



Addendum to Education Report: Advice on the scope of the conditions of the school donations scheme

To:	Hon Chris Hipkins, Minister of Education		
Date:	27 June 2019	Priority:	High
Security Level:	In confidence	METIS No:	1194846
Drafter:	Alice Sowry Georgie Handley	DDI:	s 9(2)(a)
Key contact and number:	Damian Edwards 439 5365	Round robin:	No
Messaging seen by Communications team:	No		

Purpose of report

This report is an addendum to the Education Report *Advice on the scope of the conditions of the school donations scheme* dated 20 June 2019 (the initial report).

We are seeking your agreement to reconsider your previous decision relating to preventing other entities soliciting donations with the intent of passing them onto a Board without the Board having knowledge of the request, and to make a new decision.

Summary

1. We consider that recommendation e(i) in the initial report (attached) should still stand to prevent an agent from soliciting funds on behalf of a board.
2. We have reconsidered our advice relating to recommendation e(ii), a decision relating to other entities seeking donations without the knowledge of the board. Subsequent to the initial report, we have identified a number of potential issues, including that this decision goes further than anticipated, may impact on legitimate fundraising activities, and would be difficult to enforce.
3. We recommend that you reconsider your previous agreement to recommendation e(ii) in the initial report.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that we have reconsidered our advice after identifying a number of issues relating to scope, enforceability and the potential impact on legitimate fundraising activities

Noted

- b. **agree** to reconsider your prior agreement to recommendation e(ii) of the initial report

Agree / Disagree

- c. **agree** that your prior agreement to recommendation e(i) of the initial report still stands to prevent schools from circumventing the school donations scheme

Agree / Disagree

Proactive Release Recommendation

- d. **agree** that this Education Report is not proactively released until the Education and Workforce Committee reports back on the Education (School Donations) Amendment Bill in August.

Agree / Disagree



Dr Andrea Schöllmann
Deputy Secretary
Education System Policy

27/06/2019



Hon Chris Hipkins
Minister of Education

1, 7, 19

Background

1. This report is an addendum to the initial report. The initial report provided advice on the Education (School Donations) Amendment Bill (the Bill).
2. The Bill as introduced provides that the term “solicited voluntary payment” includes a payment that is sought in any way, directly or indirectly, from a parent, by or on behalf of a board. This is to prevent an easy work-around of the scheme where entities such as alumni associations could request donations on a board’s behalf.
3. The initial report sought your agreement to:
 - a. clarify the current provision in the Bill relating to other entities acting as a board’s agent. This provision prevents a circumvention of the scheme (recommendation e(i) in the initial report); and
 - b. amend the Bill to prevent an entity of its own motion from soliciting donations with the intention of passing them onto the board without the board having knowledge or being involved in the request (recommendation e(ii) in the initial report). This is an extension to the existing scope of the Bill, as it prohibits behaviour by third parties who are not acting as an agent of the board i.e. without the knowledge of the board.

A new recommendation relating to other entities seeking donations on behalf of boards

We have identified a number of issues relating to our previous advice

4. We consider that recommendation e(i) in the initial report should still stand to prevent an agent from soliciting funds on behalf of a board. However, subsequent to the initial report, we have reconsidered our advice relating to recommendation e(ii). Upon further consideration, we have identified a number of potential issues.

The extension goes further than anticipated

5. The extension goes beyond the original mandate of the Bill by preventing third party entities from soliciting donations where the board has no knowledge of the entity’s behaviour.
6. This extension may have unintended consequences. For example, community groups may request donations from parents to support upgrading a school’s playground. It is likely to be necessary for the group to pass these funds on to the board of trustees at some point in order to achieve the stated purpose of the fundraising. This activity would be prevented if recommendation e(ii) were progressed.

It is difficult to include the extension in the Bill without impacting on legitimate fundraising opportunities

7. We consider that the extension will add another layer of complexity that may have a chilling effect on legitimate fundraising activities. It will be difficult to draft this provision in a way that does not prevent other legitimate fundraising activities.

It would be difficult to enforce and inherently unfair to boards

8. While the Ministry has the ability under the Education Act 1989 to request information from boards, there is no ability to request information from other entities.
9. In order to prevent behaviour by an entity there would need to be a sanction for that behaviour in order to enforce it. Without the creation of new offence, the sanction would likely be the recovery of the scheme funding from the board that the entity intended to pass the donations to. However the board would have no knowledge or control over the behaviour of the entity and no ability to prevent it. This means a board could have

funding recovered from it in a situation where it had not breached any of the conditions of the scheme.

