Regulatory Impact Assessment: Establishing dispute resolution panels

Advising agencies	*Ministry of Education*
Decision sought	*Cabinet policy approval*
Proposing Ministers	*Hon Chris Hipkins, Minister of Education*

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

In the education sector, unresolved issues, or issues that are not resolved in a timely manner, may lead to increased alienation from education and a failure to support the right to education. Speedy resolution is important to ensure fundamental rights to education are not denied for any length of time.

There is a gap in the current system as students in the compulsory school sector do not have the same ability to resolve disputes with their education provider as other students do. Early childhood education and international and tertiary students have their own external disputes resolution process. In the compulsory schooling sector, students and their whānau are encouraged to resolve disputes at the school level. If students and their whānau are unhappy with the decision of the principal or the school board, there are limited options available. They can only seek a review from the Ombudsman or a judicial review in the High Court (with limited exceptions as set out below).

The current pathways are inaccessible, ineffective, too slow, intimidating for students and their whānau wishing to resolve complaints, and do not provide definitive outcomes. Government intervention is required to establish an effective disputes resolution mechanism that resolves disputes in the compulsory schooling sector.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

It is proposed that the Education and Training Bill (the Bill) contains broad provisions to enable the Minister of Education to establish independent local panels to resolve disputes that cannot be resolved at school level. Additional future work will be undertaken to develop regulations that provide additional detail on the establishment and operation of panels, including their functions and powers, and membership criteria and appointment process. Panels will require additional resourcing, so the panels enabled by the Bill will not be established until this additional funding is secured.

Panels will provide a clear outcome for all parties via a mediation and facilitation service and a determinative function that can make binding decisions where agreement can't be reached, with the agreement of the parties. Panels would focus on 'serious' disputes, which would be defined in legislation. This would ensure panels can focus on the more significant complaints in a timely manner.

This approach is the best option as:

- panels would be informal, flexible and consensual, so students and their whānau would feel empowered to seek resolution of their dispute, with an escalation pathway for more serious complaints;
- matters may be resolved in a more timely manner, without recourse to existing pathways;
- it would provide certainty of outcome for all parties, with binding decisions where a mediated outcome could not be reached;
- parties would feel in control of the process; and
- it establishes a body of precedent that would promote national consistency, development of guidance and best practice.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main expected beneficiaries are students in the compulsory schooling sector who are affected by disputes involving schools. These students will have a pathway for their disputes to be resolved in a more timely manner, without recourse to existing pathways. In some cases, this has the potential to avoid life-long implications from significant periods of a student's schooling life being disengaged from education.

Whānau will also be able to follow through on concerns about their child's education, because they will have an option to pursue significant issues that they have been unable to resolve with boards.

Where do the costs fall?

There will be no costs to either party to have their dispute considered by panels.

Central government will fund the establishment and operation of panels. Panels will not be established until funding is secured.

There will be a cost in terms of time for those who seek a panel's help and for other parties to the dispute who participate in panel processes. However, these time costs are not likely to be greater than other dispute resolution options, such as making a complaint to the Ombudsman.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The Ministry maintains a database of complaints made to the Ministry, however, this does not represent the full amount of complaints there are. Since we do not know the full extent of the problem, there is a risk that panels will become overwhelmed by disputes from students and their whānau, and therefore not provide timely resolution. This is more of a risk to the implementation phase of the project, rather than to this enabling legislation itself. This can be mitigated by providing additional funding to enable panels to hear more complaints in a timely manner or potentially by amending the definition of 'serious' disputes to reduce the workload of panels. The risk that there will be too many frivolous or vexatious disputes taken to the panels will be similarly mitigated by the definition of

‘serious’ disputes. Any additional funding will be the subject of a future budget bid.

