



## Education Report: Education and Training Bill – Cabinet paper for fourth tranche of policy approvals

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| To:                                    | Hon Chris Hipkins, Minister of Education |              |           |
| Date:                                  | 18 September 2019                        | Priority:    | Medium    |
| Security Level:                        | In Confidence                            | METIS No:    | 1203068   |
| Drafter:                               | Cindy O'Brien                            | DDI:         | s 9(2)(a) |
| Key contact and number:                | Ben O'Meara s 9(2)(a)                    | Round robin: | No        |
| Messaging seen by Communications team: | N/A                                      |              |           |

### Purpose of report

This paper asks you to approve the attached Cabinet paper *Education and Training Bill – fourth tranche of policy approvals* for departmental consultation and provides further advice on the proposed independent local dispute resolution panels.

### Summary

- At the Agency meeting on 16 September, Ministers provided feedback on the legislative proposals contained in the Education Report *Tomorrows Schools Proposals for Inclusion in the Education and Training Bill*, Metis No. 1203068, dated 6 September. The Cabinet paper proposals reflect that feedback.
- There are five proposals for legislative amendments set out in the Cabinet paper:
  - revised board objectives (including objectives that give effect to Te Tiriti);
  - changing the role of boards in enrolment zones;
  - establishing a national code of conduct for boards;
  - establishing minimum eligibility criteria for Principals; and
  - establishing independent community-based panels to resolve disputes.
- The proposals regarding board objectives have been revised to remove the existing distinction between primary and secondary objectives. We now recommend four objectives of equal status. The existing primary objective of academic achievement is retained. We have added objectives focussed on student wellbeing, Te Tiriti and administrative functions.
- These objectives give effect to the Taskforce's recommendations regarding Te Tiriti and student rights. These broader aspects of a student's schooling experience are reflected

in the elevation of these broader objectives to an equal status with academic achievement.

5. The objective regarding Te Tiriti clarifies what boards have to do to meet their obligation to give effect to Te Tiriti. It also includes a new requirement to take reasonable steps to reduce inequitable outcomes for Māori students.
6. We have revised the proposal to establish minimum eligibility criteria for Principals by adding a requirement for the Minister to consult the Teaching Council and other professional bodies.
7. We remain of the view that the panels should be able to overturn board decisions relating to individual students. This role is consistent with the roles of other panels with similar functions. However, we have revised the paper to make it clear that the primary focus of panels is resolving disputes through mediation, and that determination is intended in general to be used as a last resort where mediation has failed or is not appropriate. We expect that mediation will be appropriate in most cases.

### Recommended Actions

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The Ministry of Education recommends that you:

- a. **agree** to departmental consultation on the attached draft Cabinet paper subject to discussion next week on whether any changes are required in relation to dispute resolution

Agree / Disagree

- b. **note** that the Ministry remains of the view that the proposed local dispute resolution panels should be able to overturn board decisions relating to individual students

Noted

- c. **note** that we have revised the dispute resolution proposals to be more explicit about the use of mediation, including facilitation, in preference to making determinations

Noted

### Proactive Release Recommendation

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- d. **agree** that this Education Report is proactively released once the Education and Training Bill is introduced.

Agree / Disagree



Dr Andrea Schöllmann  
Deputy Secretary  
Education System Policy  
18 / 09 / 2019



Hon Chris Hipkins  
Minister of Education

22 / 9 / 19

## Background

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1. At the Agency meeting on 16 September, Ministers provided feedback on the legislative proposals contained in the Education Report *Tomorrows Schools Proposals for Inclusion in the Education and Training Bill*, Metis No. 1203068, dated 6 September. The attached Cabinet paper incorporates revised versions of the proposals that we were asked to change.
2. We were also asked to provide further advice on the independent dispute resolution panels, for discussion. In particular, we were asked to reconsider the proposed remedies. That advice is set out in paragraphs (insert numbers).

