



Education Report: Tomorrow's Schools proposals for inclusion in the Education and Training Bill

To:	Hon Chris Hipkins, Minister of Education		
Date:	9 September 2019	Priority:	Medium
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Drafter:	Elizabeth Murray	DDI:	s 9(2)(a)
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Messaging seen by Communications team:	N/A		

Purpose of report

This paper seeks your agreement to the legislative proposals that will be included in the Education and Training Bill as part of the Government's response to the Independent Taskforce's review of Tomorrow's Schools.

Summary

- At the Agency meeting on 2 September you indicated that the legislative proposals that were part of the Government's response to the Tomorrow's Schools review should be progressed through the Government response to the Tomorrow's Schools review Cabinet paper, rather than a separate tranche four Education and Training Bill Cabinet paper.
- This paper outlines the legislative proposals that progress the six Taskforce recommendations that you have agreed to include in the Bill. These cover:
 - board reviews and priorities (Taskforce recommendations 1(a) and 1(b));
 - the role of boards in enrolment zones (Taskforce recommendation 1(i));
 - establishing a national code of conduct for boards (Taskforce recommendation 1(j));
 - establishing minimum eligibility criteria for Principals (Taskforce recommendation 2(b)); and
 - establishing independent community-based panels to resolve disputes (Taskforce recommendation 5(a)).
- With your approval, these proposals will be included in the Cabinet paper that provides the Government response to the Tomorrow's Schools review, which is due to be considered by Cabinet Social Wellbeing Committee on 16 October and Cabinet on 21 October.

4. Timing is tight to ensure that the Bill is ready to introduce and refer to Select Committee by the end of the year.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that we are seeking your approval for policy proposals that give effect to the six recommendations from the Independent Taskforce's report on Tomorrow's Schools that you have agreed to progress through the Education and Training Bill

Noted

- b. **agree** to include the attached table (**Annex 1**), that provides the recommendations for the above legislative proposals, in the Cabinet paper that provides the Government response to the Tomorrow's Schools review

Agree / Disagree

Taskforce recommendations 1(a) and 1(b): review board decisions against Te Tiriti o Waitangi and the rights of the child and amend board priorities

- c. **agree** to propose amendments to the secondary objectives of boards so that boards must give effect to Te Tiriti o Waitangi and the relevant student rights set out in the (new) Education and Training Act

Need to unpack what this means.

Agree / Disagree

- d. **agree** to propose replacing clauses 5(2)(c) to (e) in Schedule 6 of the 1989 Act with provisions which require a board to "give effect to" (as opposed to the current "comply with") the following matters:

- i. its obligations in relation to the foundation curriculum statements, the national curriculum statements, and national performance measures (if any)
- ii. its obligations in relation to teaching and learning programmes and the monitoring of student performance
- iii. if a school is a member of a community of learning that has a community of learning agreement, its obligations under that agreement
- iv. all of its other obligations under the Education Act 1989 and any other Act

Agree / Disagree

- e. **agree** to include a provision in the Bill requiring a board to consult with its students (as appropriate), staff, and school community as part of the rule making process

Agree / Disagree

Taskforce recommendation 1(i): remove role of boards in enrolment zones

- f. **agree** to propose amendments to transfer the role of boards of trustees to develop and consult on enrolment schemes to the Ministry of Education, so that this function can be carried out at a regional level

Agree / Disagree

- g. **note** that transferring this role to the Ministry of Education will have resource implications due to the volume of work created in centralising the development of enrolment schemes

Noted

- h. s 9(2)(f)(iv)

Noted

- i. **agree** to propose an amendment to the definition of "give notice" in section 11B of the Education Act 1989 so that notice of adopting or amending enrolment schemes can be made through means including, but not limited to, publishing in local newspapers

Agree / Disagree

Taskforce recommendation 1(j): establish a national code of conduct for boards

- j. **agree** to propose an amendment to give the Minister the power to issue, by *Gazette* notice, a mandatory Code of Conduct setting out the minimum standards of conduct expected of members of school boards of trustees;

Agree / Disagree

- k. **agree** to propose the following remedies to respond to significant and/or persistent breaches of the Code of Conduct for boards:

- i. giving boards the ability to censure a member; and
- ii. giving the Minister, acting on written notice from the board, the power to remove the member (if satisfied there is just cause to do so)

Agree / Disagree

Taskforce recommendation 2(b): establish minimum eligibility criteria for Principals

- l. **agree** to propose an enabling provision that requires the Minister to issue mandatory specific criteria that must be met before a principal can be appointed (with the ability for the Minister to delegate that authority to the Secretary for Education)

add a clause requiring consultation with Teaching Council and other professional bodies

Agree / Disagree

- m. **agree** to propose that the enabling provision comes into force on the commencement of the Education and Training Act and that there be a six month transitional period to allow sufficient time for the criteria to be developed and socialised with the sector

Agree / Disagree

Taskforce recommendation 5(a): establish independent community-based panels to resolve disputes

- n. **note** that you have previously agreed to including enabling provisions for local dispute resolution panels in the Bill

Noted

- o. **agree** that panels only consider 'serious disputes' so that they provide timely consideration of more serious matters, while also recognising that schools are best placed to make some decisions

