

# Impact Summary: Proposal for a new registration criterion for private schools which requires them to provide a safe physical and emotional environment

## Section 1: General information

### Purpose

The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, 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 or on behalf of Cabinet.

### Key Limitations or Constraints on Analysis

The Government expects that the physical and emotional safety of students is of the highest priority for all schools, including private schools. However, the absence of student safety as part of the registration criteria for private schools means there is no mandate for ERO to routinely review student physical and emotional safety at private schools and therefore we do not have a complete picture about the extent of the issue.

### Responsible Manager (signature and date):

Dr 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?

#### Current law- Duties

Private schools are subject to a different regulatory system from State and State integrated schools. Private schools must be registered under section 35A of the Education Act 1989. The current registration criteria in section 35C of the Education Act 1989 require that certain standards be met in relation to the premises, staffing, equipment used, curriculum, tuition standards and management. Private schools are subject to the Health and Safety at Work Act 2015 and, under the Education Act 1989, are required to have suitable premises and equipment, as approved by the Secretary for Education.

The Secretary for Education is legally bound to give provisional registration for a school if he or she is satisfied the school is likely to meet the criteria for registration as a private school. The Secretary for Education is also legally bound to give full registration after the provisional period and review if he or she is satisfied that the school meets the registration criteria. Private schools' registration criteria do not include a requirement that the school is a safe place. Although a private school's registration may be cancelled if there is a breach of registration criteria, the absence of safety in the criteria means that the Secretary for Education cannot cancel a private school's registration if he or she believes the school to be unsafe.

The Education Review Office (ERO) must conduct a review of private schools with provisional registration, including whether or not registration criteria are met. ERO's review focus, specified in the Education Act, is schools' compliance to registration criteria. However, the absence of student safety as an explicit registration criteria means that there is no clear mandate for ERO to review private schools' policies and procedures relating to physical and emotional safety of students. ERO would expect schools to take 'all reasonable steps' to ensure compliance with standards.

#### Law commission recommendations

In 2009 the Law Commission recommended that the registration criteria for private schools should include

*'that the school provide a safe and supportive environment that includes policies and procedures that make provision for the welfare of students'<sup>1</sup>.*

In 2010, the Government rejected this recommendation on the basis that there was no evidence of any harm arising from the status quo and that it would result in unnecessary costs.

#### Instances are small in number but significant for students

There have been two recent instances where significant concerns about the safety of students at private schools were identified. In the first instance, there was a serious injury to a student; the staff were not equipped to deal with it, and there was a considerable delay in the school responding to the student's needs. The Ministry of Education suspended the registration and, over the period of a year, sought information from the school to assure the Secretary for Education they would be able to provide a safe environment if the suspension were lifted. The school was unable to provide sufficient information to give this assurance to the Secretary for Education and the school's registration remained suspended. After a year, the Board governing the school decided it would close. In the second instance, concerns were raised with the Ministry about the safety and welfare of the students. The concerns related to children being unsupervised in outdoors and forestry settings, and potentially at risk of serious harm.

<sup>1</sup> <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R108.pdf>



While few private schools have been identified as providing poor safety standards for students, research is increasingly indicating high levels of bullying behaviour across the schooling network and variable levels of student wellbeing. A New Zealand Council for Education Research survey noted that, in some schools, only 68 percent of students agreed with the statement 'I feel I belong at school.' Of the 58,000 students surveyed from years 4 to 13, 15 percent (nearly 9000) reported being bullied at least every week.<sup>2</sup> New Zealand students report higher levels of bullying at school than the OECD average.<sup>3</sup> There is no evidence that the level of bullying and other forms of physical and emotional harm is better or worse in private schools than in State or State integrated schools.

### **Problem**

There is no explicit registration criterion in the Education Act 1989 requiring a school to provide a safe physical and emotional place for students.

This has the following implications:

1. students' physical and emotional safety cannot be considered when the Secretary for Education considers registering a private school;
2. where the Secretary for Education has concerns about the safety of an existing private school, registration cannot be cancelled. This may result in a school registration being suspended indefinitely. The absence of safety in private school registration criteria also means there are a range of other actions not available to the Secretary where there has been a breach (eg, issuing a notice to comply with criteria, requiring schools to inform parents that the school is not meeting the criteria);
3. because ERO's main focus in reviewing private schools is compliance with registration criteria, the absence of student safety as a registration criterion means that ERO cannot review private schools' safety policies and procedures. This results in variable information about overall safety in private schools across New Zealand, and difficulty assessing whether or not individual private schools need assistance to improve performance.
4. there is a lack of clarity for students, parents and whānau about the duty for private schools to provide a physically and emotionally safe place for students. While some students/ parents/ whānau may believe that the duty to provide a safe environment is a self-evident, the absence of specificity in the criterion may lead to students and parents to question the nature of the schools' duty, particularly in relation to emotional safety.

