



Education Report: Te Aho o Te Kura Pounamu: New governance arrangements

To:	Hon Chris Hipkins, Minister of Education		
Date:	5 August 2020	Priority:	Medium
Security Level:	In Confidence	METIS No:	1232676
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

The purpose of this paper is to provide you with a draft Gazette notice determining the composition of the Board of Te Aho o Te Kura Pounamu (Te Kura) as mandated by section 122 of the Education and Training Act 2020.

Summary

- Section 122 of the Education and Training Act 2020 (the Act) states that the Minister must, by notice in the Gazette, determine the composition of the Board of a special institution. If the notice relates to a special institution that is a distance school, the notice must specify:
 - that the Board is required to have a staff representative as a member, and
 - whether the staff member is to be elected, co-opted by the Board or appointed by the Minister.
- We have used the Gazette notice as an opportunity to strengthen governance arrangements for Te Kura's Board.
- In consultation with Te Kura, we have prepared a draft notice for your approval (Annex 1). The notice:
 - increases the size of the Board by one member
 - allows all Board members to serve past the expiry of their term until they are replaced, reappointed or advised that they will not be reappointed
 - specifies that the staff representative becomes a member through election by permanent members of Te Kura staff, and
 - sets out the process for removal or resignation of a Board member, including the staff representative.

- 4 We recommend the staff representative is elected every three years, rather than co-opted by the Board or appointed by the Minister, to provide a democratic process and transparency for staff and Board. We note that the person will be paid the same fee as the other Board members, subject to the Cabinet Fees Framework restrictions about public sector employees on boards.
- 5 We recommend you approve the notice now, so Te Kura can run a staff representative election by December 2020 and induct the elected person before the 2021 school year.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that section 122 of the Education and Training Act 2020 requires you to determine the composition of the Board of a special institution that is a distance school by notice in the Gazette, and the notice must specify:
- that the Board is required to have a staff representative as a member, and
 - whether the staff member is to be elected, co-opted by the Board or appointed by the Minister

Noted

- b. **note** there are current gaps in Te Kura's governance arrangements that can be strengthened through this revised Gazette notice

Noted

- c. **agree** that the staff representative on the Board of Te Kura should be elected by the permanent staff of Te Kura every three years

Agree Disagree

- d. **agree** that the attached notice is submitted for publication in the New Zealand Gazette (Annex 1)

Agree Disagree

- e. **note** the staff representative will receive the same fee as other members, subject to Cabinet Fees Framework provisions for public sector employees on boards

Noted

- f. **agree** that this Education Report is proactively released as part of the next publication

Release / Not release



Emily Fabling
Deputy Secretary
Strategy, Planning and Governance
05/08/2020



Hon Chris Hipkins
Minister of Education

8 / 9 / 2020

Background

- 1 The Education and Training Act 2020 (the Act) section 122 has changed the governance provisions for special institutions that are distance schools. The Act mandates a staff representative for Te Kura's Board and three options for appointing the person. We note this will require you as Minister of Education to approve a new Gazette notice prescribing the appointment procedure for a staff representative on Te Kura's Board.
- 2 The composition of the Board has been gazetted several times since 2001 as previous Ministers of Education have sought to better enable it to meet various challenges, including the school's financial sustainability and a changing student population.
- 3 The composition of the Te Kura Board of Trustees gazetted in 2011 under the Education Act 1989 removed the earlier (2009) requirement for a staff representative. Since 2012, Te Kura's Board has chosen to co-opt a member of staff ex-officio to fulfil this role [METIS 1205300 refers].
- 4 Te Kura's current governance arrangement is designed for a skills-based Board appointed by the Minister of Education, comprising a chairperson and up to six members serving three year terms. At present there is no provision in the notice allowing members to stay on the Board until replaced or reappointed and there are no provisions about how members cease to be Board members (for example, resignation, removal or for other reasons).
- 5 These gaps in Te Kura's governance arrangements cannot be covered by the Crown Entities Act 2004 sections 31-46, because Schedule 3 of the Crown Entities Act exempts School Boards of Trustees from those sections. We note that a revised Gazette notice is an opportunity to strengthen governance of Te Kura with provisions proven to work well for Crown entity governance.

Appointment of staff representative

- 6 Section 122 of the Act requires you to determine the composition of the Board of a special institution by notice in the Gazette, and where the notice applies to a distance school the notice must specify:
 - that the Board is required to have a staff representative as a member, and
 - whether the staff member is to be elected, co-opted by the Board or appointed by the Minister.
- 7 In consultation with Te Kura, we recommend the preferred process is for the staff representative to be elected every three years by the permanent staff of the school. This will provide a transparent and democratic process for staff to select their own representative on the Board. Other methods allowed by the Act (co-opting or ministerial appointment) are less enabling of staff to have a direct voice in the selection of their representative.
- 8 The Board Chair has been consulted and has given feedback that ideally the new staff representative would be inducted before the 2021 school year begins. If you approve a new Gazette notice now, Te Kura is confident it can complete the election process by December 2020.
- 9 We note that the staff representative will be paid the same fee and expenses as the other Te Kura Board members, subject to the restrictions in the Cabinet Fees

Framework¹ for public sector employees (i.e. time spent on Board work is undertaken separately to their Crown-paid employment). The staff representative becomes a Board member as the result of the electoral process and does not need to be appointed.