Agree / Disagree

- p. **agree** that serious disputes are defined in primary legislation as disputes relating to: stand-downs, suspensions, exclusions and expulsions, physical restraint, learning support, racism and discrimination, physical and emotional safety, enrolment and attendance, and the rights to education

Agree / Disagree

- q. **note** that the ability for the panels to overturn decisions made by boards will likely have resourcing implications where the Ministry needs to support boards to comply with the determinations made by the panels

Noted

- r. **agree** that there should be no application fee for either party to have their dispute heard by panels

Agree / Disagree

- s. **agree** to seek policy approval for the following features of the new disputes panels:

- i. appointment of a Chief Referee (to have administrative responsibilities for panels including appointment and removal of members) and Deputy Chief Referees (if required) by the Minister of Education, and require the Minister to consult key stakeholders on the appointments

Agree / Disagree

- ii. the Chief Referee and the Deputy Chief Referees must have a legal qualification and a minimum of five years' experience in New Zealand as a barrister or solicitor (or both)

Agree / Disagree

- iii. the Chief Referee and the Deputy Chief Referees are appointed for a period of up to five years

Agree / Disagree

- iv. the ability for the Minister of Education to remove the Chief Referee and Deputy Chief Referees for ill health, serious misconduct, being convicted of an offence punishable by imprisonment of two years or more, neglect of duty, and bankruptcy

Agree / Disagree

- v. the ability for the Chief Referee to appoint and remove the local panel and central pool members, with the appointment and removal criteria and processes, and term of appointment, to be set in regulations

Agree / Disagree

vi. the ability for panels to:

- order an apology, refer parties to mediation, up-hold, over-turn or modify a decision, in relation to an individual student
- make a declaration about board rules, bylaws or policies, if they are inconsistent with student rights
- recommend that boards reconsider their rules, bylaws or policies, if they are inconsistent with student rights

Agree / Disagree

vii. no legal representation for either party during any interactions with the panel

Agree / Disagree

viii. that processes and procedures will be culturally appropriate and will respect the diversity of the local student population, with the detail around how to do that set in regulations

Agree / Disagree

ix. a regulation making power to provide for additional detail

Agree / Disagree

t. **note** that we will provide you with further advice on how to establish and operate the panels, which will inform detailed proposals for regulations and a future budget bid

Noted

Proactive Release Recommendation

u. **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

09/09/2019



Hon Chris Hipkins
Minister of Education

15/9/19

I also want to see the primary role of school B&Ts broadened to include a stronger emphasis on wellbeing and inclusion alongside the highest possible standard of educational attainment

Background

1. Cabinet has confirmed the first two tranches of policy approvals for the Education and Training Bill (the Bill). The third tranche is intended for consideration at the Cabinet Social Wellbeing Committee (SWC) on 25 September.
2. You have indicated that you would like to progress six recommendations of the Independent Taskforce on Tomorrow's Schools (Taskforce) as part of the Bill. These tranche four proposals will be included in the Cabinet paper that details the Government's response to the Taskforce's report, rather than in a separate fourth tranche of policy approvals for the Bill. We propose that the Cabinet paper have an Annex (**Annex 1**) that provides the recommendations for Cabinet to agree for inclusion in the Bill.
3. Tranche five will progress three separate policy proposals relating to Te Tiriti o Waitangi (Te Tiriti) (originally intended for tranche three, METIS 1200361 refers), any physical restraint proposals that you agree to (advice to be provided to you on 10 September), and early learning licensing (advice to be provided to you on 11 September).
4. We have already provided a separate draft Cabinet paper containing options for progressing the religious instruction provisions in the 1964 Act within the Bill (METIS 1200878).

Proposals for inclusion in the Education and Training Bill

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

5. In relation to school board governance arrangements the Taskforce recommended that:
 - a. Recommendation 1(a): All areas of school/kura governance decision making are explicitly reviewed annually by boards to ensure adherence to Te Tiriti and the rights of the child;
 - b. Recommendation 1(b): School boards of trustees give greater priority to:
 - i. working with the school/kura community and mana whenua to set the strategic direction and plans for the school/kura;
 - ii. monitoring and evaluating learner/ākonga belonging, wellbeing and success; and
 - iii. working with other schools/kura, iwi, and government agencies for the mutual benefit of the learners/ākonga, whanau, and schools/kura.
6. In support of its recommendations, the Taskforce commented that the current expectations of boards should be reshaped and refocused to reflect the priorities set out above, the principles of Te Tiriti and the rights of the child must be given active consideration in all board decision making, and boards should report on the priorities as part of their normal annual reporting.

Annual review and reporting by boards to ensure adherence to Te Tiriti and the rights of the child (Recommendation 1(a))

7. A new strategic planning and reporting regime for school boards of trustees will be in effect from 1 January 2023. Each board will be required to:
 - a. prepare a three yearly strategic plan setting out how the board will achieve its objectives (as set out in the Education Act 1989 (1989 Act));
 - b. prepare an annual implementation plan; and
 - c. monitor and evaluate its performance against the plans, and report on its performance through the annual report.
8. The details of the new regime, such as the content of plans and reporting requirements, will be set out in regulations.
9. To enable recommendation 1(a) to have practical effect, changes need to be made to the objectives of boards. This will enable regulations to be made requiring boards to:
 - a. set out in their strategic plans how they intend to give effect to Te Tiriti and to comply with the rights of the child;
 - b. set out in their annual implementation plans specific actions for meeting these objectives; and
 - c. report on their progress (including any variance from the specific actions set out in the annual implementation plan) in the annual report.