10. Boards cannot have failed to comply with the scheme conditions where they have no knowledge or control over the behaviour of a third party entity.

An alternative provision would be subject to the same issues

11. We have considered a possible alternative provision that prevents boards from accepting funds from entities where the funds were solicited, without the knowledge of the board, for the purpose of passing on to the board. However, we consider that this alternative provision still is subject to most of the issues identified above, and could create new ones of its own.

We recommend you reconsider your previous agreement to recommendation e(ii) in the initial report

12. In light of the issues outlined above, we recommend that you agree:
 - a. to reconsider your previous agreement to the recommendation to prevent an entity of its own motion from soliciting donations with the intention of passing them onto the board without the board having prior knowledge; and
 - b. that recommendation e(i) of the initial report still stands to avoid an easy workaround.

Annex

Annex 1: The initial report

Annex 1: The Initial report

Education Report: Advice on the scope of the conditions of the school donations scheme

To:	Hon Chris Hipkins, Minister of Education		
Date:	20 June 2019	Priority:	High
Security Level:	In confidence	METIS No:	1194846
Drafter:	Alice Sowry	DDI:	s 9(2)(a)
Key contact and number:	Alanna Sullivan-Vaughan 463 8414	Round robin:	No
Messaging seen by Communications team:	No		

Purpose of report

This report responds to your request of 6 June 2019 about whether it is possible to allow boards participating in the donations scheme to continue to request donations for items where parents would otherwise bear the costs, such as food and transport for school camps.

This report also informs you of the implications of the draft Bill for other entities that may seek donations from parents.

Summary

Exemptions to the donations policy

1. Where school camps are part of a school's curriculum, schools may not enforce any compulsory payment, because all costs incurred as a result of the camp are considered to be part of curriculum delivery. They may request donations from parents towards the cost of curriculum delivery.
2. The Education (School Donations) Amendment Bill as drafted would prevent boards that receive a discretionary grant from requesting any donations. An exemption to allow these boards to request donations towards the cost of food or transport as part of curriculum delivery will require amending the Bill.
3. If you do wish to pursue an exemption, this can be achieved by inserting a power into the Bill to enable you to prescribe exceptions by *Gazette* notice. An exemption may risk undermining the intent of the scheme to stop pressure on parents to pay.

Donations solicited on behalf of boards

4. If you agree that preventing other entities from seeking donations on behalf of the board aligns with the intent of the Bill, we recommend this is made more explicit in the Bill.

Recommended Actions

The Ministry of Education recommends you:

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that any potential exemption to allow boards participating in the donations scheme to request donations towards school camp costs will require amending the Education (School Donations) Amendment Bill

Noted

- b. **note** that pursuing an exemption to the donations policy carries risks of undermining the policy intent of the scheme to stop pressure on parents to pay, as well as being difficult to limit in scope

Noted

- c. **agree** that either:

- (i) the mandatory condition in the Bill that boards may not seek any solicited voluntary payments from parents remains as is with no exemptions

OR

- (ii) an ability for the Minister to prescribe exceptions to the mandatory condition of a discretionary grant by Gazette notice is inserted in the Bill (*recommended*)

Agree / Disagree

Agree / Disagree

- d. **agree** that preventing other entities from seeking donations on behalf of a board aligns with the intent of the Bill

Agree / Disagree

- e. **agree** that the wording of the Bill is amended to more explicitly reflect your intent, indicated in response to recommendation (d), by:

- (i) preventing other entities from acting as a board's agent to circumvent the scheme

Agree / Disagree

AND / OR

- (ii) preventing an entity of its own motion from soliciting donations with the intention of passing them onto the board without the board having knowledge or being involved in the request, other than being the intended recipient

Agree / Disagree

Proactive Release Recommendation

- f. **agree** that this Education report is not proactively released until the Education and Workforce Committee reports back on the Education (School Donations) Amendment Bill in August.

Agree / Disagree



Damian Edwards
Associate Deputy Secretary
Education System Policy

20/6/19



Hon Chris Hipkins
Minister of Education

24/6/19

Background

1. This report responds to your request of 6 June 2019 for advice on whether schools that opt in to the donations scheme could still request payments from parents towards the costs of food and transport for school camps.

