



## Briefing Note: Publication of the Physical Restraint Rules and Guidelines

<b>To:</b>	Hon Jan Tinetti, Associate Minister of Education		
<b>Cc:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	8 July 2022	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1290844
<b>Drafter:</b>	9(2)(a)	<b>DDI:</b>	9(2)(a)
<b>Key Contact:</b>	Dr David Wales	<b>DDI:</b>	
<b>Messaging seen by Communications team:</b>	Yes	<b>Round Robin:</b>	No

### Purpose of Report

You have requested an update on the physical restraint guidelines including the next steps and the budget for related work, including teacher training. You have also requested talking points that can be used to respond to queries related to the physical restraint programme of work.

The purpose of this paper is for you to:

**Note** that the new Physical Restraint Rules and Guidelines (the rules and guidelines) will be published and Gazetted in Term 1, 7 February 2023.

**Note** the update on the physical restraint programme of work, the next steps, and the budget for related work, including teacher training

**Note** the substantive feedback from online consultation and engagements, and the time needed to consider and incorporate the feedback into the final rules and guidelines

**Note** that we will publish the consultation and engagement reports on the Ministry's website by August 2022

**Note** the proposed date of 7 February 2023, to publish, Gazette and socialise the new Physical Restraint Rules and Guidelines

## Summary

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- The Education and Training Act 2020 (The Act) came into force on 31 July 2020. It included changes to the framework for using physical restraint.
- In September 2020, the Physical Restraint Advisory Group (Advisory Group) was established to co-develop draft new rules and guidelines for minimising the use of physical restraint.
- Between 22 November 2021 to 3 April 2022, the draft rules and guidelines went out for public consultation via an online survey. We also completed targeted engagements with children and young people, and their whānau, via qualitative interviews/focus group discussions.
- The overall pace of progress was interrupted by Covid-19, and the need for the Ministry and the education sector to pivot to support the education sector response to Covid-19, and to not overburden the sector.
- In April 2022, the Advisory Group said that more time would be needed to fully consider the substantive feedback received, and incorporate changes to finalise the rules and guidelines and ensure that they are workable.
- The Ministry will publish and Gazette the rules and guidelines on 7 February 2023.
- We will publish reports on the findings from the consultation and target engagement in August this year.
- Alongside the work to finalise the rules and guidelines, a programme of work is underway to design, develop and implement online learning, resources, and webinars for schools, and to improve and automate processes to report incidences of physical restraint.
- \$6.262m has been secured from reprioritised baseline spending to support activities to be delivered in 2022/23.

## Proactive Release

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**Agree** that the Ministry of Education release this briefing in full once it has been considered by you.

**Agree / Disagree**



Dr David Wales  
**Te Pae Aronui**

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Hon Jan Tinetti  
**Associate Minister of Education**

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## Background

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1. The Education and Training Act 2020 (the Act), which came into force on 31 July 2020, included changes to the framework regulating the use of physical restraint.
2. The changes were in response to a range of concerns about the previous framework, including a lack of clarity about what physical restraint is, when and how it can be used, what types of other physical contact with students is acceptable, the administrative burden of reporting, and anecdotal evidence that restraint was not being reported in line with statutory requirements, and which did not differentiate between justified and unjustified use of restraint.
3. Under the Act, the Ministry of Education (the Ministry) is required to issue new rules and guidelines on the use of physical restraint.
4. The Ministry set up and worked alongside the Advisory Group to draft new rules and guidelines to minimise the use of physical restraint in registered schools and kura.
5. The new draft rules and guidelines provide an opportunity for the Ministry to support schools and kura to:
  - use strategies and practices that actively promote tamariki well-being and prevent distress
  - respond to well-being and distress in relational ways that support and maintain the mana of everyone and that minimise the need to use restraining practices.
6. The changes in the Act required the Secretary for Education to consult with:
  - tamariki, in particular, those who are Māori and those with disabilities or learning support needs, as these groups are disproportionately affected by the use of physical restraint
  - parents, whānau, and caregivers
  - national bodies representing the interests of teachers, principals, governing bodies of schools, parents and the disability community.

