decided to repeal section 5(4) which sets out the education and learning objectives for early childhood, primary and secondary education and will seek Cabinet approval through an oral item at Cabinet Social Outcomes Committee on 11 March 2025 [METIS 1343856 refers]. The LEG paper will be updated to reflect Cabinet's decision and include the appropriate CAB reference.
16. Alongside the 'freedom of expression' and section 5 decisions, officials are progressing final minor and technical drafting changes. These changes will not materially affect the policy intent and content of the proposals within the Bill.

Next Steps

17. We understand you are still to confirm which Cabinet Legislation Committee date you would like the LEG paper to be considered, and you have indicated either 27 March or 3 April.
18. 9(2)(f)(iv)

19. The table below outlines the possible dates for Cabinet Legislation Committee and how the two dates you have indicated will affect the progression of the Bill.

Milestone	Timeframe for 27 March 2025 option	Timeframe for 3 April 2025 option
Final LEG Cabinet paper to the Minister for lodging at Cabinet Legislation Committee	18 March 2025	24 March 2025
Lodge LEG paper for Cabinet Legislation Committee	20 March 2025	27 March 2025
Cabinet Legislation Committee	27 March 2025	3 April 2025
Cabinet approval to introduce the Bill	31 March 2025	7 April 2025
Bill Introduction	1 April 2025	8 April 2025
First Reading and referral to Select Committee	8 April 2025	6 May 2025

20. Talking points for Cabinet Legislation Committee have been provided to you in Annex 5.
21. Your office has requested a communications package to support the progression of the Bill which will be provided to you by 20 March 2025. This will include a draft Press Release, an ETAB 2 Q&A "back pocket" document and First Reading speech.

Annexes

The following are annexed to this paper:

- Annex 1: Ministerial and Agency Feedback Table.
- Annex 2: Clean Version of the Draft Cabinet LEG Paper – 'Approval to Introduce the Education and Training Amendment Bill (No 2)' [attached separately].
- Annex 2.2: Draft Disclosure Statement (to be attached to the final Cabinet paper) [attached separately]
- Annex 3: Tracked-Changes Version of the Draft Cabinet LEG Paper – 'Approval to Introduce the Education and Training Amendment Bill (No 2)' [attached separately].
- Annex 4: The Education and Training Amendment Bill (No 2) [attached separately].
- Annex 5: Talking points for LEG paper 'Approval to Introduce the Education and Training Amendment Bill (No 2)' [attached separately].

- 5.1. whether the freedom of speech/expression proposal is consistent with the New Zealand Bill of Rights Act 1990 justified limitations under section 5; and¹
- 5.2. the phrasing of 'freedom of speech'.

Consistency with the New Zealand Bill of Rights Act 1990

6. The Ministry of Justice noted that limiting universities' ability to restrict speech only when it violates the law may not align with the New Zealand Bill of Rights Act, and that the inability to weigh freedom of expression against other rights and obligations risks unintended consequences.
7. The Ministry of Justice highlighted that any protection of freedom of expression should be consistent with the New Zealand Bill of Rights Act, including the test for justified limits set out in Section 5.
8. The intent of this policy is to strengthen protections for freedom of expression in university settings.
9. Universities' statutory role as 'critic and conscience of society' and the academic freedom that they uphold are both understood to depend fundamentally on freedom of expression – including the ability to express ideas and opinions without fear of censorship. In this context, the proposed changes are considered necessary to ensure a robust defence of freedom of expression within university settings.
10. We have not made substantial changes to the Bill on the basis that these concerns were considered by Minister Simmonds in the development of this proposal [METIS 1338586 and 1339458 refers]. However, we have incorporated a reference to this risk in *Annex 1* (paragraphs 5 – 6) of the LEG paper and have noted that Minister Simmonds considered this during the development of the proposal.
11. The Attorney-General will provide your office with an assessment of the Bill for consistency with the New Zealand Bill of Rights Act prior to introduction.

Change in expression from 'freedom of speech'

12. Agency feedback from the Ministry of Justice and the Department of Internal Affairs noted that the term 'freedom of speech' is inconsistent with the broader New Zealand statute book and does not capture the proposal's intent which extends beyond verbal expression and sign language.²
13. Minister Reti has decided to change the terminology from 'freedom of speech' to 'freedom of expression' to provide more certainty to universities on the scope of the policy intention and to better align with other legislation including the New Zealand Bill of Rights Act 1990 [METIS 1343743 refers].
14. This change has been incorporated as part of the Minister Reti's delegated authority to address outstanding issues of detail that arise during the drafting process, consistent with policy decisions [CAB-24-MIN-0499 refers].