There is also a risk that boards could abdicate their responsibility to make decisions about student complaints in favour of leaving it to panels to make their decisions. This can be mitigated by panels publishing decisions with precedent value and contributing to best practice guidelines.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.
We consider that this proposal is compatible with the Government’s ‘Expectations for the design of regulatory systems’.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?
This proposal is built on the recommendation of the Independent Taskforce that reviewed Tomorrow’s Schools. The Taskforce consulted extensively over the past 18 months to determine what issues the schooling system has and how to address these problems. Evidence to support its recommendations was gathered from a Cross Sector Advisory Panel, public consultation meetings, targeted meetings with education experts, surveys and a formal submission process. As mentioned above, the Ministry collects data on complaints received by the Ministry but this does not represent the full number of complaints. There are likely to be many complaints about school board decisions that the Ministry is not made aware of. The Ministry also collects data on the number of students removed from school. In addition, we conducted research into: • international examples of dispute resolution in the education sector. This research focused on similar jurisdictions to New Zealand; • domestic dispute resolution schemes; • the impact of the use of restorative practices in New Zealand schools; and • the life-long impact of removals on students in New Zealand. This data and research was used to supplement the evidence gathered by the Taskforce during the consultation period.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Ministry of Education
Quality Assurance Assessment:
Partially meets
Reviewer Comments and Recommendations:

The Education Quality Assurance Panel considers that although the RIA is complex, it is relatively concise. There is a clear problem definition and compelling case for change. While there are potentially significant benefits, there are also high costs during the transition period. However, the panel does not find the RIA fully convincing and complete at this stage because the detailed design and implementation work on the preferred package is yet to be done.

Impact Statement: Establishing dispute resolution panels

Section 1: General information

Purpose
The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Summary, except as otherwise explicitly indicated. The analysis and advice has been produced for the purpose of informing in-principle decisions to be taken by Cabinet relating to establishing panels to resolve disputes between students and their whānau and boards. If policy proposals are approved by Cabinet, provisions will be incorporated into the Bill to enable the Minister of Education to establish dispute resolution panels. The Bill will repeal and replace the Education Acts 1989 and 1964, and the Industry Training and Apprenticeships Act 1992, with new education and training legislation. The provisions will enable the Minister to establish panels. The establishment of the panels themselves will be subject to a separate funding decision. The detailed provisions for the panels will be set in future regulations.

Key Limitations or Constraints on Analysis
The Ministry keeps a register of the number of people who have contacted the Ministry about a complaint. Between mid-2016 and 17 September 2019 the Ministry has received 2778 complaints. This will only be a portion of the actual number of complaints considered by schools. Therefore it is difficult to determine the exact number of complaints there are in the compulsory schooling sector.
Responsible Manager (signature and date):
Dr Andrea Schöllmann      Deputy Secretary Education System Policy Ministry of Education 11/ 10 / 2019

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Free education is a right in New Zealand set out in the Education Act 1989 (the Act). An educated population is essential for raising living standards and supporting a growing economy.

We know that students who become disengaged from education face life-long adverse outcomes. Failure to resolve disputes adequately can lead to a breakdown in the relationship between the parties and/or increased disengagement in education. If no action is taken, difficulties in resolving significant disputes in a timely manner will continue, and students and whanau in the compulsory schooling system will continue to have less rights than those in ECE and tertiary education to question decisions about them. This functional gap promotes inequity in the schooling system and could deprive students of their education rights.

2.2 What regulatory system, or systems, are already in place?

Education is regulated by the Act and associated regulations. As mentioned above, a free education is a right set out in the Act. Education is divided into the early childhood sector, compulsory schooling between age five to 19 (or 21 in limited circumstances) and the tertiary sector.

The education sector is focused on helping students to attain educational achievement to the best of their potential, promoting the development of students, and instilling an appreciation of inclusion, diversity, identity and the Treaty of Waitangi.

If students and their whānau are unhappy with a significant decision of the principal or the school board, there are limited options available. They can only seek a review from an Ombudsman or a judicial review in the High Court. The Ombudsman is a centralised and slow process, and does not provide binding decisions. Judicial review is only available where processes have not been followed correctly, and is expensive, slow and not generally accessible to most parents unfamiliar with the legal system, or who lack the required resources. The most common remedy is for the original decision maker to make the decision again, using a better process.