Monitoring and reporting (Recommendations 1(a) and 1(b)(ii))

10. The current board objectives are set out in Schedule 6 of the 1989 Act. The primary objective of boards (to ensure that every student at its school is able to attain their highest possible standard in educational achievement) should not be changed. However, we consider that the secondary objectives should be revised to refocus board priorities to address the critical cultural and social context affecting a child's ability to achieve to their highest educational potential.
11. In meeting their primary objective, boards are required to fulfil several secondary objectives. These secondary objectives are predominantly concerned with reinforcing the need for compliance with selected legal obligations already set out in statute. The Taskforce's recommendations provide an opportunity to refocus the objectives in a way that prioritises and highlights Boards' existing legal obligations in relation to Te Tiriti and the rights of the child. For the purposes of the Bill, 'the rights of the child' means the student rights set out in the Human Rights Act 1993 (HRA), New Zealand Bill of Rights Act 1990 (BORA), and the (new) Education and Training Act.
12. We therefore propose to amend the ancillary objectives by:
 - a. creating new objectives for a board to:
 - i. give effect to Te Tiriti;
 - ii. give effect to relevant student rights set out in the (new) Education and Training Act;

- b. retaining the objectives for a board to:
 - i. ensure that the school is a physically and emotionally safe place for all students and staff;
 - ii. ensure that the school is inclusive of and caters for students with differing needs;
 - iii. have particular regard to the statement of National Education and Learning Priorities (the NELP);
- c. revising the compliance focused objectives so that a board must:
 - i. give effect to its obligations in relation to the foundation curriculum statements, the national curriculum statements, and national performance measures (if any);
 - ii. give effect to its obligations in relation to teaching and learning programmes and the monitoring of student performance;
 - iii. if a school is a member of a community of learning that has a community of learning agreement, give effect to its obligations under that agreement; and
 - iv. give effect to all of its other obligations under the (new) Education and Training Act and any other Act.

13. The Taskforce's recommendation that boards monitor and evaluate learner/ākonga belonging, wellbeing, and success does not require legislative change. These broader aspects of a student's schooling experience are reflected in the retained student focused objectives and that of boards having particular regard to the NELP. The board objectives are at the centre of the strategic planning and reporting regime, which includes requirements for boards to monitor and report on student performance.

Boards working with school communities and mana whenua to set the strategic direction and plans for the school/kura (Recommendations 1(b)(i))

- 14. A board's "school community" is defined in the 1989 Act as: the parents, families, and whānau of the school's students; the Māori community associated with the school; and any other person or group whom the board considers to be part of the school community. There are various consultation requirements placed on boards, including that from 2023, a board must consult its school community when developing its strategic plan. Regulations will be developed by 2022 with the detail of the form, content, and process requirements for strategic plans. These regulations can be used to clarify the engagement between boards and mana whenua over the strategic direction of schools and kura.
- 15. Each board's strategic plan can be expected to clearly set out what the board and its community consider to be the important values and characteristics of the school. In practice, one of the ways in which these are reinforced is through school rules made by the board. Under the 1989 Act, such rules are given the status of law. In contrast to other entities with the power to make rules, boards are not required to undertake prior consultation.
- 16. The issue of boards making law without consultation should be addressed through the Bill. Requiring boards to undertake consultation would also be another means of reflecting the Taskforce's broader intentions regarding greater student, staff and

community engagement in their schools. We therefore recommend that a board should be required to consult with its students, staff, and school community as part of the rule making process.

***Boards working with other schools/kura, iwi, and government agencies
(Recommendations 1(b)(iii))***

17. We do not recommend including any changes in the Bill to progress this recommendation, as further work is required on how best to facilitate such collaboration.

Recommendation 1(i) – board role in enrolment schemes

Ministry developing enrolment schemes

18. Under the 1989 Act, the Secretary for Education (Secretary) can provide a written notice to a school that is, or is likely to be, overcrowded, and the board of that school must develop an enrolment scheme for the school. The board is responsible for both developing and consulting on enrolment schemes. The 1989 Act sets out specific consultation requirements that boards must comply with.
19. Under the current framework, schools can manipulate the zone based on areas they most wish to take students from; for example, making zones that include high socio-economic neighbourhoods and excluding closer, yet more disadvantaged, neighbourhoods. This can detrimentally affect students that are already at a disadvantage.
20. In light of the issues with this framework, the Taskforce recommended that boards should no longer have the role of developing enrolment schemes. Instead, it should be undertaken at a regional level so that the best interests of all learners/ākonga and their whānau are taken into account.
21. We recommend the new process should involve the Ministry assuming, at a regional level, legislative responsibility for developing and consulting on enrolment schemes. Schools should have a role to contribute their views and those of their community as part of the design process. Schools would also be consulted on the enrolment scheme, along with other interested parties. The details of boards' involvement in enrolment schemes will eventually be provided for in regulations.
22. Moving this responsibility to the Ministry will provide more transparency and consistency for the system, mitigate the risk of enrolment zones being used to serve the interests of individual schools in a way that causes detriment to other schools and students, and instead focus on what is best for all learners. A centralised approach will enable the development of a more effective national network of enrolment zones and a holistic view of population trends and capacity in the system. The contribution of local views to the design process from schools will contribute to an enduring and robust enrolment scheme, as well as greater buy-in from schools and communities. Additionally, giving the Ministry the main responsibility for enrolment schemes will assist to reduce competition between schools, and increase fairness for all students.
23. Shifting this role to the Ministry will have resource implications. Resourcing will be required to deliver the consultation, design and planning of enrolment zones, including additional advisers and administrative support. However, making this change will lift a significant compliance burden off boards that are currently asked to develop enrolment schemes, with consequent reductions in board and principal workload.

