

Impact Summary: Refocusing the role of school boards of trustees

Section 1: General information

Purpose

The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with policy changes to be taken by Cabinet in relation to refocusing the role of school boards of trustees and requiring boards to undertake consultation with their students, staff, and school communities on school rules.

Key Limitations or Constraints on Analysis

There are no limitations or constraints on the analysis.

Responsible Manager (signature and date):

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Deputy Secretary
Education System Policy
Ministry of Education
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Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

These proposals are based on a recommendation of the Tomorrow’s Schools Review Independent Taskforce (Taskforce). The Taskforce consulted extensively over the past 15 months to determine what issues the schooling system has and how to address these problems. One of the things that the Taskforce heard about was a need to reorient the role of school boards to focus on what matters for learners.

Why the role of boards needs reorienting

The current arrangements do not always enable schools to focus on what matters most for learners. Clause 5 of Schedule 6 of the Education Act 1989 (the Act) sets out a board’s objectives in governing a school. The primary objective is to ensure that every student is able to attain his or her highest possible standard of educational achievement. The clause also provides for a number of secondary objectives, including the requirement that schools provide a physically and emotionally safe place for all students and staff.

Boards have other governance requirements scattered across the Act. For example, clause 16 of Schedule 6 of the Act requires boards to take all reasonable steps to act in a manner that is consistent with the principles of the Treaty of Waitangi and clause 25 of Schedule 6 requires boards to perform their functions and exercise their powers in a way that is financially responsible.

The distinction between the existing primary and secondary objectives is problematic because other objectives, such as those dealing with pastoral care and Te Tiriti o Waitangi (Te Tiriti), are equally as important as boards' primary objective.

The Taskforce noted that in order for children and young people to thrive, the focus in schools needs to be broader than just on academic achievement. This is supported by what students and their whānau told us during Korero Mātauranga, the engagement on the National Education and Learning Priorities, Fono and Wānanga. The Taskforce also noted the importance of a sense of belonging and wellbeing and identified that many children and young people report experiencing racism and bullying at school.

Trustees and principals told the Taskforce that they would welcome guidance in their decision-making processes to ensure that the best interests of students are prioritised at all times. As a result of this feedback, the Taskforce recommended, in its first report, that the role of boards be reoriented so that they can focus on their core responsibilities, including student wellbeing, belonging, engagement and achievement. The proposal to reorient boards' focus received support during the Taskforce's second round of consultations.

As a result of all of the feedback received during its consultation, which included over 300 meetings with stakeholders and the public as well as analysing over 5,000 online survey responses and over 2,000 written submissions, the Taskforce developed recommendations aimed at refocusing the role of boards on things that matter to learners by:

- requiring that all areas of school/kura governance decision-making be explicitly reviewed annually by boards to ensure adherence to Te Tiriti and the rights of the child;
- School boards giving greater priority to:
 - Working with the school/kura community and mana whenua to set the strategic direction and plans for the school/kura;
 - Monitoring and evaluating learner/ākonga belonging, wellbeing and success; and
 - Working with other schools/kura, iwi, and government agencies for the mutual benefit of the learners/ākonga, whānau, and schools/kura.

We have also identified a related problem. Because board requirements are scattered across the Act, it is difficult for boards to navigate their way around the Act to make sense of their obligations and priorities.

Consultation on school rules

Boards have the ability to make rules. These rules are given the status of law. In contrast to other Crown entities with the power to make rules, boards are not required to undertake prior consultation.

This is problematic. Schools make a wide range of rules, many of which seek to regulate students' behaviour, yet there is no requirement for the rules to be informed by the views of students or their whānau. During the Ministry's various engagements, we heard from children and young people about how school rules, and their enforcement, affects them. For example, most schools across New Zealand have rules about uniforms. These are usually developed without consulting students. Students have told us that uniforms is an issue that matters for them as uniforms affect their sense of belonging and their ability to express their unique selves.