Government intervention is preferable to ensure a transparent, consistent and effective dispute resolution mechanism that treats all students equally. This is not the case if dispute resolution is only available to those students and their whānau who have the resources and skills to pursue a remedy through the High Court for example.

The Tomorrow's Schools Taskforce has recently assessed the education system in its review of Tomorrow's Schools. The Taskforce made a number of recommendations for change, some of which are being progressed in the Bill.

2.3 What is the policy problem or opportunity?

In the education sector, significant unresolved issues, or issues that are not resolved in a timely manner, may lead to increased alienation from education and a failure to support the right to education. Speedy resolution is important to ensure fundamental rights to education are not denied for any length of time. Even a month's delay can have a significant impact on

the life of students.

During consultation, the Taskforce heard that boards have powers that allow them to make decisions in relation to removals from school which can have far-reaching consequences for students, but there was no formal appeal or complaints process in the current system. The existing pathways were costly, time consuming, not responsive enough, and do not provide clear outcomes. In relation to board accountability, the Taskforce also heard from submitters that some board performance is poor, with no engagement with school communities and non-compliance in a number of areas, and there is no framework to hold boards to account.

The Taskforce recommended that panels be established to resolve issues that have not been resolved at the school level because students and their whanau are not always able to exercise their legal right to a free state education and have few options to raise concerns of issues for resolution at a local level.

This functional gap as identified by the Taskforce means students in the compulsory school sector do not have the same voice to resolve disputes about them as other students. Early childhood education and international and tertiary students have their own disputes resolution process.[1] In the compulsory schooling sector, students and their whānau are encouraged to resolve disputes at the school level. If students and their whānau are unhappy with the decision of the principal or the school board, there are limited options available. They can only seek a review from an Ombudsman or a judicial review in the High Court.[2]

The current pathways often do not deliver an effective or speedy outcome. These pathways are inaccessible, ineffective, too slow, and intimidating for students and their whānau to pursue their complaint. There is a lack of information, guidance and advocacy for those wishing to resolve complaints. Any outcomes will likely be too late to provide students and their whānau with an effective remedy. The Ombudsmen only make non-binding recommendations which schools can choose to ignore. Judicial review is expensive and time consuming, and in the event a party is successful, the remedy is usually directing that the decision be remade by the original decision maker following a better process.

In addition, existing pathways do not address disadvantage as they fail to involve whānau, acknowledge diversity and address issues in culturally appropriate ways. We know that Māori and Pacific students are over-represented in removal statistics, which shows institutional racism and unconscious bias. Other minority students (such as neural-diverse and LGBTQIA+ students) are also disadvantaged.

Work is currently underway on the ratification of the Optional Protocol on the Convention of the Rights of the Child. Under this protocol complaints about alleged breaches of child rights can be considered by an international committee of experts once all domestic remedies have been exhausted. Our work to establish panels will contribute to New Zealand's readiness to ratify the Optional Protocol.

[1] In the ECE sector, each licenced ECE service is required to have a formal complaints process and the Ministry has an obligation under the Education (Early Childhood Services) Regulations 2008 to investigate a complaint if a regulatory breach is alleged. The Education (Pastoral Care of International Students) Code of Practice 2016 sets minimum standards for education providers to ensure that all international students are well-informed, safe and properly cared for. Tertiary education organisations must have processes for receiving and responding to student complaints. International students can complain to the New Zealand Qualifications Authority, the Tertiary Education Commission or Student Allowance Review Panel.

[2] The Ministry administers the Dispute Resolution Process for student with learning support needs and NZSTA is setting up a pilot to resolve disputes about removals from schools. Both of these processes have limitations in relation to geographical coverage, availability and funding. In addition, both are voluntary processes and rely upon existing pathways if the parties are unsatisfied with the outcome.

Since mid-2016 the Ministry has received 2788 complaints about schools. The below table sets out the subject matter of these complaints.

Table One: Complaints made to the Ministry of Education between mid-2016 and 17 September 2019

Subject matter of complaints	Number of complaints*
Health and Safety/Bullying	1265
Governance (BOT, principal, staff)	1204
Enrolments/attendance/learning support	552
Stand-downs/Suspensions	278
Achievement	150
Resourcing/finance/property	146
Other**	496

* Each complaint may relate to more than one category.