## Update

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7. The draft rules and guidelines went out for public consultation (via an online survey) from 22 November 2021 to 3 April 2022. We received 268 submissions.
8. A supplier completed targeted engagements with children and young people, and their whānau, via qualitative interviews/focus group discussions. A final report was delivered mid-June 2022. Information shared by tamariki and whānau will be used to inform the new guidelines and the development of training modules.
9. Substantial feedback was received from the consultation and targeted engagements. In April 2022, the Advisory Group told us that more time would be needed to fully consider this and incorporate changes to finalise the rules and guidelines and ensure that they are workable. The Ministry will now publish and Gazette the rules and guidelines on 7 February 2023.
10. Alongside work to finalise the rules and guidelines the Ministry has progressed work to support schools to meet their statutory obligations under the regulatory framework:
11. We have reviewed the process for reporting incidents of physical restraint and have developed a new fully automated mechanism which will go live in August 2022. This automated process will enable rapid availability of reliable data, more prompt notification that restraint has occurred, and faster support for whānau, parents, tamariki, kaiako and kaimahi when it is needed.

12. We have signed a contract with 9(2)(j) for the design, development and implementation of online learning, webinars, and resources for school staff. This will enable staff within the schooling sector to build greater confidence and capability to lift the wellbeing of learners.
13. To support activity to be delivered in 2022/23, \$6.26 m has been secured from reprioritised baseline spending. This funding has been allocated to:
  - design, develop, and implement training for school staff, including online hosting and subscription fees
  - phase one of establishing an accountability and evaluation framework
  - rework the draft guidelines to respond to feedback
  - finalise translations, accessibility formats and design work for the guidelines
  - IT related work for automating the online incident reporting form and licensing fees.

### High level summary of consultation feedback on the guidelines

14. In the initial analysis of the submissions, we received substantive feedback around:
  - lack of a te ao Māori perspective in the guidelines, and that the guidelines do not speak to Māori whānau
  - lack of clarity in the definition of physical restraint when students use enabling equipment and communication devices. Submitters identified how removal or inhibiting use of these could, in some situations, constitute physical restraint
  - subjectiveness around the threshold for 'significant emotional distress'
  - tone, complexity, length and readability of the guidelines
  - needing additional examples of acceptable physical contact. For example, when engaging in personal care, such as changing continence products and administering lifesaving medications within educational settings.
15. On 12 April 2022, the Advisory Group met to discuss this preliminary feedback. They acknowledged the importance of the need to consider and address the feedback, including reflecting a te ao Māori perspective.
16. The consultation feedback also described issues outside of the changes to the guidelines and rules. This included international training providers in NZ with generic training packages that do not consider the New Zealand context, the accessibility to training and the cost, and the absence of safe holds/physical restraint training standards.
17. To address the feedback, we will:
  - seek additional input into the guidelines from those best placed to provide a te ao Māori perspective
  - work with cross sector partners and agencies to address specific feedback including whether the removal of enabling equipment and communication devices and use of other personal care and medical products is a form of restraint that needs to be considered in the guidelines.
  - seek additional Ministry legal advice in relation to our definitions and terminology
  - re-work and re-structure the guidelines to address the feedback
  - undertake Cabinet sign-out and Gazette publication process

- incorporate a review of the safeholds/physical restraint training into the 2022/23 programme of work.

## Next Steps

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### 18. The Ministry will:

- feedback findings from the consultation and engagement with the people and communities who participated (**August**)
- publish the consultation and engagement reports on the Ministry's website (**August**)
- consider the feedback and update the rules and guidelines based on the feedback (**July to November**)
- implement phase one of the reporting automation mechanism (**August**)
- secure supplier to undertake evaluation of process, outcomes and accountability (**September**)
- meet with the Advisory Group to present final draft of the Rules and Guidelines (**November**)
- publish and Gazette the new rules and guidelines on **7 February 2023**
- implement first tranche of online learning for schools on **7 February 2023**
- implement phase two of the reporting automation mechanism on **7 February 2023**
- implement second tranche of online learning for schools (**TBC**)

Please see Annex 2 for more detailed information

### 19. The programme of work will also include socialising changes and working alongside schools to support them to implement the new rules and guidelines. An accountability, performance monitoring and quality framework will also be created to support the minimisation of the use of physical restraint.

## Key Risks and Benefits

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20. The timeframe for finalising the rules and guidelines will allow the Ministry to properly consider and address the feedback on the draft rules and guidelines, so that the new legislation is workable for NZ schools and that they are able to comply with their statutory obligations, including ensuring the health, safety and wellbeing of students and school staff.
21. Additionally, if the guidelines can better reflect a te ao Māori perspective then we are more likely to meet the Crown's responsibilities to give effect to Te Tiriti o Waitangi as detailed in Section 9 of the Education and Training Act (2020).

## Annexes

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Annex 1: Talking Points for the physical restraint programme of work

Annex 2: Summary of key deliverables