Additional enrolment scheme changes

24. s 9(2)(f)(iv)
25. Under the 1989 Act, schools must give notice of the fact it has adopted, or made minor amendments to, an enrolment scheme. We recommend amending this definition so that notice of adopting or amending enrolment schemes can be made through means including, but not limited to, publishing in a local newspaper.

Recommendation 1(j) – establishing a code of conduct for boards

26. Periodically, issues arise regarding the behaviour of individual members of school boards of trustees. During its consultation phase, the Taskforce was informed of a number of concerns, in particular members seeking to progress their own interests rather than those of the board. In the absence of any statutory based individual or collective duties, the only guidance as to the responsibilities of board members is the New Zealand School Trustees Association's (NZSTA) voluntary Code of Behaviour.
27. To help rectify these issues, the Taskforce recommended that a mandatory national code of conduct for boards be established. Such a Code would give board members a common basis to work from, encourage the development of good practice over time, and provide for more transparent accountability. It would ensure boards are aware of their responsibilities and can be held accountable for their actions.
28. For a Code of Conduct to be mandatory it requires statutory authority. We recommend amending the Act to give the Minister the power to issue a Code of Conduct. We recommend the following new provisions be included in the Education and Training Bill:
- a. the Minister have the power to issue, by *Gazette* notice, a mandatory Code of Conduct setting out the minimum standards of conduct expected of members of school boards of trustees;
 - b. the Minister be required to consult with the national bodies representing the interests of governing bodies of schools, and any other stakeholders that the Minister considers ought to be consulted;
 - c. the Minister be required to have regard to any Code of Conduct issued under the (new) Public Service Act; and
 - d. individual school boards be able to specify additional standards, by way of resolution, provided that these are consistent with the 1989 Act and the standards set out in the Code of Conduct.
29. This approach allows greater flexibility in setting the minimum standards of conduct expected by school board members, and can be tailored as appropriate for different types of members.
30. We considered another option of setting out the individual and collective duties in the Bill itself (with such duties potentially being based on those in the Crown Entities Act 2004). Although this would achieve national consistency through clear articulation of the Government's expectations of all board members, and ensure that members are held to

the same or similar standards as members of other education entities, it does not provide for any local variation (as recommended by the Taskforce).

31. It would also hold all board members to the same standards of accountability, which are equivalent to those that apply to professional directors. This is problematic given that being a board member is a voluntary position and includes (for schools with students above year 8) a student representative.
32. To create accountability for this code that is not so strenuous so as to deter board membership and also to limit complaints, we recommend remedies be available to target significant and/or persistent breaches of the Code.
33. We propose that in the first instance, boards should have the ability to censure a member for significant and/or repeated breaches of the Code. Where the breaches are of the minimum standards of conduct and the board believes that a member's failure to comply with the Code may justify the member's removal from the board, the Minister, acting on written notice from the board, should be able to remove the member, if satisfied that there is just cause to do so.
34. The proposed process for removal of a member of a school board of trustees is similar to that provided for in the case of a member of a tertiary education institution council, which have a similar status to school boards of trustees under the Crown Entities Act 2004.
35. Because we are recommending remedies for breaches of the Code, the Code should be a disallowable instrument to enable external scrutiny by the Regulations Review Committee. Such an approach is consistent with that adopted for the mandatory Code of Conduct for the teaching profession; breaches of which can lead to disciplinary action.

Recommendation 2(b) – establishing minimum eligibility criteria for principals

36. At present, our education system relies heavily on the ability of boards of trustees to identify, attract and employ highly effective principals in an environment of competition and scarce supply. Boards are supported by NZSTA and the Ministry with guidelines and templates that describe the key steps in appointing principals. This includes an expectation that each board will establish criteria to evaluate candidates.
37. Boards also draw on a range of other supports for appointment according to their own needs and networks, such as hiring consultant advisers, undertaking consultation with their communities and staff about what they want from a principal, and asking other boards what they look for in a principal.
38. Ultimately, it is left to each board to develop the selection criteria they will use to appoint a principal. There is no mandatory requirement that any particular skills, knowledge, attitudes or experience are included in those criteria, other than the requirement that the person appointed as principal is a registered teacher and holds a current practising certificate.
39. The Taskforce recommended setting up a Leadership Centre, which would set the national eligibility criteria for principal/tumuaki appointment and guidelines for performance review.
40. In considering your response to the Taskforce's final report, you have signalled an interest in establishing mandatory criteria for the appointment of school principals as part of a set of wider changes aimed at improving school leadership. You have indicated

that this should be considered for inclusion in legislation now, independently of other proposals to improve leadership in schools.

