

Appendix 6: Discussion document: Proposed changes to NZQA cancellation of PTE registration for immigration breaches

Have your say on proposed changes to NZQA's mandatory cancellation of PTE registration for immigration breaches

Proposal for change

We propose that cancellation of a Private Training Establishment's (PTE) registration for immigration breaches (enrolling international students without an appropriate visa) happens at the discretion of the New Zealand Qualifications Authority (NZQA), rather than automatically. This is in line with NZQA's discretion to cancel a PTE's registration for other reasons under section 350(1) of the Education and Training Act 2020 (the Act); for example, breaches of registration conditions. This will also enable Immigration New Zealand to undertake appropriate prosecutions for immigration breaches, without providers potentially suffering the disproportionate consequence of cancellation of registration.

NZQA already has other processes in place for considering cancellation of a PTE's registration, and a conviction for enrolling an international student without an appropriate visa would be added to the list of actions that would trigger an investigation / consideration of cancellation.

Background

Section 350(2) of the Act states that the NZQA **must** cancel the registration of a PTE under certain circumstances. This includes if a PTE is convicted of an offence under section 352(1) of the Immigration Act 2009 – allowing a person to undertake a course of study if they are not entitled to do so under the Immigration Act.

The penalties for breaches of this section of the Immigration Act are fines of up to \$30,000.

Immigration New Zealand (INZ) can, and has, successfully prosecuted other providers¹ for allowing a person to undertake a course of study without the appropriate immigration authority, as these providers are not subject to the same penalties (registration cancellation) under the Act. Providers usually receive an official warning before the decision is made to prosecute.

Section 350(1) of the Act outlines situations whereby NZQA **may** cancel a PTE's registration, including breaches of registration conditions or for no longer meeting registration criteria.

Current situation

INZ have advised that they find it difficult to take forward prosecutions of providers for enrolling international students without the appropriate immigration authority (visa), because of the likelihood that requirement to deregister the PTE would be considered by judges to be disproportionate to the seriousness of the offending. There were five cases in 2018 and 2019 that were impacted by these restrictions. Each case usually involved 8-16 international students.

¹ This does not apply to providers of compulsory education – they cannot be prosecuted for enrolling a child unlawfully in New Zealand.

NZQA notes that the consequences of cancelling a PTE's registration on its students and staff can significantly outweigh the seriousness of the immigration offence. There are a number of statutory actions and other mechanisms by which NZQA can address these issues instead (in addition to any actions INZ may take).

Why change?

We are proposing this change so that:

- providers are held to account for immigration breaches;
- INZ can exercise their regulatory function and better enforce immigration law;
- fewer PTEs enrol international students without the appropriate immigration authority
- immigration breaches primarily have consequences under immigration provisions, rather than education ones;
- NZQA can build a stronger case for cancelling a PTE's registration, if required, so that immigration issues are just one factor in the decision (rather than the sole basis);
- these provisions are better aligned with the current PTE deregistration provisions for breaches of registration conditions or criteria;
- the consequences for these immigration breaches by PTEs are aligned with the consequences for other provider types; and
- the risks of exploitation to international students are mitigated by ensuring that they are enrolled legitimately and therefore have appropriate legal protections.

Options analysis

We considered several options, including:

Maintaining status quo

This is likely to perpetuate the current situation, i.e. INZ is unable to successfully prosecute PTEs for these immigration breaches, and providers therefore don't face the consequences for these breaches. It is therefore not a recommended option.

Remove any obligation to cancel a PTE's registration for immigration breaches entirely

It is important that PTEs operate within the law and that their behaviour does not create any risks to international students (for example, enabling a breach of visa conditions or increasing vulnerability to exploitation). This option would also be inconsistent with the requirement to consider cancelling a PTE's registration for other transgressions and is therefore not a recommended option.

Narrowing the criteria under which NZQA must cancel a provider's registration for immigration breaches

We considered whether it would be possible to establish a narrower set of criteria under which NZQA must cancel a provider's registration for breaching section 352 of the Immigration Act, for example repeated offences or particularly severe offences. However, we consider that it would be difficult to set appropriate criteria which were able to take into consideration all relevant circumstances, so this is not a recommended option.

Imposing an alternative penalty

We considered whether it would be appropriate to impose an alternative penalty to deregistration; for example conditions on registration or increased monitoring. This option is not recommended as it is inconsistent with penalties for other breaches of registration and monitoring requirements, and there are already penalties under the Immigration Act.

We believe the following groups will be impacted

International students

The proposed changes will improve protections for international students. International students who are not entitled to be enrolled are at risk of breaching their visa conditions, at increased risk of exploitation, and may not have all the appropriate protections international students are entitled to.

Private Training Establishments

The proposed changes will have an impact on PTEs that are breaching section 352(1) of the Immigration Act, as they are more likely to be prosecuted. However, the penalty for a successful prosecution is likely to be more proportionate to the seriousness of the immigration offence, and deregistration would no longer be an automatic consequence.

Other international education providers

The proposed changes would have no direct impact on other international education providers. However, the whole international education sector benefits from ensuring that immigration rules are upheld and international students have appropriate protections.

Cost impacts

INZ already investigates alleged breaches of section 352(2) of the Immigration Act 2009. It is possible that if this provision is changed more cases will be progressed to prosecution, which may result in increased legal costs. INZ will be able to manage this through current baselines. NZQA currently has discretion to manage PTE registration cancellations for a number of reasons. Moving cancellation for immigration breaches from an automatic requirement to a discretionary power may require some additional administrative processes for NZQA, however NZQA considers that it is unlikely to have a significant impact on resourcing.

Next steps

Proposed process

We propose that these potential changes are included in the Education and Training Amendment Bill (No. 2).

Support for implementation

INZ and NZQA already have established processes for notifications of immigration breaches. These processes would be updated to include the impacts of the new provisions.

The changes would also be communicated to the sector, particularly PTEs.

Timeframe and process for implementation

The changes would take effect when the Education and Training Amendment Bill (No. 2) is passed into law.

Questions:

- Q.1. Do you agree that it is important that INZ is able to prosecute PTEs for enrolling international students without the appropriate immigration authority (visa), in the same way they are currently able to address these issues with other education providers?
- Q.2. Do you support the proposed approach for enabling NZQA to decide whether a PTE's registration should be cancelled for enrolling international students without the appropriate immigration authority, rather than making it automatic? If so, why? If not, why not?
- Q.3. What other factors could or should be taken into account when deciding whether a PTE's registration should be cancelled for enrolling international students without the appropriate immigration authority? Are there any situations where it should be a requirement in the Education and Training Act 2020?

How to have your say

We are seeking your views on the proposal to make cancellation of a PTE's registration for immigration breaches at the discretion of NZQA, rather than an automatic requirement. You can email your submissions to legislation.consultation@education.govt.nz or write to:

Education Consultation
Ministry of Education
PO Box 1666
Wellington 6140
New Zealand

Submissions close on 16 June 2021 and will inform advice to the Minister on final policy proposals that would be submitted to Cabinet and, if approved, would be reflected in the Education and Training Amendment Bill No. 2, due to be introduced in November 2021.

Purpose of feedback

We are seeking your views on the suggested changes discussed above. Your feedback will enable us to make better informed decisions about possible changes to NZQA cancellation of PTE registration.

Please be assured that any feedback you provide will be confidential to those involved in analysing the consultation data. We will not identify any individuals in the final analysis and report writing unless you expressly give permission for this. However, submissions, including submitters' names, and documents associated with the consultation process may be subject to an Official Information Act 1982 request