** The 'Other' category is used to capture categories that are not listed. Some sample other categories are School Transport, Cultural Tensions/Conflicts, Fees, Curriculum, Network, Ministry, etc.

While the table shows the diverse nature of complaints made about schools, it does not give any indication about how serious these complaints were. We have scanned the raw data, which shows complaints range from less serious (for example about noise from a soccer field) to more serious concerns about school fees, bad behaviour from teachers and lack of access to education. A common theme from parents and caregivers is that schools/boards are not doing enough to ensure children are not subjected to bullying or to support the education needs of their child.

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

There are no constraints on the scope for decision making.

The proposal to enable the establishment of panels is part of the package of proposals to respond to the recommendations of the Taskforce.

2.5 What do stakeholders think?

The Taskforce has consulted extensively over 15 months. This included:

- a Cross Sector Advisory Panel;
- public surveys;
- public meetings (over 200 in 20 towns and cities across New Zealand);
- a formal submission process;
- social media; and
- targeted meetings with education sector stakeholders.

In addition, evidence was obtained from Pacific fono and wānanga held as part of the wider work programme engagement.

As discussed in 2.3 above, during consultation the Taskforce heard that there is no formal complaints process despite boards being able to make decisions with far reaching consequences, existing pathways are inadequate, and there is no framework to hold boards to account.

There was broad support for the Taskforce's initial recommendation that advocacy and complaint services should be provided at a regional level (through Education Hubs). Submitters welcomed this recommendation as a means of increasing board accountability and ensuring faster resolution of issues.

The Taskforce received three submissions from Kura Kaupapa Māori education providers and iwi organisations on this recommendation. All were supportive and emphasised the importance of culturally responsive disciplinary and dispute resolution processes.

The final recommendation from the Taskforce proposes advocacy and complaint services should be provided at the regional level.

We have been provided with a copy of a survey recently undertaken by VIPs Equity in Education, a support group for parents/caregivers who have children with learning support needs. 150 people participated in the survey. The results of the survey show that over the past 8 years, 97% have raised concerns or lodged a complaint with the school relating to their child's schooling. Of those who raised concerns, 71% were unhappy with how their concern was resolved. 42% considered the board refused to address their complaint at all. Nearly 90% of survey participants believed there needs to be a better, more independent and fair complaints process within the school governance system.

It is proposed that the Bill will also contain amendments to strengthen the right to education by clarifying students' right to attend school. The Ministry publicly consulted on this proposal in May to June this year. In its submission, YouthLaw Aotearoa advocated for the creation of a Ministry disputes and complaints service that is empowered to hear right to education complaints. This service should be restorative in nature and involve mediation, with an escalation pathway to an independent resolution function. YouthLaw Aotearoa has previously stated that it believes that complaints are not always dealt with appropriately by schools or the Ministry of Education. The enforcement mechanisms are ineffective, difficult to access and do not have the power to direct schools or the Ministry to take any action.[3]

Other submitters agreed, for example VIPS Equity in Education told us that legislative frameworks and underlying mechanisms to uphold and enforce rights to education for all children is clearly missing and urgently needed. IHC wishes to see the establishment of an Independent Education Review Tribunal.

We consulted the Ministry of Justice (MoJ) on the development of dispute resolution options and on the application of the MoJ guidelines for Tribunals. We also consulted with the Government Centre for Dispute Resolution generally on best practice for dispute resolution and specifically on proposed functions of panels. Both agencies are broadly comfortable with our proposed approach.

We will consult with relevant stakeholders, including children and young people, parents and whānau, iwi/hapu and peak bodies, during the development of the business case and the panel design process.

[3] http://youthlaw.co.nz/wp-content/uploads/2017/06/Challenging-the-Barriers.pdf (pg 6)

Section 3: Options identification

3.1 What options are available to address the problem?

We have identified four options. These options are not mutually exclusive, and can build upon each other and work in combination.