41. We recommend including an enabling provision in the Bill requiring the Minister of Education to issue specific criteria that must be met before a principal can be appointed. The Minister would be able to delegate the authority to issue the criteria to the Secretary for Education under provisions in the State Sector Act 1988.
42. Establishing this criteria would:
 - a. create system-wide consistency about the skills, knowledge and expertise candidates for principal roles need to demonstrate;
 - b. support better understanding of the background and experience necessary for school leadership, amongst people aspiring to a principal role as part of their future career;
 - c. provide confidence for boards that they are making the right appointments;
 - d. signal that the role of principal is of importance to the system more broadly than as a leader of one school.
43. Such an enabling provision would allow time to co-design leadership criteria with the profession, and would also enable you to consider the options for who should be delegated authority to issue the criteria.
44. While we considered whether the eligibility criteria could instead be established by the Teaching Council, we don't recommend this option. The Teaching Council's existing functions are focussed on the occupational regulation of teachers and principals and not on supporting Boards to make appointments. The Teaching Council is also an independent statutory entity, and as such cannot be directed to issue the criteria. However, there is a risk in the proposed approach that a future Minister of Education could change or rescind any delegation that you make.
45. It is also important to note that this proposal may impact on the supply and remuneration of principals. Eligibility criteria could raise barriers to recruiting a principal, particularly in isolated areas, and may put additional demand on existing principals (depending on what the criteria is).
46. This is "appointment" criteria and as such, would only apply to principals seeking appointment after the new legislation commences¹. We recommend that the enabling provision comes into force on the commencement of the Education and Training Act and that there be a minimum six month transitional period to allow sufficient time for the criteria to be developed and socialised with the sector.
47. We do not propose that the legislation retrospectively applies the criteria to incumbents employed before the legislation commences. Principals employed under the existing legislation who do not currently meet the new criteria would ideally, over time, upskill and develop to meet the same criteria as those appointed as principals under the new legislation. This will be considered as part of the longer-term Leadership work

¹ As well as those applying as first time principals, this includes incumbent principals who apply for new roles after the new legislation commences.

Recommendation 5(a) – establishing independent community-based panels to resolve issues that have not been resolved at school/kura level

48. You have previously agreed to advice establishing these panels (METIS 1200361).

The scope of the issues that panels can hear and make decisions on

49. You have previously indicated that you did not agree that panels should only hear disputes relating to a code of student rights that we would develop. We have therefore developed an alternative approach for specifying the panels' jurisdiction.
50. We recommend that panels only consider 'serious disputes', which would be defined in primary legislation as disputes relating to stand-downs, suspensions, exclusions and expulsions, learning support, racism and discrimination, physical and emotional safety, physical restraint, enrolment and attendance, and the rights to education. This will ensure panels can provide timely consideration of more serious matters, while also recognising that schools are best placed to make some decisions. Because we have not consulted on this proposed definition of serious disputes, the Select Committee process may help to refine the definition.
51. We will also need to consult with the Ministry of Justice (MoJ) and the Human Rights Commission, as grounds such as 'racism and discrimination' may stray into the jurisdiction of the Human Rights Review Tribunal. However, as these are fundamentally serious issues that can significantly affect students, we are still proposing to include them at this point.
52. The new disputes panels will provide a check on the decisions and rules that boards make. They will be able to recommend that boards reconsider their rules/bylaws or policies if they are inconsistent with student rights; make declarations (for example, that a school board's rule breaches student rights); and overturn or modify board decisions in relation to individual complaints.
53. The ability for the panels to overturn decisions made by boards will likely have resourcing implications where the Ministry needs to support boards to comply with the determinations made by the panels. For example, if a panel was to overturn an exclusion decision incorrectly made by a board, the Ministry will likely need to provide additional support, and potentially resourcing, to the board to enable it to safely and fairly support the student's return to school. These sorts of resourcing issues will need to be worked through as we develop a business case to support the establishment of the new disputes regime.

There should be no application fee for resolving disputes

54. We recommend that there should be no fee for either party. While some dispute resolution mechanisms do have an application (or filing) fee, we consider that an application fee will place an additional barrier for students and their whānau pursuing a remedy.

Legislative framework for disputes regime

55. Since we provided our previous advice, we have met with MoJ and the Government Centre for Disputes Resolution and further developed our thinking. We seek your agreement to further features to be included in the Bill.

Addressing the power imbalance between the parties

56. In any dispute between students and their whānau and boards there is a power imbalance between the parties. Boards have access to greater resources and knowledge of the education system, and this can be intimidating to whānau wishing to pursue their complaint.
57. We have discussed this issue with the Government Centre for Disputes Resolution. They have provided examples of how other dispute resolution schemes address this power imbalance, such as the Utilities Disputes scheme, where the decision of the Commissioner is binding on the provider but not the consumer.
58. We recommend adopting a similar approach here. If students and their whānau choose to pursue mediation and/or determination, boards will be required to participate in one or both processes and, in relation to determinative proceedings, will be bound by the panel's decision.