The absence of a clear requirement that fundamental school rules be consulted on with the school/kura's community and mana whenua is also inconsistent with the Taskforce recommendation above, that boards give greater priority to working with their community to set their strategic direction and plans. School rules are often fundamental manifestations of a

school's strategic direction and culture.

2.2 Who is affected and how?

School boards of trustees are affected by these changes as they will be required to govern schools based on both strengthened and new objectives. School boards' behaviour will further be changed by being required to consult with students, staff and school communities in the development of school rules.

Students, staff and school communities, including mana whenua, will be positively impacted as they will now have an official avenue for having a say in the development of school rules.

Students will also be affected by the changes to school board objectives as there will be a greater focus on student wellbeing. These changes are intended to emphasise the importance of schools having a more holistic approach to teaching and learning, with a particular focus on student wellbeing.

2.3 Are there any constraints on the scope for decision making?

There are no constraints on the scope for decision-making.

Interdependencies with other work

The broader work intended to better reflect Te Tiriti in education legislation contains proposals for what giving effect to Te Tiriti entails. As this proposal contains an objective requiring school boards to give effect to Te Tiriti, the two pieces of work are intertwined.

This proposal is also closely linked to the proposal to establish a mandatory Code of Conduct for school boards of trustees as both pieces of work are aimed at strengthening governance and improving transparency and accountability in relation to school boards of trustees.

Section 3: Options identification

3.1 What options have been considered?

Please note: The analysis of the proposed changes relating to Te Tiriti have been undertaken in the RIA dealing with proposals to better reflect Te Tiriti in education legislation

Option One – Status quo

Under this option, school boards continue to have a primary objective focused on educational achievement and several secondary objectives. Boards would also not be required to consult on school rules.

The benefits of this option are that it would involve the least amount of change for schools and would be most cost efficient. However, the key drawback of this option is that it does not address any of the issues identified in section 2.1. Objectives would continue to be located throughout various places in the Act and would not have an explicit focus on student rights or a strengthened focus on Te Tiriti. Under this option, boards would still be some of the only entities with the power to make rules without being required to undertake prior consultation with stakeholders.

Option Two – Refocusing school board functions with no change to require boards to consult on school rules

Under this option, the legislation would be amended to provide that boards' primary objectives in governing schools are:

Objective 1: To ensure that every student at the school is able to attain their highest possible educational standard

Objective 2: To ensure that the school is a physically and emotionally safe place for all students and staff and that the board gives effect to relevant student rights and takes all reasonable steps to eliminate racism, stigma, bullying and discrimination within the school

Objective 3: To ensure that the school is inclusive of and caters for students with differing needs

Objective 4: To ensure that the school gives effect to Te Tiriti including through:

- working to ensure that its plans, policies and local curriculum reflect local tikanga, mātauranga Māori and te ao Māori;
- taking all reasonable steps to make available instruction in tikanga Māori and te reo Māori
- taking all reasonable steps to reduce inequitable outcomes for Māori students.

In meeting these objectives, the board must:

- have particular regard to the statement of National Education and Learning Priorities
- give effect to its obligations in relation to the foundation curriculum statements, the national curriculum statements, and national performance measures (if any)
- give effect to its obligations in relation to teaching and learning programmes
- give effect to its obligations in relation to monitoring and reporting of students' progress
- perform its functions and exercise its powers in a way that is financially responsible
- if the school is a member of a community of learning that has a community of learning agreement under section 72, comply with its obligations under that agreement as a member of that community
- comply with all of its obligations under the (new) Education and Training Act or any other Act.

This option would require schools to use time and resources to re-orient their focus and give more weight to objectives that are currently secondary in the legislation.

The benefits of this option are that it directly addresses the issues identified in section 2.1 in relation to school board objectives and gives effect to the Taskforce's recommendations about what matters to learners. This option also provides for a cohesive set of objectives in one place within the Act, making it easier for boards to navigate the legislation to make sense of their obligations and priorities.

