

Impact Summary: Power for the Minister to instruct the Secretary to appoint a Commissioner if a board of trustees election is declared invalid

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 in relation to the proposal for the Minister of Education to have the power to appoint a Commissioner if a board of trustees election is declared invalid.
Key Limitations or Constraints on Analysis
There are no limitations or constraints on the analysis.
Responsible Manager (signature and date):
<p>Dr Andrea Schöllmann, Deputy Secretary</p> <p>Education System Policy</p> <p>Ministry of Education</p> 

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?
<p><i>Invalid elections</i></p> <p>Section 101D(5) of the Education Act 1989 gives the Minister the power to declare an election of a board of trustees invalid. An invalidation would usually happen where an error could affect the result of the election, for example, where a significant number of the roll failed to be sent voting papers. Subsection (c) provides that in the case of an invalid election the Minister can reinstate the previous board (i.e. the board that has been voted out at the invalidly conducted election) until a new election is held. This is the only solution to an invalid election provided for in the Act.</p> <p>There are several issues with bringing back the previous board until a new, valid election is held. Under the status quo, the previous board could have been out of office for up to two months before being reinstated (under section 101D, an election can be declared invalid up to 60 days after it is held). It may be difficult to reinstate the board if its members have moved on to other commitments, or no longer wish to be involved in the running of the school. Additionally, bringing back the previous board may be problematic from the point of view of the school community, who may have had issues with the previous board or some of its</p>

members (hence them being voted out at the election).

If there is no regulatory change, previous boards will continue to be reinstated (in some cases against either their will or that of their communities) until valid elections are held, or there is a risk of a school not having a governing body for the period it takes to conduct a valid election.

Opportunity to make change now

The recent board of trustees elections highlighted some of the issues in the legislative framework. An Education and Training Bill is currently being developed, and will replace all existing education and training legislation. This provides us with an opportunity to address the problem with invalid elections now, so that it can be in place for the next triennial board elections in 2022.

2.2 Who is affected and how?

While this proposal theoretically affects all schools that have elections, as there is always the risk that any school's election suffers from errors which may lead to an invalidation, in reality only a small number of schools have their board of trustees elections declared invalid. In 2019 this was six schools. In 2016 it was one.

Communities who were unhappy with the previous board voted out at the invalidly held election are likely to be happy with this change, as they would not want those members coming back until a valid election is held. Previous board members who no longer want to be on the board would also support this change, as under the status quo they must return to govern the school until a valid election is held.

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

There are no constraints on the scope.

Interdependencies with ongoing work

This proposal is part of a wider work programme intended to better facilitate board elections. The wider legislative framework for board of trustees elections is overly prescriptive and out of date. To rectify this, the Ministry of Education has begun a review to ensure the framework (particularly the Education (School Trustee Elections) Regulations 2000) is fit for purpose. This work sits alongside the proposed Commissioner power and the other minor amendments that form part of the Education and Training Bill.

Section 3: Options identification

3.1 What options have been considered?

Option 1: Retaining only the power to reinstate the previous board after an invalidly held election (status quo)

As discussed in the problem definition (section 2.1), there are issues with the status quo around reinstating previous board members who may have moved on (being difficult to track down or no longer willing to be a member of the board) and the dissatisfaction the community may have had with the previous board.

However, there are several benefits to this option. The previous board members understand how the school operates and how to run the school, which should facilitate more stable governance of the school than allowing the invalidly elected board to remain for a few months until a valid election is held.

There is also no significant associated monetary costs with this option. Although, there may be a cost to the schools that have had their elections invalidated in having to find the previous board members that must be reinstated.

Option 2: Adding the power for the Minister to direct the Secretary to appoint a Commissioner after an invalidly held board election alongside the existing power to reinstate the previous board (preferred)

Under this option, the Minister would have the power to direct the Secretary to appoint a Commissioner if an election is declared invalid under section 101D(5). This would be in addition to the Minister's current power to reinstate the previous board, giving the Minister the discretion to determine what was best for a school on a case by case basis. The Commissioner would remain in place until a valid election was held (on a date to be determined by the Minister under section 101D(5)(b)), as is currently the case when a previous board is reinstated.

This is our preferred option. It directly addresses the problems identified above (in the problem definition) associated with reinstating the previous board.

The Ministry is experienced in appointing Commissioners. Ministry staff appoint Commissioners from a Ministry-pre-approved list of providers. This would ensure that a school continues to have stable governance over the period between an invalid election and a valid one.