A Chief Referee

59. We are proposing that the Bill contain provisions that allow the Minister of Education to appoint a Chief Referee (and Deputy Chief Referees if required). We also recommend that the Minister consult key stakeholders on the appointment. We recommend that these appointments go through the Appointments and Honours Committee, as is usual for appointments to these types of positions.
60. The Chief Referee will be responsible for the administration of local panels and the membership pool. This includes appointing and removing members to and from the membership pool and individual panels, managing and training members and reporting functions.
61. We propose that the Chief Referee should be required to have a legal qualification and a minimum of five years' experience in New Zealand as a barrister or solicitor. This is consistent with requirements for similar positions in tribunals administered by MoJ. The legal expertise is also essential because panels will make decisions on relevant student rights included in the 1989 Act, the HRA and the BORA.
62. The Chief Referee should be appointed for a period of up to five years for consistency with similar roles and to ensure adequate time for that person to develop panel expertise and best practice guidance and direction in relation to the resolution of schooling system disputes. Because Deputy Chief Referees will have to stand in for the Chief Referee, the same appointment criteria should apply.
63. We recommend that the Chief Referee and Deputy Chief Referees can only be removed by the Minister of Education because of ill health, serious misconduct, being convicted of an offence punishable by imprisonment of two years or more, neglect of duty, and bankruptcy. This is consistent with other removal grounds for similar positions.
64. It is not clear how many panels will be required to ensure the timely consideration of disputes, nor how much panel membership will change over time. It may be that local community membership will be more fluid. Allowing the Chief Referee to appoint and remove members (see below) as necessary will allow a more nimble response to appointments and ensure timely consideration of disputes.

Approval and removal criteria and processes for other panel and central pool members

65. The model proposed by the Taskforce includes local community members, who will bring other skills to the panel. We have also identified a need for a central pool of experts to ensure panels have the right mix of skills, expertise and diversity to meet the needs of the local student population. More work and consultation is required to determine the criteria.
66. It may not be appropriate to apply the grounds for removal proposed for the Chief Referee and Deputy Chief Referee, to the other panel members. This is because the roles and responsibilities are significantly different.
67. We therefore recommend that the appointment and removal criteria and processes, and the appointment term, for other panel and central pool members be set in regulations.

An appeal function

68. MoJ expressed a preference for the panels to include an appeal function. They suggested this could be done by empowering the Chief Referee (or a Deputy Chief Referee if the Chief Referee was involved in the panel decision) to hear appeals of panel decisions, from either party.
69. While there are some schemes where determinative decisions cannot be appealed, including the Student Allowance Appeal Authority, War Pensions Appeal Board and Catch History Review Committee, MoJ's preference is for the ability to appeal a determinative decision.
70. We have some concerns about the approach suggested by MoJ. It appears to be untried. MoJ advised us that they are not aware of any schemes that have the internal appeal mechanism they have recommended to us i.e. schemes in which the dispute resolution body that heard the dispute also hears the appeal. The only examples of appeal processes we are aware of are schemes where a different body hears the appeal. There is potential for conflicts of interest under MoJ's recommended approach that do not arise under schemes where a separate appeal body hears the appeal.
71. The trade-offs of creating a new separate appeal body include higher costs and greater complexity. An alternative option is to allow appeals to the district and high court. In terms of scheme administration, this would be cheaper than setting up and running a new appeal body but it would be significantly more expensive for the parties to access.
72. For students and their whānau, the proposed scheme significantly improves their ability to obtain redress when students' rights have been breached, even without the ability to appeal a panel decision. The inability to appeal panel decisions may be of more concern to schools given that panels will be able to overturn board decisions. Currently, board decisions cannot be overturned.
73. We think the likely cost and complexity of allowing appeals outweighs the benefits, especially given the ability for both parties to have panel decisions reviewed by the existing offices of Parliament.

Remedies

74. Remedies are an important part of any determinative function. We have discussed the range of remedies available to panels with MoJ, and recommend that the Bill allow panels to order an apology, refer parties to mediation (if they have not already been to

mediation), up-hold, over-turn or modify the original decision, or make a declaration. These remedies are consistent with best practice guidance issued by MoJ.

Legal representation

75. The panels are intended to provide a low level dispute resolution mechanism that empowers students and their whānau to pursue a resolution. In line with this, we recommend that the Bill specifies that parties cannot be legally represented during any interactions with the panel. Legal representation will make processes and procedures more complex and expensive, and therefore less accessible.

Panel processes and powers

76. For transparency, key processes and powers should be provided for in primary legislation. This is problematic in relation to powers.
77. While some aspects of our proposed model for the panels are consistent with tribunals administered by MoJ, there are some critical differences that mean we should not assume it will be appropriate to provide in legislation for the panels to have all the powers commonly provided for in relation to tribunals and similar dispute resolution bodies. These differences include:
- a. Panel membership - some tribunals require all members to be lawyers but we have only specified that the Chief Referee, and Deputy Chief Referees, be lawyers
 - b. We are not proposing to allow parties to be represented by lawyers in proceedings but most tribunals do allow this.

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

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

80. For processes, the Bill should provide that processes and procedures will be culturally appropriate and will respect the diversity of the local student population, with the detail around how to do that set in regulations.

Further advice

81. We will provide you with further advice on how to establish and operate the panels which will inform detailed policy proposals for regulations and a future budget bid.

Next steps

82. The following timelines indicate the next steps for the different tranches of policy approvals for the Bill.
83. Timing is tight to ensure that the Bill is ready for Introduction and referral to Select Committee by the end of the year.