We did consider non-regulatory approaches to resolving disputes in the schooling system. There are currently two examples of non-regulatory approaches. The Ministry currently provides the Dispute Resolution Process (DRP) to resolve learning support disputes. Second, the New Zealand School Trustees' Association and the Office of the Children's Commissioner are establishing a pilot to resolve disputes about exclusions and expulsions from schools. Both of these are non-regulatory options and rely upon existing pathways. We considered whether these non-regulatory processes could be broadened to consider all disputes in the schooling system, but this was discounted, because without legislative backing they would not have a statutory mandate to consider and resolve issues or provide effective remedies.

We have included non-regulatory aspects in the options below. For example, option 4 includes operational initiatives intended to prevent issues from occurring and becoming "complaints" or "disputes".

We have looked at models of dispute resolution in the schooling sector in the UK, Canada and Australia. We found that these models are diverse. The UK has established tribunals (one based in England and one based in Wales) to hear disputes about disability and educational needs. In Scotland and Ontario, Canada, school complaints are heard by Ombudsmen, and in Victoria, Australia, the Independent Office for School Disputes fulfils this function. We have identified some trends that informed the options we have developed. These trends include:

- a consensus approach is common, with a focus on flexibility to help people find a workable solution;
- some matters are outside of the scope of the dispute resolution processes, for example eligibility for funding and staff disciplinary actions;
- resolution at the lowest possible level; and
- a tiered approach, with mediation as a first step followed by a determinative function.

Option One – the status quo

Under this option, the only pathways available to students and their whānau to resolve their disputes are the Ombudsmen and judicial review in the High Court.

The issues with the status quo are described more fully in Section 2. This option does not address the problems identified and has been discounted.

Option Two – Independent community based advisory/support panels (the Taskforce option)

The Taskforce recommended the establishment of independent community based panels with an advisory/support role to resolve disputes that have not been resolved at a school level. Panels, made up of local members, would contribute to improving policies, practices and engagement with schools, but would not make decisions. This option provides students and their whānau with some support as they seek to resolve their disputes. It lends itself to faster consideration and engagement on issues and greater involvement of all parties, including whānau, and helps to create an environment where students and their whānau may feel more comfortable seeking a remedy. It also introduces an independent third party, and a

broader community perspective, to the dispute resolution process.

Advantages

Panel support and advocacy may make students and their whanau more confident to pursue a complaint against the school. It will help them to voice their concerns and assert their rights in a way that could make schools more open to reconsidering earlier decisions.

Community-based panels may be better able than national bodies to reflect the diversity of the student population so that students and their whānau feel more comfortable seeking a remedy.

Panels can be accessed more quickly than the Ombudsman and the High Court judicial review process so this option enables speedier consideration of disputes.

Disadvantages

Limiting the panel's role to support and advocacy does not go far enough in helping students to exercise their right to a free State education. If two parties have been unable to resolve a dispute on their own, complaints and disputes resolution schemes usually provide for third party intervention that includes the ability for the third party to make recommendations or binding decisions, and to provide some form of redress (see, for examples, the attached table).

There is potential for inconsistent, localised approaches to panels' support and advocacy practice. Outcomes may differ between locations. It would also be difficult to collate learnings to improve policies, practices and engagement with schools if panels cannot make formal recommendations or binding decisions.

There would be no right of appeal so students dissatisfied with the outcome of panel support and advocacy would have to use the existing external review pathways (Ombudsman and High Court judicial review).

Panels would have unlimited jurisdiction to deal with complaints and disputes. Dealing with minor matters would either reduce the ability to resolve serious complaints quickly, or make the scheme significantly more expensive to run than would be the case if jurisdiction was limited to serious complaints.

In addition, it may be that local panels have potential conflicts of interest, and it may be difficult to secure independence in the panel.

Option Three – Independent local dispute resolution panels

Under this option broad provisions would be inserted into the Bill to enable the Minister of Education to establish independent local dispute resolution panels to deal with serious complaints. Additional work would be undertaken to develop regulations to provide additional detail on how the panels will operate, once established. To get the right balance of community representation, knowledge and skills, panels would be made up of local community members (as recommended by the Taskforce) and members from a central pool of experts. This would also ensure a consistent and systemic view is taken to the resolution of complaints across the country.

