Cabinet Paper material Proactive release

Minister & portfolio Minister Hipkins, Education

Name of package Healthy Drinks in Schools: Consultation on Changes to Promotion and

Provision

Date considered 28 February 22 Date of release 7 April 2022

These documents have been proactively released:

Cabinet Paper: Public consultation on proposed changes to the promotion and provision of healthy drinks in schools

Date considered: 28 February 22 Author: Minister of Education

Cabinet Minute: CAB-MIN-22-0045
Date considered: 28 February 22

Author: Cabinet Office

Cabinet Minute: CBC-22-MIN-0009
Date considered: 21 February 22

Author: Cabinet Office

1268189 Briefing Note: Healthy Drinking Regulations Talking Points

18 February 22

Author: Ministry of Education

Material redacted

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here: http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html

In Confidence

Office of the Minister of Education

Chair, Cabinet Business Committee

Public consultation on proposed changes to the promotion and provision of healthy drinks in schools

Proposal

This paper seeks approval for public consultation on my preferred option and two other options I have considered to ensure that schools continue to promote healthy food and nutrition, and only provide healthy drinks. The options are set out in the attached discussion document: *Proposed changes to the promotion and provision of healthy drinks in schools*.

Relation to government priorities

The proposal to introduce a new duty that requires schools to provide only healthy drinks to year 1-8 students will support the achievement of the Government's Child Youth and Wellbeing Strategy by improving the oral and physical health of children and young people. It should also reduce the rate of potentially avoidable hospitalisations, which includes tooth decay and is a Child Poverty Related Indicator under the Child Poverty Reduction Act 2018.

Executive Summary

- New Zealand health statistics have highlighted high rates of Decayed, Missing or Filled Teeth (DMFT) in children by the time they reach their final year of primary school (Year 8), and these rates are disproportionately higher for Pacific and Māori students.¹ Sugar-sweetened beverages account for a significant proportion of free sugars consumed by children and contribute significantly to these outcomes.²³
- The current National Education Goals (NEGs) and National Administration Guidelines (NAGs) will cease to have effect on 1 January 2023. NAG 5b requires all school boards to promote healthy food and nutrition. I am proposing to make new Regulations under section 638 of the Education and Training Act 2020 to replace NAG 5b.
- 5 I am proposing that we replace the existing NAG 5b with
 - 5.1 a duty in Regulations for all schools and kura to promote healthy food and nutrition; and
 - 5.2 a duty on all schools and kura with students in years 1-8 to only supply healthy drinks to year 1-8 students.

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¹ Ministry of Health, WAI 2575 Māori Health Trends Report, 2019.

² Free sugars are defined by the World Health Organisation as "all monosaccharides and disaccharides added to food by both the manufacturer and consumer, including sugars naturally present in honey, syrups, and fruit juices."

³ Sundborn et al, "New Zealand's growing thirst for a sugar-sweetened beverage tax", New Zealand Medical Journal, 2015.

- While this is my preferred option, the attached discussion document, which forms a part of the regulatory impact analysis process, also contains two other options:
 - 6.1 **Option 2**: replace the existing NAG 5b with a duty in Regulations, and impose an additional duty on all schools (primary and secondary) to only provide healthy drinks.
 - 6.2 **Option 3**: replace the existing NAG 5b with a duty in Regulations to promote healthy food and nutrition with no additional duties on school boards regarding the provision of healthy drinks.
- The preferred option (**option 1**) strengthens the existing requirement in a measured way, by ensuring all students in years 1-8 have a minimum standard for drinks provided by their school.⁴ The preferred approach allows for other drinks to be supplied by schools and kura in some circumstances, such as where they form a part of a curriculum activity or are a part of a child's health plan.
- 8 I am seeking Cabinet's agreement to public consultation to test these options.
- I am not proposing to introduce the new healthy drinks duty in secondary schools (option 2) at this point. This is because far fewer secondary schools already have water-only policies than primary schools and more work needs to be done to understand the barriers to their implementation. However, my expectation is that secondary schools will be shifting to water-only policies in future and I am seeking feedback during public consultation on the barriers secondary schools would face with this type of requirement.