Tranche three of Education and Training Bill	
Departmental consultation on tranche three Cabinet paper	3 to 10 September
Ministerial consultation on tranche three Cabinet paper	10 to 17 September
Tranche three Cabinet paper lodged	19 September
Tranche three Cabinet paper considered by SWC	25 September

Government response to Tomorrow's Schools (including tranche four)	
Education report with tranche four proposals to MO	9 September
Departmental and Ministerial consultation on Tomorrow's Schools Government response	24 September to 3 October
Tomorrow's Schools Government response lodged (including tranche four legislative proposals)	10 October
Tomorrow's Schools Government response at SWC (including tranche four legislative proposals)	16 October
Tomorrow's Schools Government response approved by Cabinet (including tranche four legislative proposals)	21 October

Tranche five	
Draft tranche five Cabinet paper provided to MO	TBA
Departmental consultation on tranche five Cabinet paper	25 to 2 October
Ministerial consultation (in recess week) on tranche five Cabinet paper	3 to 9 October
Tranche five Cabinet paper lodged	10 October
Tranche five Cabinet paper considered at SWC	16 October

Religious instruction Cabinet paper	
Ministerial and departmental (concurrent) consultation on religious instruction Cabinet paper	TBA
Religious instruction Cabinet paper lodged	TBA
Religious instruction Cabinet paper at SWC	TBA

Next steps after all policy approvals for Education and Training Bill	
Final drafting by PCO	21 October to 14 November
Lodge approval to introduce LEG paper	14 November
LEG approval to introduce	19 November
Introduction of Education and Training Bill	25 to 29 November (recess week)
First reading	In sitting weeks 3 or 10 December
Select Committee – setting of timelines and calling for submissions	In last sitting week 18 December

Annexes

- Annex 1: Table of amendments for inclusion in the Government response to Tomorrow's Schools Cabinet paper

TABLE OF PROPOSED LEGISLATIVE AMENDMENTS

Taskforce Recommendation No.	Proposed legislative response	Related amendments
<p>1a. All areas of school/kura governance decision making are explicitly reviewed annually by boards to ensure adherence to Te Tiriti o Waitangi and the rights of the child</p>	<p>The Bill will create new secondary objectives for boards of trustees, enabling these to be reviewed and reported on as part of the new strategic planning and reporting regime.</p>	<p>Amend the secondary objectives of boards as provided for in the Education Act 1989, in order that boards must give effect to Te Tiriti o Waitangi/the Treaty of Waitangi, and to relevant student rights set out in the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993, and the Education and Training Act</p>
<p>1b. Boards of Trustees give greater priority to:</p> <ul style="list-style-type: none"> Working with the school/kura community and mana whenua to set the strategic direction and plans for the school/kura Monitoring and evaluating learner/akonga belonging, wellbeing and success Working with other schools/kura, iwi and government agencies for the mutual benefit of the learners/ākonga whanau and schools/kura 	<p>The Bill will refocus the secondary objectives of boards away from the current emphasis on compliance with legal obligations.</p>	<p>Amend the secondary objectives of boards as provided for in the Education Act 1989, by:</p> <ul style="list-style-type: none"> Creating new objectives for a board to: <ul style="list-style-type: none"> Give effect to Te Tiriti o Waitangi/the Treaty of Waitangi Give effect to the relevant student rights set out in the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and the Education and Training Act Retaining the objectives for a board to: <ul style="list-style-type: none"> Ensure that the school is a physically and emotionally safe place for all students and staff Ensure that the school is inclusive of and caters for students with differing needs Have particular regard to the statement of National Education and Learning Priorities replace the current board objectives which require boards "to comply" with requirements that a board "give effect to" the following matters: <ul style="list-style-type: none"> its obligations in relation to the foundation curriculum statements, the national curriculum statements, and national performance measures (if any)

Taskforce Recommendation No.	Proposed legislative response	Related amendments
1i. Developing and consulting about enrolment schemes is carried out by the local Education Support Learning Network (ESLN) rather than the board so that the best interests of all learners/ākonga and their whānau are taken into account	The Bill will shift the responsibility for developing and consulting on enrolment schemes from boards of trustees to the Ministry of Education. This is intended to improve transparency and consistency in developing enrolment schemes across the system, mitigate the risk of enrolment zones being used to serve the interests of individual schools and instead focus on what is best for all learners in a community.	<ul style="list-style-type: none"> its obligations in relation to teaching and learning programmes and the monitoring of student performance If a school is a member of a community of learning that has a community of learning agreement, its obligations under that agreement; and all of its other obligations under the Education Act 1989 and any other Act <p>Include provisions in the Bill to:</p> <ul style="list-style-type: none"> make the Ministry of Education responsible for developing and consulting on enrolment schemes require the Ministry of Education to obtain input from boards of trustees to the development of enrolment schemes enable the detail of how boards of trustees have input to the development of enrolment schemes to ultimately be set in regulations update the definition of "give notice" in section 11B of the Education Act 1989 so that notice of adopting or amending enrolment schemes can be made through any means including, but not limited to, publication in local newspapers
1j. A national code of conduct for boards of trustees is established	The Bill will establish a mandatory Code of Conduct (and sanctions for failure to comply) for boards of trustees. The Code of Conduct will be aimed at making boards more accountable, fostering collaboration between boards	<p>Include provisions in the Bill to specify that:</p> <ul style="list-style-type: none"> the Minister of Education may issue a mandatory Code of Conduct, by Gazette notice, setting out the minimum standards of conduct expected of members of school boards of trustees before issuing the Code of Conduct, the Minister of Education must consult with the national bodies representing the