To ensure accessibility and inclusion, there would be no fees and panel processes and procedures will be culturally appropriate and incorporate restorative practices. Parties would not be allowed to be legally represented during any interactions with the panel.

Panels would not advocate for students and their parents and whanau. Independence is a key component of complaints and disputes resolution schemes. If the panel advocates for either party, it cannot be an independent third party. The Ministry of Education is doing work

on providing an advocacy service for students and their parents and whānau. Related advice is expected to be provided to the Minister of Education at the end of March 2020.

Panels would be primarily focussed on mediation. They will work with both parties to resolve the dispute through facilitative mediation in the first instance. This is a process where the mediator assists the parties to a dispute to, for example, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement about some issues or the whole dispute. This is the most common form of mediation in regulated schemes. The mediator is not a decision-maker, and the process is based on achieving co-operation between the parties.

If mediation is unsuccessful, or not appropriate, the panel will be able to make recommendations or, with the consent of both parties, binding decisions. The parties can agree at any stage during the dispute resolution process to allow the panel to make a final decision and to be bound by that decision. In general, these functions would only be used as a last resort, where mediation has been unsuccessful or is not appropriate. It is expected that in most cases, mediation will be appropriate.

Panels would have the ability to order an apology, refer parties to mediation (if they have not already been to mediation), uphold, and, with the agreement of both parties, over-turn or modify the original decision in relation to an individual student. In order to provide a check on the decisions and rules that boards make, panels will also have the ability to recommend that boards reconsider their rules or policies if they are inconsistent with student rights, and to make declarations (for example, that a school board's rule breaches student rights).

This process requires the panel to have consensual (agreement of both parties) and determinative (third party decides) functions. There will be no right of appeal but panel decisions can be reviewed by the Ombudsman and through the High Court judicial review process.

Mediated agreements are contracts that can be enforced by either party through the courts. The Bill would provide for binding decisions to also be enforced by either party through the courts. Panel recommendations are not binding and cannot be enforced.

Advantages

This option introduces independence to the dispute resolution process by not requiring panels to advocate for either party. The mixed local/central membership approach to panels would facilitate consistency of approach and outcomes across the country and promote good practice.

The consensual and determinative dispute resolution processes enable matters to be resolved in a more timely manner, without recourse to existing external review pathways, and would provide a certain outcome that is binding on both parties. Students and their parents and whanau will be able to get remedies, and to enforce these. This closes the functional gap identified by the Taskforce.

The informal, flexible and consensual atmosphere of the panels intended by the Taskforce, is retained, so students and their whānau would still feel empowered to seek resolution of their dispute, with an escalation pathway for more serious disputes.

Disadvantages

Panels would not be able to modify or overturn board decisions without the board's consent. This is inconsistent with most dispute resolution schemes which do enable this. It is likely to be perceived by many stakeholders as not going far enough to support students to realise their rights under the new legislation. We decided against giving panels this power for the

following reasons:

- schemes that provide for this also have a related right of appeal. Adding in another appeal layer creates additional cost and complexity and moves the scheme further away from its aim of low level, accessible dispute resolution. Even if the right of appeal was to the courts and not to a new body, there would be costs to schools (with flow on effects to government) in taking and responding to appeals.
- we would have to revisit the proposal not to allow legal representation
- schools are more likely to support students previously removed if they have agreed to the reinstatement decision
- The preferred option can be viewed as an incremental step – additional powers, remedies and/or appeal rights can be built in if over time the scheme proves to be ineffective. It is not clear to us that mediated agreements, non-binding recommendations and agreement to enter into binding decisions, will be ineffective in resolving disputes and giving students redress where appropriate. The additional benefits from enabling panels to overturn decisions without consent may not warrant the additional cost and complexity. 90% of the Ombudsman's recommendations are followed voluntarily. So recommendations can be effective, particularly in a bespoke scheme like this where the panel will only be focussing on education matters.