Background

Schools' existing duty to promote healthy food and nutrition will end on 1 January 2023

On 1 January 2023 the current NEGs and NAGs will cease to have effect. NAG 5(b), which requires all State schools to promote healthy food and nutrition, is the only NAG not earmarked for inclusion elsewhere. I propose that this requirement be replaced with an identical duty under Regulations made under section 638 of the Education and Training Act 2020.

Problem definition/opportunity

State schools should continue to promote healthy food and nutrition for all students

School-level approaches to promoting healthy food and nutrition are proven to be effective in improving children's attitudes and behaviours towards the food and drink they choose to consume at school, and at home. Eating habits established at a young age significantly inform a person's ongoing approach to healthy eating and drinking through to adulthood, so it's important to promote the benefits of healthy food and nutrition during this formative period.

New Zealand primary school students experience high rates of obesity and DMFT and sugar sweetened beverages are a significant contributor

Healthy food and drink are good for a child's general health, dental hygiene, and school behaviour. Schools that have voluntarily implemented water-only policies have seen that it benefits teaching and learning as well as student concentration health and wellbeing. Regulation of school-level provision of healthy food and

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⁴ Including composite schools that contain a minority of secondary school students.

- drink is common practice in other OECD countries and operates according to varying levels of prohibition and prescription.
- Good progress has been made under the current requirement in NAG 5(b) to promote healthy food and nutrition, but system-level change is needed to improve this further. According to a 2016 University of Auckland survey, of the 819 schools sampled, 67.5% of primary and 23.3% of secondary schools with a school food service (e.g. canteen or lunch order system) offered only milk and water as beverage options⁵.
- A school's promotion of healthy food and nutrition is undermined when the school also provides unhealthy food and drink. Whole-school approaches to healthy eating and drinking, where the educational messages are underpinned with consistent behaviour from the school itself, have been found to be more effective in influencing students' healthy food and drink choices. Currently, the Ka Ora Ka Ako Healthy School Lunches programme is the key government programme providing healthy food and drink in certain primary and secondary schools.
- Research in New Zealand has highlighted free sugars as contributing significantly to high rates of obesity, poor oral health, diabetes and other health-related diseases. The consumption of free sugars in sugar sweetened beverages now represents 26% of the total sugar intake of children.⁶ Further, studies conducted by the Environmental Health Indicators New Zealand (EHINZ) note that dental decay is now the most common disease reported among children in New Zealand.⁷
- The government has committed, through the Child and Youth Wellbeing Strategy, to ensure that children have the best possible health as a foundation for wellbeing. Potentially avoidable hospitalisations is both an indicator under the Child and Youth Wellbeing Strategy as well as a Child Poverty Related Indicator (identified in the Child Poverty Reduction Act 2018). Oral health is a key indicator for potentially avoidable hospitalisations.
- 17 Long standing structural and historic inequities in New Zealand society have disadvantaged particular groups, which has result in Māori and Pacific children being over-represented in the number of children experiencing poor dental outcomes. Between 2002 and 2016, Māori children in Year 1 and Year 8 were significantly more likely to suffer from decayed, missing, or filled teeth than their non-Māori peers.⁸ In 2018/2019, Pacific children aged 1-14 years were nearly twice as likely as non-Pacific children to have had teeth removed due to decay, an abscess, infection or gum disease in the past 12 months.⁹
- New Zealand has epidemic levels of obesity with adults having the fourth highest rate of overweight and obesity within OECD countries in 2019 and children having the second highest rate of overweight within OECD and European Union countries in 2016.¹⁰ From 2020 to 2021, obesity rates for children that had remained fairly

⁵ For this survey, 'primary schools' included full primary and intermediate schools, 'secondary schools' included secondary and composite schools

⁶ Sundborn et al, "New Zealand's growing thirst for a sugar-sweetened beverage tax", New Zealand Medical Journal, 2015.