Incidental costs associated with school camps

Current legal position

2. Section 3 of the Education Act 1989 (the Act) establishes a student's entitlement to free education and enrolment.
3. Ministry Circular 2018/01 clarifies for schools the types of payments they may request from parents in particular situations. The Circular makes it clear that where an item or activity is part of delivery of the curriculum, payment cannot be enforced or compelled (nor can a child's participation be denied for non-payment), therefore any parental contributions sought are voluntary donations.
4. School camps are part of delivery of the curriculum where there is a general expectation that students must attend (for example a whole-class camp, a Year 9 induction camp), or the camp that is part of course work, for example a Year 12 Outdoor Education camp that has NCEA credits attached.
5. All items such as transport and food are currently considered to form part of the camp event, and therefore payment cannot be compelled because the camp event is a curriculum activity. This means that no payments requested towards food/transport costs for a curriculum activity can legally be described as, or enforced as, a fee.
6. The Ministry Circular 2018/01 states that it is reasonable for parents to be asked to contribute towards the cost of food and transport for the camp, but such a request is a request for a donation. Parents are free to pay these in full, in part or not at all. No student can be denied access to the curriculum (including school camp events) because of a parents' inability or unwillingness to pay a voluntary donation.
7. Some schools may organise camps or field trips that are not part of any course and for which there is no general expectation of participation – for example, an optional weekend ski trip. In these situations, the event is not part of a school's curriculum and therefore payment can be enforced where students choose to participate. Schools that participate in the donations scheme are still free to charge activity fees in respect of these optional events. However, this means that these schools only offer non-curriculum camps, which may not be a desirable outcome.

Options for any potential exemption

8. As currently drafted the Education (School Donations) Amendment Bill contains a mandatory condition that as part of opting in to the donations scheme a board does not solicit any voluntary payments from parents. This would prevent participating boards from requesting parental contributions towards the cost of school camps that are part of a school's curriculum delivery. This could result in some schools being reluctant to opt in to the scheme.¹ Alternatively, it could result in schools opting in to the scheme but

¹ We have not assumed that schools will only opt in to the scheme if they will receive greater revenue from the scheme compared to requesting donations from parents. Some public feedback indicates that schools may feel obliged to accept any additional government funding on offer, even if this leads

only offering camps that are not part of the curriculum. This means these schools may stop offering camps linked to the curriculum, meaning students potentially miss out on Education Outside the Classroom learning opportunities the school would otherwise be organising.

9. A number of submissions received on the proposed Bill recommend that boards be permitted to continue requesting donations from parents for school camps and school trips, as costs cannot otherwise be met. Your office has also received correspondence on this matter.
10. Any potential exemption to allow boards participating in the donations scheme to request donations towards the cost of food/transport as part of curriculum delivery will require amending the proposed Education (School Donations) Amendment Bill.

How the Education (School Donations) Amendment Bill could be amended to allow boards in receipt of a discretionary grant to request donations from parents towards school camp costs

11. The current wording of the Bill states that a mandatory condition of payment of a discretionary grant is that a board does not seek or receive any solicited voluntary payment from parents.
12. If you would like to create an exemption from this mandatory condition to enable boards that receive discretionary grants to lawfully request voluntary contributions towards school camps, we recommend inserting an ability into the Bill for the Minister to prescribe exceptions to the mandatory condition of a discretionary grant, by Gazette notice.²
13. Inserting an ability that would enable you to prescribe exceptions would give flexibility to consult with schools on the need for such an ability as well as the scope of any particular exemptions you may consider. This option also means any future exemptions would be easy to implement as they would not require legislative change. Any such exemptions may not necessarily assist schools in budgeting for camps, as all donations are voluntary so schools cannot rely on parents paying.

Any exemption that allows participating boards to request donations is likely to undermine the policy intent of reducing pressure on parents

14. Any exemption may undermine the policy intent of the donations scheme to reduce pressure on parents, as schools may be able to justify requesting large donations towards items such as camps.
15. Furthermore, schools could not rely on all parents paying the requested amount because it is a request for a donation and therefore voluntary to pay. This means that any exemption that limits the amount or specific costs for which a school may continue to request parental donations may have limited benefit for the schools it is intended to help.