Best practice in dispute resolution requires that consensual and determinative functions are kept separate. Allowing the panels to perform both functions may require some ring-fencing and measures such as having different panel members involved in the mediation and decision making stages. There will be costs associated with this however they may not be as high as the cost of providing establishing an additional body to perform one of the two functions.

Option Four – an end to end process

This option would involve a comprehensive approach that includes the following five tiers:

- tier one - operational initiatives to prevent issues from occurring, for example better use of restorative and culturally appropriate practices and better guidance for schools;
- tier two - internal complaint processes to resolve disputes at the school level;
- tier three - a review of board decisions by the Ministry of Education (at a regional level), which includes mediation and binding decisions; and
- tier four - an appeal to an independent layer, which makes binding decisions There are many different ways this option could be designed. For example, the independent function could be provided by an independent tribunal or an independent commissioner.
- Tier 5 – appeal to the District Court and High Court.

This option comprises all the features of an ideal complaints and disputes resolution scheme. Tiers 1 and 2 can be incorporated into options 1 and 2 and in each case, would represent an incremental improvement to those options. We have not assessed them as stand alone options because they are not an improvement on the status quo.

Advantages

This option provides for a comprehensive process that starts with disputes prevention and ends with a final right of appeal to the courts. The interim stages provide for accessible, inclusive and transparent processes with the greatest degree of independence of all the options.

Disadvantages

This is the most complex and expensive option. It is not clear that option 3 will not be effective in resolving the vast majority of disputes in which case the additional cost and

complexity may not be warranted.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The key criterion for accessing the options is that serious disputes, including disputes about the right to education, are resolved effectively, including in a transparent, accessible, culturally appropriate and timely manner. Secondary criteria are that the disputes resolution mechanism:

- supports disadvantaged students and their whānau;
- is fit for purpose and captures the desired complaints; and
- is cost effective and feasible.

3.3 What other options have been ruled out of scope, or not considered, and why?

As discussed above, we discounted the option of expanding the non-regulatory mechanisms to resolve a broader range of disputes.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

Criterion	No action	Option 2 – independent community based advisory/support panels (Taskforce option)	Option 3 – independent local dispute resolution panels	Option 4 – end to end process
1. Serious matters are resolved effectively	**0**	+ an additional path available, but advisory role only	++ additional pathway available that provides a clear resolution in a more timely manner, closes the functional gap, provides escalation pathway, decreases reliance on existing pathways	+++ additional pathway available that provides a clear resolution in a more timely manner, closes the functional gap, provides escalation pathway, decreases reliance on existing pathways
2. Supports disadvantaged students	**0**	+ disadvantaged students more likely to pursue resolution through panels rather than existing pathways, local membership will enhance ability to support disadvantaged students	++ as for option 2, but flexible, restorative and culturally appropriate processes will provide further support for disadvantaged students	++ as for option 3
3. Is fit for purpose	**0**	+ decreases reliance on existing pathways but does not address all of the identified problems	++ addresses the identified problems	++ addresses the identified problems
4. Cost effective and feasible	**0**	++ most cost effective and easily established because it is the simplest model	++ will cost more to establish than option 2, but will provide more benefits to students and their whānau	+ most complex to establish and expensive to operate because of the addition of tiers three and four. The right of appeal to the District Court and High Court could have cost impacts for schools (taking or responding to appeals) and flow on effects for the government.
Overall assessment	**0**		**Preferred option**	

Key:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The analysis above shows that option 3 (the panels provide a clear outcome for all parties) is the preferred option. Option 3 is focused on resolving disputes in a timely way at the lowest possible level, without recourse to existing pathways, and therefore plugs the current functional gap in the compulsory schooling system. The focus on restorative and culturally appropriate processes will help students and their whānau feel empowered to resolve a dispute.

Option 3 can be seen as a first step to resolve disputes in the compulsory education sector, and it is effectively a subset of option 4. Pursuing option 3 enables us to learn and adjust as required before looking at the broader elements a more comprehensive option 4 system might need.