- 10 The choice of process for selecting a staff representative can be reviewed at any time, and the composition adjusted by publishing a new Gazette notice. We plan to consult Te Kura's Board before the elected staff representative's term ends, to ask if electing the staff representative is operating well in practice and should continue. We will update you if issues have arisen that you should be made aware of.

Modifying other governance provisions

- 11 Alongside mandating the election of a staff representative, we recommend you approve a Gazette notice that will strengthen Te Kura's governance by:
- changing the total number of Board members so the election of a staff representative does not reduce the number of Ministerial appointees. This is set out in Clause 1 of the draft notice (Annex 1).
 - allowing all Board members to serve past the expiry of their term until replaced or reappointed. A similar provision is in place for Crown entity boards in section 32(3) of the Crown Entities Act 2004 (CEA). It ensures that a delay in the appointment process does not leave the Board without enough members to function effectively. This is set out in clause 3 of the draft notice.
 - setting out the process for removal or resignation of a member. This is set out in clauses 4-8 of the draft notice. This includes specifying that the staff representative must leave the Board if they are no longer a permanent employee of Te Kura. Clause 5 is similar to CEA section 36. Clauses 6, 7 and 8 about removal of an elected member are similar to CEA sections 38 and 40.

Next steps

- 12 If you approve the attached draft notice, we will submit it for publication.
- 13 If you require changes to the notice, we will work with your Office to submit an updated draft for your approval.
- 14 Te Kura will run an election for a staff representative by December 2020.

Proactive Release

- 15 It is intended that this Education Report is proactively released to align with the timeframe for when the Gazette notice is published, as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Annexes

Annex 1: Draft Gazette notice

¹ CO-19-1 *Fees Framework for members appointed to bodies in which the Crown has an interest*, paragraphs 69-79

Te Aho o Te Kura Pounamu Board of Trustees (Te Kura) Notice 2020

Pursuant to section 122 of the Education and Training Act 2020, the Minister of Education hereby gives the following notice.

1. Te Kura's Board of trustees shall be constituted as follows:
 - a. a chairperson appointed by the Minister of Education,
 - b. up to six members appointed by the Minister of Education, and
 - c. a permanent member of the Te Kura staff who has been elected by the permanent staff of Te Kura to represent them.
2. A trustee's term may not exceed three years.
3. A trustee continues in office despite the expiry of his or her term of office until:
 - a. the trustee ceases to hold office, or
 - b. the trustee is reappointed or re-elected, or
 - c. the trustee's successor is appointed or elected, or
 - d. the appointor informs the trustee by written notice (with a copy to the Board) that the trustee is not to be reappointed and no successor is to be appointed at that time.
4. The trustee who is a staff representative ceases to hold office if they are no longer a permanent Te Kura staff member.
5. The responsible Minister may remove an appointed trustee at any time.
6. The responsible Minister may, for just cause and after consulting with the Board, remove the elected staff representative at any time and require a new representative to be elected.
7. In (6) above, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the Board or the individual duties of members (depending on the seriousness of the breach).
8. Removal under clause (5) or (6) of this notice must be made by written notice to the trustee with a copy to the Board.
9. Te Aho o Te Kura Pounamu – The Correspondence School Board of Trustees (Te Kura) Notice 2011 published in the New Zealand Gazette, 13 October 2011, No. 155, page 4441, is revoked.
10. This notice takes effect on the day after its publication in the New Zealand Gazette.

8th day of September 2020

Dated at Wellington this XX day of XXXX 2020.
HON CHRIS HIPKINS, Minister of Education.



Corrigendum—Te Aho o Te Kura Pounamu Board of Trustees (Te Kura) Notice 2020

In the notice with the above heading published in the [New Zealand Gazette, 11 September 2020, Notice No. 2020-go4212](#):

Replace the paragraph

“1. Te Kura’s Board of trustees shall be constituted as follows:

- a. a chairperson appointed by the Minister of Education;
- b. up to six members appointed by the Minister of Education; and
- c. a permanent member of the Te Kura staff who has been elected by the permanent staff of Te Kura to represent them”.

with

“1. Te Kura’s Board of trustees shall be constituted as follows:

- a. a chairperson appointed by the Minister of Education;
- b. up to six members appointed by the Minister of Education; and
- c. a permanent member of the Te Kura staff.

And delete paragraph 3.

Replace the paragraph

“4. The trustee who is a staff representative ceases to hold office if they are no longer a permanent Te Kura staff member.”

with

“4. The trustee who is a staff representative ceases to hold office if they are no longer a Te Kura staff member.”

And delete paragraphs 6, 7, and 8.

Dated at Wellington this 28th day of September 2020.

SEAN TEDDY, Acting Secretary for Education.