Taskforce Recommendation No.	Proposed legislative response	Related amendments
	and encouraging good school governance.	<p>interests of governing bodies of schools, and any other stakeholders that he or she considers ought to be consulted; all members of school boards of trustees must comply with the Code of Conduct;</p> <ul style="list-style-type: none"> the Code of Conduct will be a disallowable instrument school boards may, by way of resolution, censure a member for significant and, or repeated breaches of the Code of Conduct; where a member of a school board of trustees breaches one or more of the minimum standards of conduct and the board believes that the member's failure to comply with the minimum standards of conduct may justify their removal from the board, the Minister, acting on written notice from the board, should, if satisfied that there is just cause to do so, be able to remove the member;
2b. The Leadership Centre sets national eligibility criteria for principal/tumuaki appointment and guidelines for performance review. It should also provide a single set of professional standards for principals/tumuaki to be used for their performance review.	The Bill will empower the Minister of Education to set eligibility criteria that boards of trustees must use to evaluate candidates for school principal vacancies. This is intended to strengthen leadership in the schooling system by standardising and making mandatory criteria for appointing principals that ensures appointees have the right skills, knowledge, attitudes and experience	<p>Include enabling provisions in the Bill that:</p> <ul style="list-style-type: none"> require the Minister of Education, with power to delegate, to require specific criteria be met before a principal can be appointed provide for the enabling provision to come into force on the commencement of the Education and Training Act and that there be a minimum six month transitional period to allow sufficient time for the criteria to be developed and socialised with the sector

Taskforce Recommendation No.	Proposed legislative response	Related amendments
5a. Independent community-based panels are established locally, by the ESLN, to resolve any learner/ākonga or parent or whānau issues that have not been able to be resolved at the school/kura level.	<p>necessary for these critically important roles.</p> <p>The Bill will establish a free complaints and dispute resolution scheme for the schooling system.</p> <p>Local complaints and dispute resolution panels, made up of local members and members from a central pool of experts, will deal with serious disputes that students and parents have been unable to resolve with the school.</p> <p>Panels will provide mediation to help the parties agree solutions but if mediation is not appropriate or has not worked, panels can make binding decisions. Panel decisions can be appealed to the Chief Referee.</p> <p>Panels will be able to</p> <p>The Chief Referee (appointed by the Minister of Education) will be responsible for</p>	<p>Include provisions in the Bill to:</p> <ul style="list-style-type: none"> establish local panels to manage serious disputes between students, their whānau and schools define "serious disputes" to include disputes about stand-downs, suspensions, exclusions and expulsions, learning support, physical restraint, racism and discrimination, physical and emotional safety, enrolment and attendance, and the rights to education specify that the purpose of the panels will be to provide timely, flexible procedures for the resolution of serious disputes between students, their parents and schools specify that panels will be made up of local members and members from a central pool of experts and that members of panels and the central pool will be appointed by the Chief Referee enable panel and central pool membership numbers, appointment criteria, appointment processes, appointment terms and removal processes to be set in regulations enable the Minister of Education to appoint a Chief Referee (and Deputy Chief Referees if required) and require the Minister to consult key stakeholders on the appointment specify that the Chief Referee and Deputy Chief Referees: <ul style="list-style-type: none"> must be a barrister or solicitor of the High Court of New Zealand with at least five years experience must be appointed for a term of up to five years can be removed by the Minister for ill health, serious misconduct, being convicted of an offence punishable

Taskforce Recommendation No.	Proposed legislative response	Related amendments
	<p>appointing panel and central pool members and for the administration of panels. The Chief Referee will also hear appeals against panel decisions.</p> <p>The legislative framework for the scheme will be enabling. Core components of the scheme will be provided for in the primary legislation with the ability to set detailed processes and procedures in regulations.</p> <p>Students and parents will be able to get remedies including an apology and having a board decision modified or overturned. Panels will also be able to recommend (but not require) boards to change policies and procedures,</p>	<p>by imprisonment of two years or more, neglect of duty, inability to perform the functions of office, and bankruptcy</p> <ul style="list-style-type: none"> • make the Chief Referee (with power to delegate to the Deputy Chief Referee) responsible for: <ul style="list-style-type: none"> ◦ appointment, management and removal of panel and central pool members ◦ administration of panels • enable the panel and central pool membership numbers, appointment criteria, appointment process and removal process, to be set in regulations • provide that the panels will have the following features: <ul style="list-style-type: none"> ◦ mediation and determinative functions ◦ no fees to access the panel or participate in mediation or determinative proceedings ◦ students and whānau can require a school to participate in mediation and determinative proceedings but the participation of students and parents is voluntary ◦ the ability to consider merits and process of a school's decision ◦ the ability to recommend changes to board policies and procedures ◦ the power to order an apology, refer parties to mediation (if they have not already been to mediation), uphold, over-turn or modify the original decision, or make a declaration ◦ parties cannot be represented by lawyers ◦ panel processes and procedures will be culturally appropriate and will respect the diversity of the local student population