



## Briefing Note: Update on Dispute Resolution Panels

<b>To:</b>	Hon Jan Tinetti, Associate Minister of Education (School operations)		
<b>Cc:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	3 November 2022	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1298695
<b>Drafter:</b>	9(2)(a)	<b>DDI:</b>	9(2)(a)
<b>Key Contact:</b>		<b>DDI:</b>	
<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	No

### Purpose of paper

You have requested an update on work to establish dispute resolution panels for schools. This paper provides background on dispute resolution panels; work undertaken to date, and next steps.

### Summary

- In 2019, the Government committed to establishing dispute resolution panels (the panels) as part of its response to recommendations made by the Independent Taskforce's review of Tomorrow's Schools. The panels will provide an accessible, low cost, flexible, and timely avenue for students and their whānau to resolve serious disputes with their school board.
- The 2020 Labour Party Manifesto included the establishment of a complaints resolution mechanism in the schooling sector. The Manifesto noted the panels would contribute to New Zealand's ability to sign up to the Optional Protocol to the Convention on the Rights of the Child on the Communications Procedure.
- While the Education and Training Act 2020 (the Act) established the framework for panels, funding is required to implement them. The panels need to be established by regulations, which will set out additional details about their processes and procedures. These regulations need to be put in place before panels can be operational.
- 9(2)(f)(iv)

- Your office has asked for advice about how quickly panels could be established if funding were confirmed. If funding was confirmed for the Budget 2023 process, we could begin policy work to develop the regulations from early 2023, with a view to having regulations in force from 1 July 2024. Panel members could then be recruited and trained, and we could expect panels to be fully operational by 1 January 2025.

## Proactive Release

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**Agree** that the Ministry of Education will not release this briefing, because it is subject to Cabinet and Budget decisions yet to be made on the future establishment of dispute resolution panels.

**Agree / Disagree**

9(2)(a) [redacted]  
**Group Manager**  
**Te Puna Kaupapahere - Policy**

03/11/2022



Hon Jan Tinetti  
**Associate Minister of Education**  
**(School operations)**

06/11/2022

## Background

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1. In 2019 the Independent Taskforce that reviewed Tomorrow's Schools recommended the establishment of independent parental and learner advocacy and complaints resolution panels. In response to the Taskforce, Government agreed to establish a disputes resolution scheme to resolve serious disputes that students and their whānau have been unable to resolve with their school boards. The legislative framework for the dispute resolution scheme was included in the Education and Training Bill, which was supported by most submitters on the Bill in early 2020.
2. The 2020 Labour Party Manifesto included the establishment of a complaints' resolution mechanism. It also indicated that the Government intended to become party to the Optional Protocol to the Convention on the Rights of the Child on the Communications Procedure. Panels will contribute to New Zealand's ability to sign up to this optional protocol by providing a pathway to resolve alleged breaches of children's rights.

### Why dispute resolution panels are needed

3. Panels aim to address a gap in the education system, where students and whānau have few options to resolve disputes with their school. This is different from other education sectors. Early childhood education, international students and tertiary students, for example, have their own external disputes resolution processes. In schooling, students and their whānau are encouraged to resolve disputes at the school level by raising complaints directly with the principal or the school board. If students and their whānau are unhappy with the outcome, their only options for redress are to seek a review from the Ombudsman or a judicial review in the High Court.
4. These pathways can be inaccessible, slow, intimidating, and do not address disadvantages experienced by Māori and Pacific students and other groups such as neurodiverse and LGBTQIA+ students. As a result, students and their whānau are not always able to effectively exercise their legal right to a free state education. The lack of access to a complaints' resolution mechanism can lead to increased alienation from education and create additional barriers to re-engagement with schooling.