## Revised proposals

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### Recommendations 1(a) and 1(b) – board reviews and priorities

3. The proposals regarding board objectives have been revised to remove the existing distinction between primary and secondary objectives. We now recommend four objectives of equal status:
  - a. Objective 1: Every student is <sup>able</sup> required to attain their highest possible of standard of education achievement, including through the board:
    - giving effect to its obligations in relation to the foundation curriculum statements, the national curriculum statements, and national performance measures (if any);
    - giving effect to its obligations in relation to teaching and learning programmes;
    - giving effect to its obligations in relation to monitoring and reporting of students' progress;
    - having particular regard to the statement of National Education and Learning Priorities.
  - b. Objective 2: Every student is able to achieve their fullest potential in becoming connected, confident, active learners, including through the board:
    - Giving effect to relevant student rights;
    - Ensuring the school is a physically and emotionally safe place for all students;
    - Ensuring the school is inclusive of and caters for students with differing needs;
    - Ensuring the development and implementation of rules, policies and directions to eliminate racism, stigma, bullying, and discrimination within the school.
  - c. Objective 3: The board gives effect to Te Tiriti, including through:
    - Working in partnership with mana whenua to ensure that its plans, policies and directions reflect local tikanga, mātauranga Māori and te ao Māori;

- Taking all reasonable steps to provide instruction in tikanga Māori and te reo Māori;
  - Taking all reasonable steps to eliminate inequitable outcomes for Māori students.
- d. Objective 4: The board meets its other governance obligations, including through:
- Performing its functions and exercising its powers in a way that is financially responsible;
  - If a school is a member of a community of learning that has a community of learning agreement, giving effect to its obligations under that agreement;
  - Giving effect to all of its other obligations under the (new) Education and Training Act and any other Act.
4. The existing primary objective of academic achievement is retained. We have added objectives focussed on student wellbeing, Te Tiriti and administrative functions. These objectives give effect to the Taskforce's recommendations regarding Te Tiriti and student rights. These broader aspects of a student's schooling experience are reflected in the elevation of these broader objectives to an equal status with academic achievement.
5. The objective regarding Te Tiriti clarifies what boards have to do to meet their obligation to give effect to Te Tiriti. It also includes a new requirement to take reasonable steps to reduce inequitable outcomes for Māori students.

*Establishing criteria for appointment as a school principal*

6. We have revised this proposal by adding a requirement for the Minister of Education to consult the Teaching Council and other professional bodies on the proposed criteria.

*Local dispute resolution panels*

7. We were asked to reconsider the remedies proposed for the panels. In particular, the ability to overturn a board decision. We remain of the view that it is essential that panels be able to overturn board decisions. If they are limited to making non-binding recommendations, they are effectively operating as a type of ombudsman. This might be perceived as inefficient duplication of the service already provided by the Ombudsmen. It also fails to address the call from stakeholders for an independent dispute resolution body empowered to make binding decisions, including decisions overturning those made by boards. YouthLaw Aotearoa, for example, commented in its submission to the Taskforce on the need for an appeal body to overturn board decisions.
8. We are not aware of any situations comparable to expulsion, where a complainant cannot seek to have a decision overturned. Tenants can be evicted from their homes, employees can be dismissed from their jobs, and people can be denied residency. In each of these examples, decisions can be overturned. It is difficult to see why, when education is a fundamental right, children and young people should not have the same ability to have decisions that prevent them from realising that right, overturned.
9. There was concern expressed at the agency meeting this week about the problems that result from schools being forced to take back expelled students. Our proposals include the use of restorative practices where appropriate. This reduces the likelihood of reinstatement being ordered in situations where key relationships cannot be repaired.

This is similar to employment situations. Decisions around whether to order an employer to take back a former employee often include consideration of what the ongoing relationship will be like.

10. We were asked to consider making more use of mediation. We have revised the paper to make it clear that panels will be primarily focussed on resolving disputes at the lowest possible level, through mediation. We have also clarified that under this model, mediation includes facilitation. Facilitation is where panels will work with both parties to help them resolve the dispute without the need for a mediated agreement.
11. We have clarified in the Cabinet paper that, in general, the determinative function, including the ability to overturn board decisions, should only be used as a last resort, when mediation has failed or is not appropriate. It is intended to be the exception rather than the rule. We expect that mediation will be appropriate in most cases.
12. Following discussion at next week's agency meeting, we can, if needed, revise this section of the attached paper.

### Next steps

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13. The paper is scheduled for lodgement on 10 October for SWC on 16 October. Departmental and Ministerial consultation are scheduled to run concurrently from 24 September to 3 October.

### Annexes

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Annex 1: (Draft) Cabinet Paper: "Education and Training Bill – fourth tranche of policy approvals" (*attached separately*)