Community members who did not like the previous board may like this option, as it ensures that members purposefully voted out at the last election do not continue to govern the school. It also provides certainty for a school community in who is governing the school. However, the appointment of a Commissioner could give the perception that there are problems with the school and its governance (which can be the case in other circumstances where a Commissioner is appointed under the Act).

This option has the benefit of being flexible, as the Minister can choose between reinstating the previous board and directing the Secretary to appoint a Commissioner, depending on the needs of a particular school.

There would be a minimal monetary cost associated with this option, as a Commissioner

would have to be paid to govern the school until a valid election was held. This would likely be between two and four months. However, this option would cost less than option 3, as the Minister would retain discretion as to when a previous board should be reinstated, or a Commissioner appointed. There are also very few invalidly held elections (one in 2016 and six in 2019).

Option 3: Replacing the power to reinstate the previous board after an invalidly held election with the power for the Minister to direct the Secretary to appoint a Commissioner

This option has the same benefits as option 2 in relation to the Ministry's experience in appointing Commissioners, stable governance of the school, and views of communities dissatisfied with the previous board. However, it also attracts the same costs, such as giving the perception that there are issues with school's governance.

This option also lacks the flexibility of option 2. Under this option, a Commissioner must be appointed after each invalidly held election, even if reinstating the previous board would be more appropriate at a particular school. There are some situations where reinstating the previous board is beneficial. For example, if the election is declared invalid within a week of it being held, and retaining the previous board would allow for continuity.

As with option 2, there would be a minimal monetary cost associated with this option. However, it would cost more than option 2, as a Commissioner would be appointed after every invalidly held election, rather than giving the Minister the discretion to reinstate the previous board.

Option 4: Amending the Act to allow the invalidly elected board to stay in office until a valid election was held

We considered amending the Act to allow the invalidly elected 'new' board to stay in office until a valid election was held.

While some of the community may prefer this option, because they may prefer the invalidly elected new members to those of the previous board, it undermines the legitimacy of the board's governance if invalidly elected board members are governing a school. This also risks disrupting the stable governance of the school, as the school will be subject to three different boards within a short period of time (previous board, invalidly elected board, new validly elected board).

This option would have no significant costs associated with it.

Other options

We considered other options such as short-term appointment of members to the board. However, we considered that these options would be administratively burdensome when the length of time that they would be appointed for is relatively short.

3.2 Which of these options is the proposed approach?

Our preferred option is option 2. This option directly deals with the problems associated with reinstating a previous board after an invalidly held board election. This is because it gives the Minister the power to choose whether reinstatement of the previous board or appointment of a Commissioner would be best for the particular school, taking into account a school's circumstances and the circumstances of the invalidly held election.

Option 2 provides a mechanism for stable governance of a school. The Ministry is experienced at appointing Commissioners into schools for short periods of time to ensure that schools are governed appropriately.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

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

Regulated parties – school boards of trustees	<p>There would be a low cost for school boards as a Commissioner is paid out of board funds (Ministry sets maximum hours of work). However, the legislation enables the Ministry to cover the costs of any intervention (out of already appropriated funds) if it determines that the school is not in a position to pay for it.</p> <p>Any costs associated with carrying out another election are paid by the Ministry in already appropriated funds, therefore there would be no additional costs for either schools or the Ministry in running another election.</p>	Low: Hourly rate for Commissioner is between \$80 and \$150. Anticipated to work 10 to 20 hours a month for variable periods but a maximum 3.5 months. This is per board. Number of boards with invalid elections likely to be low. In 2019 there were six invalidations and in 2016 there was one.
Regulators	Regional directors appoint Commissioners from a Ministry pre-approved list of providers. Regional staff monitor the commissioners for the duration of the intervention.	Low
Wider government	N/A	N/A
Other parties	N/A	N/A
Total Monetised Cost	There are low costs associated with the appointment of a commissioner for schools. These costs would be partially offset as board members usually receive a \$55 honorarium per board meeting each and the Chair of a board receives a \$75 honorarium per board meeting, although boards can set higher rates. Additionally, the legislation enables the Ministry to cover the cost of the intervention if it determines this would be appropriate (i.e. if the school is experiencing financial difficulties).	Low

	<p>There may be some minimal costs for the Ministry if it is decided that a school should not pay for the Commissioner. However, the numbers of invalidations are very small, therefore the cases in which the Ministry may have to cover the cost are either also very small or non-existent.</p> <p>The appointment of a commissioner and the monitoring of the intervention is part of the Ministry's BAU work and would be met within existing costs. This work may need to be carried out by Ministry regional staff. However, this time commitment is likely to be minimal.</p>	
Non-monetised costs	N/A	N/A