¹ Section 5 of the New Zealand Bill of Rights Act 1990 (justified limitations) notes that the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

² The use of the term 'freedom of speech' may unintentionally narrow the scope of the proposal which may include non-verbal forms of expression such as clothing, writing, artworks, dance and theatre for example. It would also exclude the New Zealand Bill of Rights Act 1990 freedom to 'seek, receive, and impart information and opinions in any kind and in any form'.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that Annex 1 sets out the feedback received from Ministerial and agency consultation and how this has been addressed in the draft LEG paper in Annex 2
- b. **note** that during consultation, agencies raised some concerns including:
- i. whether the freedom of expression proposal is consistent with the New Zealand Bill of Rights Act 1990 justified limitations under section 5; and
 - ii. the phrasing of 'freedom of speech', which Minister Reti has decided to change to 'freedom of expression' throughout the Bill for consistency across the New Zealand statute book

Noted

Noted

- c. **note** your decision to repeal section 5(4) on the education and learning objectives for early childhood, primary and secondary education, which has been reflected in the attached Bill (Annex 4)

Noted

- d. **confirm** that you approve the content of the attached draft Cabinet paper and the Bill for lodging, subject to minor editorial amendments

with change to 3.4 and point 3+4 of the bill

Confirmed

- e. **indicate** whether you want to:

EITHER

+ suggested change to current on pg 3+4 e(i)

- i. lodge for Cabinet Legislation Committee held on 27 March 2025

Agree / Disagree

OR

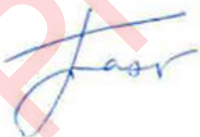
- ii. lodge for Cabinet Legislation Committee held on 3 April 2025

Agree / Disagree

Proactive Release:

- f. **agree** that the Ministry of Education release this paper once Cabinet has made the decisions regarding the introduction of the Education and Training Amendment Bill (No 2) subject to any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.

Agree / Disagree



Jen Fraser

General Manager | Schools Policy

Te Pou Kaupapahere

10/03/2025



Hon Erica Stanford

Minister of Education

18/3/25

Annex 1: Overview of Ministerial and Agency Feedback

Proposal	Clause(s) of the Bill	Summary of feedback	How feedback was reflected in the LEG paper and/or the Bill
Amend school board objectives and remove the power to issue a statement of National Education and Learning Priorities (NELPs)	4, 5, 6, 8, 10, 27 and 28.	<p>Te Tiriti o Waitangi: Officials understand that Minister Seymour's office raised concerns about the Te Tiriti o Waitangi related provisions in clause 6 and 8 of the Bill.</p> <p>Confirming compliance: The Ministry of Justice noted that schools must continue to comply with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993.</p>	<p>Te Tiriti o Waitangi: 9(2)(f)(iv)</p> <p>Confirming compliance: Compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 was always the intention; we have specified this in <i>Annex 1 (paragraph 3)</i> of the LEG paper.</p>
Require school boards to have Attendance Management Plans (AMPs)	9, 23 and 25.	Minister Seymour and the Parliamentary Counsel Office suggested minor and technical changes relating to drafting clarifications.	Amendments to <i>clause 9 (section 137B)</i> and <i>clause 23 (section 638(g)(i))</i> of the Bill have been made to clarify the thresholds and triggers for schools' actions and interventions relating to attendance management plans. No change was required in the LEG paper.
Require universities to have a statement on freedom of expression	7, 11, 12, 13, 24 and 25.	<p>Change in expression: The Ministry of Justice and the Department of Internal Affairs noted that 'freedom of speech' is a narrow interpretation and the right extends more broadly. Both agencies recommended that using 'freedom of expression' may be desirable from a drafting perspective to have consistency in language across the statute book and to reflect policy intent.</p> <p>Questions about consistency with the Bill of Rights Act: The Ministry of Justice noted that limiting universities' ability to restrict speech only when it violates the law may not align with the Bill of Rights Act and recommended that any protection of freedom of expression should be consistent with the Bill of Rights Act, including the test for justified limits in section 5.</p> <p>Reference correction: The Ministry of Justice also noted that the relevant international agreement given effect to as part of the development of this proposal would be the International Covenant on Economic, Social, and Cultural Rights instead of the Universal Declaration of Human Rights.</p> <p>Minor and technical: The New Zealand Qualifications Authority suggested that it would be useful to clarify whether the 'complaints procedures' and the 'report on the number and nature of complaints' refer only to complaints about freedom of speech and academic freedom or are about all complaints received by the university.</p>	<p>Change in expression: Minister Reti has decided to incorporate the change to 'freedom of expression' [METIS 1343743 refers]. This change has been explained in <i>paragraph 10</i> of the LEG paper and is reflected across the Bill.</p> <p>Questions about consistency with the Bill of Rights Act: The Ministry of Justice's concerns have been highlighted in <i>Annex 1 (paragraph 13)</i> of the LEG paper which highlights the proposed changes are considered necessary to strengthen the protection of freedom of expression in university settings. Officials have included a response to highlight the policy intent in <i>Annex 1 (paragraph 14)</i>.</p> <p>Reference correction: <i>Annex 1 (paragraph 9)</i> of the LEG paper has been amended to reflect the correct reference.</p> <p>Minor and technical: <i>Paragraph 8.3</i> of the LEG paper addresses The New Zealand Qualifications Authority's feedback by specifying that the complaints procedure is restricted to academic freedom and freedom of expression.</p>
Fix a minor omission in the Act for Wānanga	14.	There was no feedback on this proposal.	
Strengthen Government's role in Initial Teacher Education	15 and 16.	The Teaching Council noted a minor and technical error where the incorrect reference ('teacher registration') was originally used.	This has been corrected in <i>paragraph 12.1</i> of the LEG paper.