Under this option, no changes would be made to require boards to consult on school rules. While this would mean that boards would not need to use time and resources to consult students, staff and the school community on school rules, they would remain some of the only entities with the power to make rules without being required to undertake prior consultation with stakeholders.

Option Three – Refocusing school board functions and requiring schools to consult students, staff and school communities on school rules

Under this option boards' objectives in governing schools would be amended as indicated in Option Two. This would have the same benefits and disadvantages as identified above.

Additionally, boards would be required to consult students, staff and their school communities on school rules. This may have cost implications for boards. However, students, staff and school communities would be provided with an official mechanism for having their voices heard.

3.2 Which of these options is the proposed approach?

Option Three is the preferred option as it directly addresses the issues identified in section 2.1 and it gives effect to the Taskforce's recommendations about what schools should focus on in order to give effect to what matters to learners.

The focus on educational achievement (objective one) has been retained. The objective for schools to ensure that they are inclusive and cater for students with differing needs has also been retained (objective 3) but elevated to an equal status with educational achievement. This option also raises as a primary responsibility of boards the requirement to give effect to Te Tiriti (objective four). The current governance objectives for boards require schools to ensure that they are a physically and emotionally safe place for students and staff (objective two). This objective has been retained but the status of it has been elevated, and amended to include the requirement that the board gives effect to relevant student rights and takes all reasonable steps to eliminate racism, stigma, bullying and discrimination within the school.

The new strategic planning and reporting regime that will commence on 1 January 2023 will enable reporting on these objectives through annual reports.

This option helps to focus boards on what the Taskforce has indicated matters most for learners while requiring a minimal level of change in relation to board objectives. The proposed changes impose no additional requirements on boards relating to student rights, as they already have to give effect to student rights under the Bill of Rights Act 1990, Human Rights Act 1993 and the Education Act 1989. Boards are also already required to ensure that their students are free from racism and discrimination under the Human Rights Act 1993 and the requirement that students are free from bullying is implicit in boards' existing requirements that they provide a physically and emotionally safe place for all students.

These changes would give effect to the Taskforce's recommendation to help refocus boards on a wider range of objectives, not just educational achievement. This would help recognise the important role that boards play in developing all aspects of students' educational experience. It would also address some of the concerns that the Ministry has heard about, where some schools fail to give effect to a more holistic approach to teaching and learning because they are too focused on academic achievement. It would also help address the evidence that shows that a significant number of students experience bullying, racism, discrimination and stigma when they're at school.

The requirements in objectives two and three, and the fact that boards will have to report on the objectives as part of their planning and reporting requirements, gives effect to the Taskforce's recommendation that boards focus on the monitoring and evaluating of learner belonging, wellbeing and success.

Additionally, this option makes it easier for boards to navigate their various priorities as they will no longer be scattered across the Act.

Option Three is also the preferred option as it requires boards to consult on school rules. School rules are often fundamental manifestations of a school's strategic direction. The absence of a clear requirement that school rules be consulted on with the school/kura's community is inconsistent with the Taskforce recommendation that boards give greater

priority to working with their community to set the strategic direction and plans. This option enables those affected by school rules, such as the students themselves, their parents and whānau, to be guaranteed an avenue through which they can express their views. The proposal also address the inconsistency that, unlike other entities with the power to make rules, school boards are not required to undertake any prior consultation as part of their development. This is despite the fact that the rules that schools create are given the status of law.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts
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Additional costs of proposed approach, compared to taking no action		
Regulated parties	<p>There may be some additional costs for schools having to take all reasonable steps to eliminate racism, discrimination, stigma and bullying. These steps are like to take the form of policies or rules. As these are likely to affect students, staff and school communities, an additional time commitment and resources would be required to consult with the affected individuals or groups.</p> <p>In some cases the costs may be one-offs as schools would only be required to develop anti-racism, discrimination, stigma and bullying policies once. They may be required to consult with their students and communities if they intend to change the policies but this is likely to be infrequent.</p> <p>Schools currently have to consult on the development of the health curriculum every two years and will be required from 1 January 2023 to consult their communities on their strategic plans. Therefore, there are opportunities for alignment of various consultation requirements, resulting in a more cost-effective approach to engagement.</p>	Medium
Regulators	<p>There may be a low cost for the Ministry in providing support for schools, for example, in the form of resources about how to engage effectively with students and the school community. While such resources already exist, more specific ones, tailored for the new legislative requirements may need to be developed. There may also be some costs for the Ministry in providing support for schools to take steps to eliminate racism, discrimination, stigma and bullying and giving effect to relevant student rights.</p>	Low