Clearly specifying that private schools must provide a safe place for students in the criteria will help some students and their parents to be more aware of their right to have a safe environment.

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<sup>2</sup> <http://www.nzcer.org.nz/system/files/Student%20Wellbeing%20Report.pdf>, p 1.

<sup>3</sup> PISA2015 – New Zealand Students Wellbeing Report, Ministry of Education; 2015, p26.

## 2.2 Who is affected and how?

Including a registration requirement for private schools to provide a safe physical and emotional place for students provides a clear mandate for the Secretary for Education to consider safety in registration decisions and provides a wide range of tools for the Secretary to act where there were concerns about safety. It will also clarify the mandate for ERO to review private school policies and therefore both the Ministry and ERO would be better informed about the standard of safety in such schools, and could contribute to more timely interventions when the Secretary for Education considers necessary to promote safety in private schools.

Private schools that have already been registered will continue to be registered. This will mean little change in behaviour for most private schools. If the Secretary for Education considers an existing private school is not providing a physically and emotionally safe environment, he or she will be able to take a range of actions including:

- issuing the school's managers with a notice to comply
- requiring the school managers to inform parents of the students at the school that the school is not meeting its registration criteria
- imposing conditions on the school's registration:
- suspending the registration or
- cancelling the school's registration.

Managers of proposed new private schools will need to satisfy the Secretary for Education and the ERO that the proposed school will be a physically and emotionally safe place.

Most submitters noted the importance of student safety but there were mixed views on whether a legislative change was necessary. ERO supports the change.

Feedback from consultation is discussed in section 5.1 below.

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

No constraints or interdependencies have been identified.



## Section 3: Options identification

### 3.1 What options have been considered?

The key objective for this intervention is to contribute to the safety of students at private schools with the provision of better information about safety requirements and providing a wider set of interventions for the Secretary where there is a concern about student safety in private schools. This would enable the Ministry of Education to work with the school in the rare occasions where risks to safety have been identified, while balancing the freedoms private schools have under their regulatory system.

Three options have been considered in line with the objectives:

- Option A – Status quo. No regulatory changes relating to the registration criteria of private schools.
- Option B – Include in the registration criteria the requirement that private schools provide a physically and emotionally safe place for students and specify the policies and procedures required by those schools in order to satisfy the Secretary that the school is a safe place (essentially the Law Commission recommendation).
- Option C – Include in the registration criteria that private schools must provide a safe physical and emotional environment. This option differs from option B in that private schools would have greater flexibility to determine how they would satisfy the Secretary of their safety procedures and practices and safety performance.

The following criteria were used to assess the three options:

- The extent to which the option provides a full suite of possible remedies for the Secretary for Education to refuse to grant or to cancel registration when there is a concern as to whether private schools are providing a safe place for students.
- The extent to which the option provides a clearer mandate for ERO to review private schools' policies and procedures (and therefore will provide more routine and robust information about safety within private schools).
- The extent to which the option clarifies the duties of private schools to provide a physically and emotionally safe place for students and therefore makes it clear to students and their parents that private schools have a duty to provide a safe place.
- The extent to which the option is consistent with the duties of on State and State integrated schools – ie, does the option does pose a higher burden on private schools than State schools.
- The extent to which the proposed new registration criteria are consistent with current registration regime approach (which expresses the desired outcome rather than how it is to be achieved).

	Provides wider suite of remedies for Secretary if schools not safe	Clearer mandate for ERO to review policies and procedures	Clearer duties for schools, students and parents and whānau	Safety requirements similar for State and State integrated schools	Consistent with other registration regime
Option A– status quo	NO	NO	NO	NOT CLEAR	NO
Option B- Change to registration criteria and specify policies	YES	YES	YES	NO	NO
Option C Change registration criteria	YES	YES	YES	YES	YES

*Option A (status quo)*

This option would not see any change to the registration criteria and the problems identified in 2.1 above would not be addressed, that is:

- the Secretary could not refuse to provisionally register a potentially unsafe school,
- ERO would not have a clear mandate to review private schools safety policies, and
- the duties on private schools would continue to lack transparency.

While it is implicit in the Education Act 1989 that private schools need to provide an environment where student welfare is not put at risk, this is not reflected in the registration criteria. It is therefore unclear whether student welfare means the same as providing a physically and emotionally safe place for students.

*Option B Specification of policies and new registration criterion*

Under this option, the key problems identified in 2.1 above would be addressed, that is:

- the Secretary for Education would be able to refuse a private school's registration or to take a range of actions, including cancelling the registration, where he or she believes the school is not providing a physically or emotionally safe place;
- ERO would have a clearer mandate to review schools' policies and procedures, and students, parents and whānau would be clearer as to private schools' duties to provide a safe place; and
- The duties on private schools to provide a safe physical and emotional place for students would be an explicit duty and the requirement would be more transparent to the schools themselves, students and their parents and whānau.