Proposal	Clause(s) of the Bill	Summary of feedback	How feedback was reflected in the LEG paper and/or the Bill
Strengthen the Teaching Council's disciplinary and competence evaluation processes	15, 17, 18, 19 and 26.	<p>Minor and technical changes: The Teaching Council noted some minor and technical issues regarding drafting clarifications which have since been addressed. The Teaching Council also suggested changes to the proposal relating to the prosecution function on the failure to make a mandatory report, to expand this to include reporting any matter of conduct or competence.</p> <p>Privacy Risks: The Office of the Privacy Commissioner noted that public registers can present a very high level of intrusion on individuals' privacy, so it is important that policy proposals extending the use of public registers are fully informed by a consideration of privacy risks and potential mitigations.</p>	<p>Minor and technical changes: The minor and technical drafting changes have been incorporated in <i>paragraph 14</i> of the LEG paper. We have not incorporated the change regarding the scope of prosecution (<i>paragraph 14.6</i>) as it expands beyond the original policy intent [CAB-24-MIN-0412 refers].</p> <p>Privacy Risks: We have incorporated the feedback from the Office of the Privacy Commissioner in the Cabinet paper through <i>Annex 1 (paragraph 8)</i> which highlights the actions the Teaching Council will take to mitigate identified privacy risks.</p>
Make the power to set fees for international students optional rather than mandatory	20.	There was no feedback on this proposal.	
Extend the notification period for school strikes	21.	There was no feedback on this proposal.	
Make principal eligibility criteria requirements optional rather than mandatory	22.	There was no feedback on this proposal.	
Enable National Student Numbers (NSN) to be used for research initiatives	25 and 29.	<p>Drafting clarification: The Tertiary Education Commission noted that the current drafting precludes other individuals eligible for participation in the Performance-Based Research Funds (PBRF). For example, individuals who employed to conduct research but are still assigned National Student Numbers (NSNs) as they are eligible and eventually may become researchers. Other minor and technical changes to more accurately reflect policy intent.</p> <p>Privacy Act compliance: The Office of the Privacy Commissioner recommended clarifying the LEG paper to highlight compliance with the Privacy Act 2020.</p>	<p>Drafting clarification: We have amended the definition of researcher in the Bill to include other eligible individuals including those who are, or was, employed or engaged by a tertiary education organisation and undertakes, or undertook, research or research led training.</p> <p>Privacy Act compliance: We have incorporated the feedback from the Office of the Privacy Commissioner to reflect compliance with the Privacy Act 2020 including how previous use of NSNs has been lawful in <i>paragraph 18</i> of the LEG paper.</p>