It may be difficult to limit the scope of any potential exemption

16. There are likely to be significant issues with the scope of any exemption targeted towards parental contributions towards school camps.

to a drop in funding. Some schools may also want to avoid the administrative burden and uncertainty of requesting donations from parents.

² Similar 'exception' abilities exist in other areas, for example section 2 of the Act enables the Minister to prescribe classes of person to be treated as domestic students.

17. The rationale for exempting requests for donations towards school camps is that parents would otherwise need to bear the costs of food and/or transport but for the curriculum activity. This argument could also extend to other similar curriculum activities, for instance swimming lessons, materials used and consumed as part of curriculum delivery (for example in food technology classes), and field trips. The wording of an exemption will need to be carefully considered to limit it to the scenarios where parents may otherwise be expected to bear some proportion of the costs of the activity.
18. It may be difficult to accurately limit the exemption to the proportion of the costs of an activity that parents would otherwise cover. For example, many schools may currently request a lump sum donation towards the per-child cost of a school camp. Only some of this amount would help the school cover the food and transport costs. It is likely to be administratively cumbersome (and difficult to enforce) to require that schools demonstrate the level of donation requested only applies to the food/transport portion of the costs of curriculum delivery.

There are other options available for refining the school donations scheme in the longer-term

19. s 9(2)(f)(iv)

20.

Current provisions in the Bill affecting other entities seeking donations on behalf of boards

The Bill does not prevent other entities from seeking donations in their own right

21. In previous advice [METIS 1163756 refers] we signalled that a key risk of the donations scheme is that separate entities associated with participating schools could continue to request donations, because as legally separate entities they cannot be subject to the board's agreement to not ask for donations.
22. There has been some concern about state-integrated schools' eligibility for the scheme and whether the Bill might affect the payments proprietors can request. In your response to Oral Parliamentary Question 6 on 11 June 2019 you clarified that your intent was to continue to allow proprietors to request compulsory attendance dues as well as donations towards the costs borne by proprietors of state-integrated schools (such as property and insurance costs not covered by government funding).³

The Bill prevents boards from collecting donations intended for other entities

23. Some boards currently send out combined requests for donations including donations sought on behalf of other entities. For example, a board might request a donation for the board and a donation for the parent-teacher association, payable to the board (which then passes on some collected amounts to the parent-teacher association).

³ Proprietors also have the right to request donations and fund-raise for any purpose and the Bill does not affect their right to do so.

24. The current wording in the Bill would prevent boards from making requests on behalf of other entities, because those requests would be made "by" the board. This may have an impact on the way some schools bundle requests for payments. The board may still pass on another entity's request for a donation, as long as it is clear the request is not being made by the board, but it may not collect the money on behalf of the other entity.
25. Although this may require some schools to change their practices, this will facilitate clearer communication and less confusion for parents.

The Bill prevents other entities from seeking donations on behalf of boards

26. The current version of the Bill includes a definition of "solicited voluntary payment from parents" in proposed new section 79A(7).
27. Proposed subsection 79A(7)(c) specifies that these are payments that are sought in any way, directly or indirectly, from the parent or those parents, by or on behalf of the board.
28. The wording of new subsection 79A(7)(c) would prevent other entities from soliciting voluntary payments from parents on behalf of boards of trustees. This means parent-teacher associations, proprietors of state-integrated schools, and alumni associations (as well as any other organisation or individual) would be prevented from soliciting voluntary payments from parents on behalf of boards that have opted in to the policy.
29. The phrase "on behalf of a board" in new subsection 79A(7)(c) is capable of bearing two related but different meanings:
 - 29.1. An entity essentially acts as a board's agent to wilfully circumvent the scheme, or
 - 29.2. An entity of its own motion solicits donations with the intention of passing them on to the board, but without the board having any knowledge or being involved in any way other than as ultimate recipient.
30. If you agree that preventing other entities from seeking donations on behalf of the board aligns with the intent of the Bill, we seek your direction on whether the wording should cover one or both of the situations described in paragraph 30. We recommend that the departmental report includes a proposal to make the intent of this wording more explicit in the Bill. This change can be made under your delegated authority to issue drafting instructions, regardless of whether any submissions are received on this matter.
31. If it is not your intent that the Bill prevents other entities from seeking donations on behalf of the board, we recommend that the departmental report includes a proposal to amend the definition of solicited voluntary payment by replacing the phrase "by or on behalf of a board" with "by a board" in new subsection 79A(7)(c).