Specifying safety policies that private schools would need to comply with would provide for a high level of transparency. However, it would result in a duty more onerous for private schools than applies to State and State integrated schools. Furthermore, specifying safety policies in the private school registration criteria would be inconsistent with other current registration criteria which specify the desired outcomes rather than how outcomes are to be met. For example, other criteria require staff, premises, and equipment to be suitable, they do not specify what suitable means.



### Option C – Specification of new registration criterion

As with option B, this option would result in the problems identified with the current registration criteria being addressed. Unlike option B, this approach would be more consistent with the requirements of State and State integrated schools and would be consistent with how the other registration criteria are expressed. This option is consistent with the current registration regime for private schools as it does not specify how the private schools should provide a safe physical and emotional environment, but gives them the flexibility to decide what is best for their school.

### 3.2 Which of these options is the proposed approach?

Option C is preferred because it would meet the objective of contributing to student safety in private schools, the duties it would impose would be consistent with the duties on State and State integrated schools, and the criteria would be consistent with the existing private school criteria.

## 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 <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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#### Additional costs of proposed approach, compared to taking no action

Regulated parties	There are currently 87 private schools and it is likely that most of them could demonstrate that they provide a safe physical and emotional environment for students. In a small number of cases, schools may need to update their policies or safety practices. This too is anticipated as having low monetised impacts.	Low
Regulators	The Ministry of Education may be informed of more cases (though still few) of poor safety performance in private schools. This would mean more instances of the Ministry working with schools to raise performance. The Ministry may provide guidance to private schools on how to meet safety elements of registration criteria. ERO would have a new criterion to review which would augment the ERO's current reviews of private school policies and procedures relating to safety. Costs are to be met within baselines.	Low  ERO identified potential additional costs of between \$43,000 - \$47,000 per annum for the conduct of safety reviews.
Total Monetised Cost	NA	NA

Non-monetised costs	<i>Low increase in compliance costs for most private schools; potential for medium additional costs for small amount of schools where there is poor performance. Low additional administrative costs for ERO and Ministry.</i>	<i>Low</i>
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**Expected benefits of proposed approach, compared to taking no action**

Regulated parties	Private schools can be assured they are providing a safe environment for students.	<i>Medium</i>
Regulators	Clear mandate for ERO to review policies and procedures. Clearer mandate for Secretary for Education making registration (and registration cancellation) decisions in respect of private schools. Better sector-wide information will assist the Ministry and sector to identify any problems and work to resolve them in a timely manner.	<i>Medium</i>
Other parties	Greater confidence for students, parents and whānau on the safety record of private schools and the duties expected of them. This may assist some caregivers to make informed decisions about the schools they will send their children to.	<i>Medium</i>
Total monetised benefit	NA	NA
Non-monetised benefits		<i>Medium</i>

**4.2 What other impacts is this approach likely to have?**

None identified
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## Section 5: Stakeholder views

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

The Ministry consulted on the proposal to add a new registration criterion requiring private schools to provide a safe physical and emotional environment between 20 March and 13 April 2018 as part of the consultation on issues being considered for legislation in 2018.

Fifteen submissions were received on this issue. Most submissions noted the desirability of private schools providing a safe environment for students. Five submissions explicitly agreed to a change to the registration criteria. This included the Ombudsman's Office, the Independent Schools Association and New Zealand Educational Institute Te Riu Roa (NZEI).

The ERO supports the proposed change in registration criteria.

Four submitters considered a change to private schools' registration criteria was unnecessary or undesirable. The key arguments were that private schools already provide a safe environment and parents are best placed to monitor student well-being. Concerns were also expressed about the State interfering in private education. Three submitters had concerns about the Government judging what constitutes emotional wellbeing, particularly where it might diverge from the views of religious education providers. Several submitters used the example that the State may have a different view to private schools on how transgender students should be treated.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements be given effect?

Once the Bill has received Royal assent, the Ministry will write to all private schools and other relevant stakeholders (including ERO) and advise them of the law change.

The amendment will not change the registration status of private schools already registered. They will therefore not need to reapply for their registration.

Managers of schools seeking to be registered as a private school will need to comply with the new safety registration criteria.

ERO has identified how new registration criteria on safety might affect its work programme including how it would review policies and procedures and liaise with students.

The Ministry of Education will liaise with ERO and other stakeholders on the development of resources to assist new and existing private schools to provide a safe place for students, and how they can satisfy the Secretary for Education and ERO that the school is a safe place.

## Section 7: Monitoring, evaluation and review

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

Currently ERO reviews private schools policies and procedures. This will continue.

### 7.2 When and how will the new arrangements be reviewed?

The new arrangements will be assessed by the Ministry of Education as part of normal practice and in conjunction with the ERO's regular statutory review processes, as outlined above.