### How the panels would work

5. The Act enables the establishment of a dispute resolution scheme to facilitate and promote the resolution of serious disputes between students and State schools in an effective, flexible, and timely manner (section 216). The key features of the scheme as set out in the Act include:
  - a. 'serious disputes' are defined as those involving rights to education, learning support, stand-downs, suspensions, exclusions and expulsions, racism or discrimination, physical and emotional safety, and physical restraint;
  - b. panels consist of local members to reflect local communities, and national expert members to provide nationwide consistency, and are led by one Chief Referee appointed by the Minister of Education;
  - c. mediation between the parties is a first step with panels also being able to make binding decisions (if both parties agree) where mediation is inappropriate or unsuccessful;
  - d. when making binding decisions, panels can confirm, reverse, or modify the board's original decision, make a declaration that the board has committed a breach of student rights, recommend that the board review or establish rules, order an apology from the board or that the board refrain from certain conduct.

6. For panels to be implemented, regulations must first be made that provide further detail on processes and procedures for establishing and operating them. These processes and procedures are intended to be flexible and incorporate culturally responsive and restorative practices.

### Indicative costings for panels

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7. The Ministry has sought advice from KPMG to model the costs of establishing panels. The costings work considered different options for the structure of the scheme including variations on the composition and size of the panels and different scenarios for the level of demand.
8. We consider that the most effective operating model for the panels would consist of Ministry staff to provide administration support for the scheme, and a pool of regional members to form the local panels when disputes are to be heard. This model is preferable to administering the scheme nationally, as it would be locally responsive and meet the intent of the policy to provide an accessible, effective, and timely resolution process.
9. 9(2)(f)(iv)

### Process and timeframes for implementation

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10. A bid for the establishment of dispute resolution panels would need to be invited into the Budget 23 process by Budget Ministers. We understand the focus will be on outstanding manifesto commitments. We are expecting that the Minister of Education will receive a letter from the Minister of Finance within the next week, with an invitation to submit proposals on bids.
11. If funding were prioritised in Budget 2023, Annex 1 provides indicative timeframes for what might be possible for implementation.
12. We envisage the panels would be implemented in two phases, as follows:
  - a. **Phase One: Pre-establishment and planning period of at least 12 months<sup>1</sup>**, which would include policy work and consultation on the regulations for the panels, appointment of the Chief Referee and central positions, and development of training and practice guides.
  - b. **Phase Two: Delivery of panels after regulations are in place**, including appointment of a Deputy Referee, panel members, training, and commencement of disputes resolutions.

### Annexes

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Annex 1: Timelines for establishing dispute resolution panels, subject to Budget 2023

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<sup>1</sup> The election period in 2023 may impact the timeframe because of when it is possible to publicly consult on an exposure draft of the regulations.

Annex 1: Timeline for establishing dispute resolution panels subject to Budget 2023

	Regulations	Operational policy and delivery
Phase One: Pre-establishment and planning period		
December 2022 – March 2023	Policy development on draft regulations – develop draft proposals/concepts and test with key sector groups	Establish Ministry design and implementation team
April	Advice to Ministers on proposed regulations	
May	Budget 2023 announcement (mid to late May)	Finalise recruitment documentation
June/July	Cabinet paper for proposed regulations	Preliminary HR / Recruitment documentation
August – October	PCO drafting of regulations and finalising content	Advertise for Chief Referee and other central roles – and recruitment phase
November - December	Public consultation on exposure draft of the regulations (6 weeks)	Appointments confirmed (including Minister must sign off on appointment of Chief Referee)
February - March 2024	Finalising regulations	Development of guidance, practice notes, training scheme for members, appointment processes and procedures
April – May 2024	LEG and Executive Council decisions, gazette regulations	
1 July 2024	Regulations come into force	
Phase Two: Delivery		
July 2024		The Chief Referee will recruit deputy Chief referee local members, central members, facilitators, and admin staff.  Training of panel members and facilitators.
1 January 2025		Panels operational

Note: the above timeframes for regulatory development may be impacted by the election period. Panels can only be recruited once regulations are in place, so delaying regulations would push out delivery of the panels.