⁷ Environmental Health Intelligence New Zealand, Oral Health of Children factsheet, 2021.

⁸ Ministry of Health, WAI 2575 Maori Health Trends Report, 2019.

⁹ Health Quality & Safety Commission New Zealand: Bula Sautu report - Pacific health in the year of COVID-19, 2021.

¹⁰ Mackay et al, "How healthy are Aotearoa New Zealand's food environments? Assessing the impact of recent food policies 2018 – 2021", 2021.

static for four of five years increased by 3.2 percentage points, from 9.5 to 12.7 percent.¹¹

Policy proposals

- To help ensure that all children benefit from schools continuing to promote healthy food and nutrition, I am proposing to transfer the existing NAG requirement into Regulations as a duty on school boards to promote healthy food and nutrition for all students. This continues the current requirement all schools have been subject to since 2009.
- I am also proposing to strengthen this Regulation by introducing a new duty on school boards with students in years 1-8 to only provide healthy drinks. This would limit school-level provision of drinks to:
 - 20.1 Plain, unflavoured water;
 - 20.2 Reduced or low-fat milk; and
 - 20.3 Unsweetened reduced or low-fat plant-based milks (e.g. soy, rice, almond, oat) with added calcium and vitamin B12.
- While this is my preferred approach (option 1), the attached document, as a part of the regulatory impact analysis process, also sets out two alternative options.
- 22 These options are:
 - 22.1 Option 2: replace the existing NAG 5b with a duty to promote healthy food and nutrition in Regulations, and impose an additional duty on all schools (primary and secondary) to only provide healthy drinks.
 - 22.2 Option 3: replace the existing NAG 5b with a duty in Regulations and impose no additional duties regarding healthy drinks on school boards.
- 23 Under the preferred option, all schools with students in years 1-8 will have a minimum standard for drinks provided by the school. There will be some practical circumstances where the requirement to provide healthy drinks will not apply, such as where students are doing a curriculum activity like juice making or where a school needs to provide a specific drink to meet a child's health needs.
- Regulating the food that can be provided by schools would require more policy work than could be done before the new Regulations need to take effect in October 2022. Regulating the provision of healthy drinks in primary school settings only, however, would be simpler to implement in the short-term while still being beneficial to schools and students.

I am proposing to consult on a number of implementation issues associated with the new duty

Circumstances where the duty may create challenges or will not apply

We want students to be consuming healthy drinks throughout their time at school, as part of their everyday habits. However, there are special occasions and limited circumstances (such as preventing a diabetic emergency), where it would be practical and reasonable for the new duty to not apply. The circumstances under

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¹¹ Ministry of Health, New Zealand Health Survey, 2021

which this new duty will not apply will be tested during the public consultation. They are:

- 25.1 At any school event to mark any religious or cultural occasion (for example, communion, pōwhiri);
- 25.2 For any drinks consumed as part of the curriculum;
- 25.3 For any drinks provided as part of any medically prescribed dietary requirements;
- 25.4 In any school in an area where a boil water notice is currently in effect.
- This new duty will apply only to drinks provided by school boards, and not to any drinks brought to school from home for a student's own consumption. Schools can go further than the Regulation ie some school policies go further by prohibiting unhealthy drinks being brought in from home, or during the events listed above. Before implementing a whole-school approach to healthy drinking that goes further than the Regulations, I expect schools to consult with their community.