As part of the monitoring and evaluation of this intervention, we will consider whether panels, once established, have resolved the problems we have identified. It may be that the evaluation concludes that an independent tribunal may provide additional benefits over and above those provided by panels. However, option 3 might resolve all of the problems without need of recourse to the more extensive and costly option 4 model.

We have confidence in the evidence used to reach this preferred option. As discussed above, the Taskforce conducted extensively to determine what issues the schooling system has and how to address these problems. This evidence is supplemented by Ministry data.

As outlined above, stakeholders broadly support establishing dispute resolution processes as a means of increasing board accountability and ensuring faster resolution of issues.

The Ministry of Justice and the Government Centre for Dispute Resolution are comfortable with the proposal.

5.2 Summary table of costs and benefits of the preferred approach

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*	**Evidence certainty** *(High, medium or low)*
Additional costs of proposed approach, compared to taking no action			
Regulated parties	There will be no financial costs for either party to have a panel consider their dispute, but parties will have time costs to prepare for and attend panel considerations. No legal representation is allowed during panel hearings so this will reduce costs.	Will depend upon individual cases	High
Regulators	There will be a cost to the	To come after business	High

	Ministry to establish and operate panels. Costs will be confirmed in the business case, still to be developed	case is developed	
Wider government	N/A		
Other parties	N/A		
Total Monetised Cost		*To be confirmed in business case*	
Non-monetised costs		*N/A*	

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	Providing an alternative pathway to resolve disputes will keep students engaged in learning, and maintain the relationship between the parties. Boards can use panels to de-escalate disputes with students and their whānau	High	High
Regulators	Unresolved disputes do not lead to increased disengagement in education		High
Wider government	If students can remain in education, potential reductions in costs for other sectors, such as youth justice		
Other parties	N/A		
Total Monetised Benefit		*To be confirmed in business case*	
Non-monetised benefits		*High*	

5.3 What other impacts is this approach likely to have?

As we do not know how many disputes there are in the compulsory schooling sector, it is unknown how many panels or members will be required to ensure a timely resolution of disputes. We are developing a business case that will provide greater detail.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The proposals are consistent with the Government's 'Expectations for the design of regulatory systems'.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Legislative vehicle
Broad provisions enabling panels to be established will be included in the Education and Training Bill, and further detail will be provided by Regulations.

Communications
There will be a communications strategy for publicly announcing the commencement of the Bill. This will likely include communicating to all schools through the School Bulletin and informing relevant peak bodies. The Ministry of Education's social media platforms will also publicise the law change.

Transitional arrangements
No transitional arrangements are required.

Responsibility for operational arrangements
Panels will be administered by the Ministry of Education. Additional funding will be sought through Budget 2020.

New arrangements coming into effect
The commencement provisions are still being finalised. However, the legislative framework can come into effect upon commencement, but panels will only be established once the additional funding is confirmed.

Other agencies
We will consult with relevant stakeholders, including iwi/hapu and peak bodies, during the development of the business case and the design process, as well as on the accompanying regulations that provide additional detail.

6.2 What are the implementation risks?

As outlined above, it is unknown how many complaints there are in the compulsory schooling system and there is a risk that panels will become overwhelmed, and therefore not provide timely resolution. This can be mitigated by providing additional funding to enable panels to hear more complaints in a timely manner or potentially by amending the definition of 'serious' disputes to reduce the workload of panels.

There is also a risk that boards abdicate their responsibility to make decisions about students to panels. This can be mitigated by panels publishing decisions with precedent value and contributing to best practice guidelines.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?
The Ministry of Education will monitor and evaluate the impact panels have on resolving disputes to determine whether the impacts anticipated materialise. Data is collected on how many students are removed from school. As discussed above, the Ministry already collects data on the number of complaints raised with the Ministry. As part of the monitoring and evaluation process, we will collect additional data on the number of disputes in the compulsory education sector (depending upon receiving additional funding – see below).

7.2 When and how will the new arrangements be reviewed?
The Ministry will seek funding to evaluate and monitor the operation of panels. The details of the evaluation scheme will be determined during development of the business case.