



Education Report: Delegation of statutory powers under section 71C of the Education Act 1989

To:	Hon. Chris Hipkins, Minister of Education		
Date:	16 April 2018	Priority:	Medium
Security Level:	In Confidence	METIS No:	1106128
Drafter:	Morag Allan	DDI:	[REDACTED]
Key Contact:	Tony Turnock	DDI:	[REDACTED]
Messaging seen by Communications team:	Yes	Round Robin:	No s 9(2)(a) OIA

Purpose of Report

The purpose of this report is to seek your agreement to delegate to the Secretary for Education, and further delegation to Ministry office holders as determined by the Secretary, your power under section 71C of the Education Act 1989 (the Act).

Summary

1. The Education (Update) Amendment Act 2017 made a number of changes to the Education Act 1989 to provide greater options about collaboration and accountability for members of a Community of Learning. Sections 71C to 75 allow Communities of Learning to enter into a statutory agreement with the Secretary for Education to cover some, or all, of the activities the Community of Learning will undertake.
2. Section 71C of the Act requires you to approve a Community of Learning for the purpose of the Community entering a statutory agreement with the Secretary for Education.
3. A statutory agreement has legal force and could be used in circumstances where a Community of Learning wishes to enter into a major commitment (eg developing a significant shared asset) and cannot do so as a Community of Learning because it is not a legal entity.
4. Approval has to be given on a case by case basis when a Community of Learning decides it wants to enter into an agreement. Seeking approval each time a Community of Learning decides to enter into an agreement with the Secretary is an operational task that could be managed by the Ministry.
5. To expedite the process when a Community of Learning decides it wants to enter into an agreement, we are seeking your agreement to delegate your power to the Secretary or other Ministry office holders.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that the Education (Update) Amendment Act 2017 made a number of changes to the Education Act 1989 to provide greater options about collaboration and accountability for members of a Community of Learning;

Noted

- b. **note** that Section 71C of the Act requires the Minister to approve a Community of Learning for the purpose of the Community of Learning entering a statutory agreement with the Secretary for Education;

Noted

- c. **agree** to the delegation of your power under section 71C of the Education Act 1989 to the Secretary for Education;

Agree / Disagree

- d. **sign** the attached instrument of delegation; and

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

Release / Not release



Katrina Casey
Deputy Secretary
Sector Enablement and Support

16/4/2018



Hon Chris Hipkins
Minister of Education

30/4/18

I'd like to hold off making a decision on this until after the review of Tomorrow's Schools is complete and we know what the future of COLs will be.

Background

1. The Education (Update) Amendment Act 2017 made a number of changes to the Education Act 1989 to provide greater options about collaboration and accountability for members of a Community of Learning. Sections 71C to 75 allow Communities of Learning to enter into a statutory agreement with the Secretary for Education to cover some, or all, of the activities the Community of Learning will undertake.
2. The sections were introduced to provide greater certainty and legitimacy for members of a Community of Learning beyond the current Memorandum of Agreement each member signs, especially in situations where the Community of Learning moves beyond a focus on collaboration to further enable them to share expertise and resources. It is not compulsory for a Community of Learning to enter into an agreement with the Secretary.
3. A statutory agreement has legal force and could be used in circumstances where a Community of Learning wishes to enter into a major commitment (eg developing a significant shared asset) and cannot do so as a Community of Learning because it is not a legal entity.
4. An agreement with the Secretary will address the legal certainty to enter into such a commitment and manage liability for the members as well as the Crown.
5. Entering into a statutory agreement with the Secretary requires all the parties in the Community of Learning to sign up, so we envisage it will be utilised by a mature Community of Learning that has worked together collaboratively for some time. It may be some time before these provisions are tested in practice.
6. These changes came into force in May 2017 however there have not yet been any requests from a Community of Learning to enter into a statutory agreement with the Secretary for Education.

Delegating approval power

7. Section 71C of the Act requires the Minister to approve a Community of Learning entering into a statutory agreement with the Secretary. Approval has to be given on a case by case basis when a Community of Learning decides it wants to enter into an agreement. The legislation does not provide for across-the-board approval to be given to allow every Community of Learning to enter into a statutory agreement; thus strengthening assurance that every request is considered on its individual merits.
8. The decision to approve a request from a Community of Learning to enter into a statutory agreement with the Secretary will require an operational assessment and determination of merit that can be managed within the Ministry. Delegating your power to the Secretary will place the decision-making closer to where the mutual commitments, and relationship with, the Community of Learning is taking place. The actions required can be actively managed in a timely way which will serve to support the momentum of the Community of Learning.