Monitoring and compliance

- I am proposing a light-touch compliance approach to the new duty. This means that when any complaints are made to the Ministry of Education, regional staff will be in contact with the school to highlight the duty.
- This is a proportionate response to a system where many primary school boards had already opted to implement a healthy drinks policy in 2016.
- The Ministry of Health has, under Budget 2019, employed 30 FTE staff based in regional public health units to assist with voluntary approaches to healthy food in schools' policies, and the roll-out of the Ka Ora, Ka Ako Healthy School Lunches programme. Given their existing remit to visit, encourage and work with schools in their area to establish healthy eating and drinking policies, these staff would be well-placed to highlight the new, strengthened Regulations for school provision of healthy drinks, as well as the impact on Māori and Pacific children. These staff will not be required to inspect schools' compliance with the new duty and would instead continue to encourage and advocate healthy eating and drinking policies.
- There may be impacts for schools who have existing catering contracts, but I expect these to be small given that many primary schools (67.5% of primary schools with a school food service) already had a water-only policy in 2016.
- I am seeking Cabinet's agreement to publicly consult on my preferred option, and two other options I have considered. The discussion document will be used to flush out implementation issues, check the existing guidance is fit for purpose, and to test the proposed light-touch compliance approach.
- Following this, I intend to seek agreement to the final policy decisions and approval to issue drafting instructions in May 2022, with a view to bringing the Regulations into force at the start of term 4 in 2022.

Secondary schools are not currently within the preferred option, but the consultation will be used to better understand the barriers to future healthy drinks regulation in these settings

- The benefits of healthy drink policies are similar for secondary schools. However, these settings are different to primary schools in their provision of drinks; far fewer secondary schools already have healthy drinking policies than primary schools, and more work needs to be done to understand the challenges these settings would face in their implementation of such a policy.
- 34 Approximately 110 secondary schools have primary school-aged students in them, usually Years 7 and 8. As a part of the consultation, the Ministry will test the impacts for these schools of not being required to implement a whole-school approach to healthy drinking. Research suggests that these approaches have been proven to be more effective in achieving meaningful buy-in from the student body if applied as whole school approaches 12. This will therefore be an opportunity to test the willingness of these schools to adopt a healthy drinks policy for all their students, including those in year 9 and above.
- I intend to use the public consultation period to better understand the barriers secondary schools might face in implementing a duty to only provide healthy drinks in the future.
- The proposed new duty on schools to only provide healthy drinks for year 1-8 students can be extended to include all year levels in future. Once I better understand the practical barriers, and any funding implications, I intend to apply a similar duty to all remaining State schools. We know that it is possible, as some secondary schools have already taken this step. I expect other secondary schools to begin moving towards only providing healthy drinks ahead of this future change.

Financial Implications

37 There may be funding and practical implications for school boards to consider – for example revenue from vending machines and tuck shops and consideration of whether there is sufficient infrastructure (ie water fountains) on school sites. I intend to test this in public consultation and following that the Ministry of Education will work through what, if any, financial implications there may be for schools.

Legislative Implications

Feedback on these options will inform revised proposals that I expect to submit to Cabinet in May 2022 when I will be seeking approval to issue drafting instructions for Regulations to implement the proposed duties on school boards.

Impact Analysis

Regulatory Impact Statement

39 The Regulatory Impact Analysis panel at The Ministry of Education has reviewed and confirmed that the discussion document can substitute for an interim Regulatory Impact Statement. It will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.

Climate Implications of Policy Assessment

The Climate Implications of Policy Assessment (CIPA) team at the Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

¹² Irwin et al, "Promoting healthy beverage consumption habits amongst elementary school children", Canadian Journal of Public Health, 2019