Expected benefits of proposed approach, compared to taking no action		
Regulated parties – school boards of trustees	<p>The appointment of a Commissioner would benefit schools as this would enable continued governance of the school to occur. Reinstating the previous board can be difficult, as previous board members may no longer be able or willing to return to their previous position. This has not happened so far but there is a possibility of it happening in the future.</p> <p>Schools (usually the principal or current invalidly elected board or Chair) are tasked with contacting previous board members and arranging their reinstatement. This can at times be administratively difficult as the invalidly elected board could have been in office for up to two months. The appointment of a Commissioner is likely to reduce such costs.</p>	Low - at system level as very few schools will be impacted in practice but it is of high importance to individual schools that have their elections invalidated.
Regulators	While regional staff are not directly involved in contacting the previous board members, they typically make sure that the correct process is followed by schools which may attract minor administrative costs. The appointment of a Commissioner is likely to reduce such costs.	Low
Wider government	N/A	N/A
Other parties	<p>Some community members may find the appointment of a Commissioner beneficial as the reinstatement of the previous board could be seen as problematic if the community members voted particular members out at the invalidly conducted election.</p> <p>Previous board members may also find this proposal beneficial as some of them may have</p>	Low

	moved on to other commitments and either cannot or may not wish to return as board members.	
Total Monetised Benefit	Potential reduction in the administrative costs associated with the reinstatement of previous boards.	Low
Non-monetised benefits	Schools would benefit from guaranteed continual governance, community members that voted the previous board members out would not become disgruntled at their reinstatement, and previous board members who thought they had finished their term as board members would not have to be reinstated.	Low

4.2 What other impacts is this approach likely to have?

None.

Section 5: Stakeholder views

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

No public consultation was undertaken on this proposal due to it being a minor change to the board of trustees election regime. The proposal provides the Minister with flexibility in determining, on a case-by-case basis, whether reinstating a previous board or directing the Secretary to appoint a Commissioner would be more beneficial for a school.

The timing to include this proposal in the Education and Training Bill limited the ability to consult with affected schools. However, schools and communities will have the opportunity to provide their views on this proposal as part of the Select Committee process on the Bill.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Legislative vehicle

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

Communications

There will be a communications strategy for publicly announcing the commencement of the new legislation (Education and Training Bill) that will give effect to this proposal. This will likely include communicating to all schools through the School Bulletin and informing relevant peak bodies, such as the New Zealand School Trustees Association (NZSTA). The Ministry of Education and NZSTA's social media platforms will also publicise the law change.

Enforcement strategy

The Ministry of Education would be responsible for the ongoing operation and enforcement of the appointment of a Commissioner when an election is declared invalid. Regional directors appoint a Commissioner and regional staff monitor the commissioner for the duration of his or her appointment. The Ministry is experienced in enforcing interventions, including Commissioner appointments.

The new arrangement will come into effect once the Education and Training Bill is enacted. Regulated parties (boards of trustees) will not require any preparation time as they will have no involvement and will not be impacted by the appointment of a Commissioner when an election is declared invalid.

Section 7: Monitoring, evaluation and review

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

If a board of trustees election is declared invalid and it has been determined that it is appropriate for a Commissioner to be appointed an existing Ministry pre-approved list of providers would be used by Ministry staff to appoint the Commissioner.

The Ministry monitors and evaluates all school interventions through various mechanisms, including a well-tracked internal electronic system which records information about all school interventions, such as when a Commissioner is appointed and for what purpose, as well as reports which Commissioners are required to provide the Ministry at least once a month.

The Ministry's electronic system collects information on things ranging from the number of initiatives and where they are located as well as more specific information such as approval of appointment and other relevant operational information. Data related to the appointment of Commissioners in the case of invalid elections will be collected through the same system. A minor adjustment to the system would be needed for the collection of information in relation to the appointment of a Commissioner in the case of an invalidly elected board.

7.2 When and how will the new arrangements be reviewed?

In addition to the mechanisms described above, such as regular reports on the appointment of Commissioners and monitoring and evaluation of interventions by the Ministry, issues or concerns can be raised, and aspects of the arrangements reviewed, through regular and ongoing relationships between education providers and the Ministry.

If, as a result of monitoring and feedback, it becomes apparent that there may be unintended or unexpected consequences when a Commissioner is appointed in the case of an invalid election, this would lead to a review of this arrangement.