Wider government	N/A	N/A
Other parties	The proposal for schools to consult on their rules represents an opportunity for students, staff and whānau to have a say, it is not a requirement. Therefore, those wishing to provide their views may have to commit some of their time to the consultations carried out by the schools based on the proposed new requirements.	Low
Total Monetised Cost	There may be some additional costs for those schools that are not already taking steps to reduce racism, discrimination and bullying, or that do not already consult their student body and school community as part the development of their school rules. The support the Ministry may need to provide schools is part of the Ministry's BAU work and would be met within existing costs. Some of this work may need to be carried out by Ministry regional staff. However, this time commitment is likely to be concentrated on a smaller number of schools requiring more significant support, as some schools may already be complying with the proposed changes.	Medium
Non-monetised costs	A small time commitment may be required of students and community members who would be consulted by schools on rules that would be likely to affect them.	Low

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	<p>A cohesive set of objectives, located in one part of the Act, will provide clarity for boards on what they must focus on when governing their schools.</p> <p>Schools would no longer have to figure out how to divide their priorities and resources between their primary and secondary objectives as all objectives would carry equal weight.</p> <p>Schools would benefit from consulting their student body, staff and school communities when developing their rules, as they are more likely to get buy in from those consulted. This will support both adherence to the rules and their implementation, as all parties will have clarity of what the school rules are.</p>	Low
Regulators	N/A	N/A
Wider government	N/A	N/A
Other parties	Students, parents, whānau, hapū and other members of school communities would benefit from both proposals. They told us that schools should focus on student wellbeing more and adopt a more holistic approach to teaching and learning. Removing the distinction between primary and secondary objectives will enable schools to deliver this.	Medium

	<p>A focus on student rights and a requirement to take all reasonable steps to reduce racism, discrimination, stigma and bullying would increase schools' focus on preventing students from being negatively impacted by these behaviours.</p> <p>Students would also have the opportunity to have their voices heard, through a formal avenue, in the development of school rules.</p>	
Total Monetised Benefit	N/A	N/A
Non-monetised benefits	<p>Students and school communities would benefit from schools having an increased on wellbeing, as this is an important aspect of student progress, achievement and success. Students and members of school communities would also have an official avenue for being able to have a say about school rules.</p> <p>The proposed changes relating to objectives would provide clarity for schools about what they should focus on and the priority they should give to their various governance objectives.</p>	Medium

4.2 What other impacts is this approach likely to have?

There are no other impacts.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

These proposals are consistent with what the Tomorrow's Schools Review Independent Taskforce heard as part of its extensive consultation which included over 300 meetings with stakeholders and the public as well as over 5,000 online survey responses and over 2,000 written submissions. The Taskforce's initial recommendations aimed to address issues of board performance by reorienting the role of boards so that their core responsibilities were the school strategic and annual plans, student success and wellbeing, localised curriculum and assessment. This proposal received support from stakeholders during the Taskforce's second phase of consultation, which led the Taskforce to recommend refocusing the role of boards on the things that matter to learners. This included the requirement that boards review their decisions to ensure they're compliant with the rights of the child and te Tiriti, that schools work with mana whenua to set the strategic direction of schools and that schools focus on student wellbeing, belonging and success.