Population Implications

Population group	How the proposal may affect this group
Children	The option to place a new duty on school boards of primary schools to provide only healthy drinks is intended to positively impact obesity rates and oral health, and concentration and behaviour in school.
Māori	Research by the Ministry of Health has shown that rates of obesity and decayed, missing or filled teeth are disproportionately higher for Māori than non-Māori, both at school age and adulthood. By ensuring schools continue to promote healthy food and nutrition, and introducing a duty to serve only healthy drinks in primary schools, these policy proposals are universal and apply to all children, but are intended to improve health outcomes for tamariki Māori.
Pacific people	In 2018/2019, Pacific children aged 1-14 years were nearly twice as likely as non-Pacific children to have had teeth removed due to decay, an abscess, infection or gum disease in the past 12 months. Research by the Health Quality and Safety Commission has shown that the prevalence of diabetes among Pacific populations is approximately three times higher than other New Zealanders. Regular consumption of sugar-sweetened beverages can contribute significantly to a person's risk of developing diabetes.
	Eating and drinking habits developed at a young age are also likely to inform an individual's eating and drinking habits into adulthood. Placing a duty on schools to promote healthy food and nutrition and allowing only healthy drinks to be served by the school, may prove to have a positive impact on rates of poor oral health, and diabetes among Pacific communities later in adulthood.
Women	The Ministry of Health's annual New Zealand Health Survey has shown an increase in obesity rates from 31.2% in 2019/20, to 34.4% in 2020/21. There was a significant increase from 2019/20 to 2020/21 for women (31.9% to 35.9%), but not for men.
	Studies have identified women who have an intellectual disability as being at a higher risk of obesity; 65.6% compared to 30.2% of the general population.
	The option to introduce a duty on schools to only provide healthy drinks is intended to mitigate the amount of free sugars consumed by children, including girls, during childhood.
Disabled people	The Ministry of Health's annual New Zealand Health Survey shows that disabled adults were 1.6 times more likely to be obese than non-disabled adults, after adjusting for age and gender.
	According to the 2021 Child Poverty Survey, many disabled children have several impairments and health conditions and if disabled children can be encouraged to be as healthy as possible

via making healthy food and drink choices, then this should improve their overall health and help to prevent further health conditions developing.

The option to introduce a duty on schools to only provide healthy drinks applies to State schools, which includes specialist schools. The proposal is intended to mitigate the amount of free sugars consumed by children, including disabled children, during childhood.

Treaty of Waitangi implications

- The Treaty places positive obligations on the Crown to act reasonably and with the utmost good faith towards Māori, and to actively protect iwi/Māori rights and interests. Officials have assessed the proposals in this paper against the three articles of the Treaty and its principles.
 - 41.1 Kāwanatanga/government the new duty on school boards to only provide healthy drinks would affect all State and State-integrated schools, including kura. The option would limit the types of drinks that school boards could provide to their ākonga. However, the proposal is practical and includes exemptions, recognising that for particular school religious or cultural occasions like pōwhiri, providing other types of drinks is an important part of celebrations.
 - 41.2 Rangatiratanga/chieftainship Māori will be consulted on these options through the public consultation, and through specific engagement with kura, Te Rūnanga Nui and Ngā Kura ā lwi, which will provide an opportunity to shape the final policy settings and what context-specific exemptions from the Regulations should be included.
 - 41.3 Oritetanga/equity the option to introduce a new duty on primary schools to only provide healthy drinks is intended to contribute to redressing the existing health inequalities between Māori and non-Māori children in relation to rates of obesity and oral health. Placing a legal duty on all schools to promote healthy food and nutrition, and only provide healthy drinks, guarantees the same rights for all learners.

Human Rights

All of the proposals appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination as to the consistency of these proposals with the New Zealand Bill of Rights Act will be made when the new Regulations for school boards have been drafted.

Consultation

The following organisations were consulted on this paper: Ministry of Health, New Zealand Treasury, Department for Prime Minister and Cabinet, Te Puni Kōkiri, Ministry of Pacific Peoples, Ministry for Women, Ministry of Business Innovation and Employment, New Zealand Qualifications Authority, Education Review Office,

Ministry of Social Development, Office for Disability Issues, Tertiary Education Commission, Ministry of Youth Development, Department of Internal Affairs, Office of the Privacy Commissioner, The Teaching Council, Oranga Tamariki, Education New Zealand, Ministry of Justice and the Public Services Commission.

- Due to the link with existing guidance and the Healthy Active Learning programme, the Ministry of Health has been consulted throughout the development of this advice. The Ministry of Health supports these proposals.
- The Ministry of Education also intends to work with the NZSTA to access its school board network to receive feedback from boards on the proposed changes.

Communications

46 My officials will engage with schools and other interested groups to discuss the options and take feedback as part of public consultation. An engagement plan will be developed to support this.