Legislative Context for Delegation

9. Under section 28 of the State Sector Act 1988, the appropriate minister, in relation to a department, may delegate powers to the chief executive of that department. When ministers delegate to departmental chief executives, they can also approve the sub-delegation to departmental employees via section 41 of the State Sector Act 1988.
10. Delegation does not preclude you from making any decision yourself. If you agree to the delegation of this power, we will update you from time to time regarding the use of the delegation by the Secretary or the Secretary's sub-delegates.

Next Steps

11. Should you agree to the recommended delegation, you are asked to sign the Instrument of Delegation, and note that a memo will then be provided to the Secretary for Education for further delegation to appropriate Ministry of Education office holders.
12. This delegation may be revoked by you at any time by giving written notice to the Secretary for Education.

Proactive Release

13. It is intended that this Education Report is proactively released 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: Education Amendment (Update) Act 2017 – Communities of Learning
- Annex 2: Instrument of Delegation

Communities of learning

71C Community of learning approved by Minister

- (1) The Minister may approve a community of learning for the purpose of the community entering an agreement under section 72.
- (2) A community of learning must consist of a group of 2 or more State or State integrated schools but may also include 1 or more of the following:
- (a) licensed early childhood services (as defined in section 309);
 - (b) certificated playgroups;
 - (c) tertiary education organisations (which has the same meaning as **organisation** in section 159B(1)).
- (3) The Minister may approve a community of learning only if the Minister is satisfied that—
- (a) the purpose of the group is to come together for the purpose of raising achievement for children and young people; and
 - (b) the membership of the group that will form the community is appropriate having regard to that purpose.

72 Secretary may enter agreement with community of learning

- (1) The Secretary and the members of a community of learning approved by the Minister may enter a community of learning agreement.
- (2) The matters that a community of learning agreement may provide for include (without limitation) any or all of the following:
- (a) the activities that the community of learning will undertake;
 - (b) the commitments of individual members of the group in carrying out the activities;
 - (c) any resources that may be provided to carry out the activities;
 - (d) any data collection requirements related to the activities;
 - (e) the format and content of the plans and annual reports required under sections 73 and 74.
- (3) Each member is jointly and severally liable for the obligations and responsibilities of the community of learning set out in the agreement.

(4) A member that proposes to withdraw from a community of learning agreement must give the Secretary notice in writing of the withdrawal.

(5) The Secretary must, by notice in the *Gazette*, list the members of each community of learning that have entered into a community of learning agreement with the Secretary and update the list to record any changes to membership of the community.

73 Community of learning that has agreement with Secretary must also prepare plan

(1) A community of learning that has a community of learning agreement with the Secretary must—

- (a) prepare and maintain a plan to cover a period agreed to by the Secretary; and
- (b) provide the Secretary with a copy of the plan.

(2) The plan must have particular regard to any statement of National Education and Learning Priorities issued under section 1A.

(3) A community of learning that changes a plan provided to the Secretary must provide the Secretary with a copy of the changed plan as soon as practicable.

74 Report to Secretary by community of learning

A community of learning that has a community of learning agreement with the Secretary must report annually to the Secretary regarding—

- (a) its performance and progress in relation to the activities it has agreed to undertake; and
- (b) the use of any resources provided to or by the community of learning in accordance with the agreement to carry out the activities.

75 Performance review of community of learning

The Chief Review Officer may review the performance of a community of learning under Part 28.



Instrument of Delegation

Delegation of powers of the Minister of Education

Under section 28 of the State Sector Act 1988 I, Chris Hipkins, Minister of Education, delegate to the Secretary for Education, my power under section 71C of the Education Act 1989.

Under section 41 of the State Sector Act 1988 I consent to the further delegation of the power under section 71C of the Education Act 1989 to employees of the Ministry of Education as determined by the Secretary for Education.

Dated at Wellington this day of 2018

Hon Chris Hipkins
Minister of Education