The Ministry has received similar feedback about what matters to learners during Korero Mātauranga, the Fono, Wānanga and engagement on the development of a draft NELP. Children and young people, their parents and whānau told us that they continue to be impacted by racism, discrimination and stigma and bullying when they are at school. During the engagement on the NELP, many children and young people reported that racism is one of the key reasons for them not liking to be at school and one of the main things they would change about school. They also told us about how both verbal and physical bullying negatively impacts them and their schooling experiences. These comments are similar to what we heard during Wānanga, where Māori learners and their whānau told us that their confidence, achievement and outcomes are impacted by racism and bias.¹ Pacific

¹ <https://conversation.education.govt.nz/conversations/maori-education/>

communities identified wellbeing as central to education and that bias, racism and bullying affect Pacific youth and lead to mental health issues.²

While no public consultation was undertaken on these specific proposals, they are closely linked with what stakeholders told us during the Ministry's and Taskforce's engagements and consultations.

Schools and communities will have the opportunity to provide their views on this proposal as part of the Select Committee process on the Bill.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Legislative vehicle

The proposals will be implemented through the Education and Training Bill.

Communications

There will be a communications strategy for publicly announcing the commencement of the new legislation (Education and Training Bill) that will give effect to these proposals. This will likely include communicating to all schools through the School Bulletin and informing relevant peak bodies, such as the NZSTA, PPTA, NZEI etc. The Ministry of Education's social media platforms will also publicise the law change.

Implementation of the new arrangements

Boards will be responsible for the implementation of the proposed changes. Schools will have to ensure that they give equal weight to the governance objectives as part of the governance of their schools. Schools will also be required give effect to Te Tiriti, student rights and take all reasonable steps to eliminate racism, discrimination, stigma and bullying.

Schools are experienced in creating rules, policies and local curricula. The Act already requires schools to consult their communities, for instance, in relation to the health curriculum. Therefore, the proposed requirements involve processes that schools are already familiar with. The Ministry's role is to make ensure that schools are complying with these proposed new obligations. Section 7 provides more detail on how the Ministry intends to do this.

Commencements of new arrangements

It is proposed that the new arrangements will have a delayed commencement and only come into force on 1 January 2021. This way schools will have sufficient time to become familiar with the changes and prepare to give effect to them. The delayed commencement will also enable the Ministry to better prepare any support that might be required for boards.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The new arrangements will be primarily monitored through the school planning and reporting system. Schools are required to set out in their charters their aims and objectives for the next 3-5 years and have an annually updated section that clarifies how they're going to achieve this for that specific year. The Ministry approves schools' charters. From

² <https://conversation.education.govt.nz/assets/Uploads/Pacific-Fono-Summary-Findings-Dec18.PDF>

1 January 2023, a new planning and reporting regime will come into force which will require schools to submit their strategic plans for approval to the Ministry. These new planning and reporting requirements are intended to be developed throughout 2022, in consultation with the sector.

In addition to the planning and reporting system, the impact of the new arrangements will also be monitored through regular and ongoing relationships between education providers and the Ministry. Regular meetings with a range of advisory groups and peak bodies, which are both topic and sector specific, are also used to collect feedback on the impacts of regulatory changes. It is also anticipated that the impact of the proposed changes will be able to be monitored through ERO's evaluations and reports.

7.2 When and how will the new arrangements be reviewed?

Any issues with the proposed arrangements are likely to become apparent as part of the school planning and reporting regime and the Ministry's role in approving charters, and from 1 January 2023, school strategic plans. Issues and concerns can also be raised through regular and ongoing relationships between schools and the Ministry.

If, as a result of monitoring and feedback, it becomes apparent that there may be unintended or unexpected consequences as a result of the new arrangements or if there are issues with requirements to consult students, staff and school communities on school rules, a review of the arrangements would be carried out. We would also expect to hear from boards, as part of our ongoing relationships with them whether the existing support is adequate or whether more support is needed to help them give effect to the new arrangements.