Proactive Release

I propose to proactively release this paper, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

- The Minister of Education recommends that the Committee:
 - note that the current National Administration Guideline which requires schools to promote healthy food and nutrition will cease to have effect on 1 January 2023;
 - note that New Zealand students of primary school age experience high rates of obesity and decayed, missing or filled teeth, and sugar sweetened beverages are a significant contributor;
 - note that the attached discussion document sets out three options, and that option 1 is preferred;
 - 3.1 Option 1: replace the existing NAG 5b with a duty in Regulations and impose an additional duty to only provide healthy drinks for students in years 1-8;
 - Option 2: replace the existing NAG 5b with a duty in Regulations, and impose an additional duty on all schools and kura to only provide healthy drinks
 - 3.3 Option 3: replace the existing NAG 5b with a duty in Regulations to promote healthy food and nutrition, with no additional duties on school boards regarding healthy drinks
 - 4 **note** that the intended period of public consultation will be from early March to mid-April (five weeks) which will commence immediately following approval by Cabinet
 - note that the Minister of Education intends to seek final policy approvals for these proposals, and approval to issue drafting instructions for Regulations made under the Education and Training Act 2020, from the Cabinet Social and Wellbeing Committee in May 2022

agree to the Minister of Education releasing for public consultation the *Discussion document: Proposed changes to the promotion and provision of healthy drinks in schools*, subject to any minor editorial, formatting and layout changes required, together with this Cabinet paper and associated minutes subject to appropriate redactions.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Business Committee: Period Ended 25 February 2022

On 28 February 2022, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 25 February 2022:



CBC-22-MIN-0009 **Healthy Drinks in Schools: Consultation on Consultation on Changes to Promotion and Provision**

Portfolio: Education



CBC-22-MIN-0012

Investigation into the Impacts of Recent Credit Contracts and Consumer Finance Act 2003 Changes: Initial Findings and Proposals CONFIRMED

Portfolio: Commerce and Consumer Affairs

Michael Webster Secretary of the Cabinet



Cabinet Business Committee

Minute of Decision

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Healthy Drinks in Schools: Consultation on Changes to Promotion and Provision

Portfolio Education

On 21 February 2022, the Cabinet Business Committee:

- noted that the current National Administration Guideline (NAG 5b), which requires schools to promote healthy food and nutrition, will cease to have effect on 1 January 2023;
- 2 **noted** that New Zealand students of primary school age experience high rates of obesity and decayed, missing, or filled teeth, and sugar sweetened beverages are a significant contributor;
- **noted** that the discussion document attached under CBC-22-SUB-0009 sets out the following three options:
 - Option 1: (preferred) replace the existing NAG 5b with a duty in regulations and impose an additional duty to only provide healthy drinks for students in years 1-8;
 - Option 2: replace the existing NAG 5b with a duty in regulations, and impose an additional duty on all schools and kura to only provide healthy drinks;
 - 3.3 Option 3; replace the existing NAG 5b with a duty in regulations to promote healthy food and nutrition, with no additional duties on school boards regarding healthy drinks;
- 4 **noted** that the intended period of public consultation will be from early March to mid-April 2022 (five weeks);
- 5 **noted** that the Minister of Education intends to seek final policy approvals and to issue drafting instructions for Regulations in May 2022;
- approved the release of the discussion document *Proposed changes to the promotion and provision of healthy drinks in schools*, subject to any minor or editorial changes required.

Jenny Vickers Committee Secretary

Attendance: see over

Present:

Rt Hon Jacinda Ardern (Chair)

Hon Grant Robertson

Hon Kelvin Davis

Hon Dr Megan Woods

Hon Chris Hipkins

Hon Carmel Sepuloni

Hon Andrew Little

Hon David Parker

Hon Nanaia Mahuta

Hon Poto Williams

Hon Damien O'Connor

Hon Stuart Nash

Hon Kris Faafoi

Hon Michael Wood

Hon Dr David Clark

Officials present from:

Office of the Prime Minister

Department of the Prime Minister and Cabinet