

Regulatory Impact Statement: Strengthening School Board Member Eligibility Requirements

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions
Advising agencies:	Ministry of Education
Proposing Ministers:	Minister of Education Associate Minister of Education (School Operations)
Date finalised:	8 December 2022
Problem Definition	
<p>A primary objective for school Boards, as set out in section 127 of the Act, is providing for the physical and emotional safety of students and staff. However, current eligibility criteria do not adequately support this important role and there has been recent concern about the suitability of some potential candidates for school board elections.</p> <p>The eligibility criteria are deliberately light-handed to allow school communities to elect representatives according to local preferences. However, as many school board elections do not progress to a vote because schools have difficulty attracting enough candidates and some members are co-opted or selected, local preferences are often not being tested. The current eligibility requirements do not reflect this reality or the associated risks.</p> <p>In addition, the current vetting process means that school communities cannot be confident that candidates or co-opted board members meet the eligibility requirements.</p> <p>A recent public consultation indicated that 53% of the 429 submitters believe the current eligibility requirements are not fit for purpose or sufficient.</p>	
Executive Summary	
<p>Clauses 9 and 10 of Schedule 23 of the Education and Training Act 2020 (the Act) specify who is ineligible to serve as a member of a school board. This includes “a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person.”</p> <p>Once a person has obtained a pardon, served their sentence, or otherwise completed their penalty they are once again eligible to serve on a school board. This view is consistent with the way that the Public Service Commission considers eligibility for membership of a Statutory Crown entity board.</p>	

However, school board members have an important role in ensuring that the school is a physically and emotionally safe place for all students and staff, which is a primary board objective as set out in section 127 of the Act.

Additionally, school community members currently cannot be confident that board members are telling the truth when declaring their eligibility, as there are no vetting or checking requirements to verify eligibility.

Government intervention is required to strengthen eligibility requirements to reflect board members' role in a school.

Options to address the issue are divided into two categories to address separate but related areas of concern.

Options on amending eligibility requirements

1. Make individuals convicted of specified Children's Act offences ineligible to be school board members unless an exemption is obtained
2. Limit eligibility for individuals who have obtained a pardon, served the sentence, or otherwise suffered the penalty imposed for an offence by:
 - a. removing eligibility for all those convicted of a described offence even if a sentence has been served
 - b. removing eligibility for all those convicted of a described offence even if a sentence has been served, but allow these people to obtain an exemption from a specified Chief Executive
 - c. removing eligibility for all those convicted of a described offence for a set period of time after the offence was committed or the sentence was served (bright-line test)

Options to strengthen compliance information about candidates

3. *Strengthen disclosure requirements*
4. *Police vet all incoming school board members*
5. *Conduct checks on whether board members are eligible through a random audit*

The preferred option is a combination of options 1 and 5.

This option would be more restrictive than the current settings because it would add a list of specified offences that remove eligibility even if the sentence has been served. The only way those convicted of a specified offence would be able to serve on a board would be to seek an exemption from the Secretary for Education, as children's workers who have been convicted of specified offences have to do.

This option would more clearly reflect the school governance role of board members and the school board objective of providing for the emotional and physical wellbeing of students and staff. This option would make clearer the policy intent of the eligibility requirements as they relate to school settings and align the standards more closely to the standards for children's workers. The auditing of school board members to verify eligibility will also increase confidence among the school community in the suitability and honesty of school board members.

Under this option, a greater proportion of Māori – and to a lesser degree, Pacific people – than other ethnic groups will no longer be automatically eligible to become school board members, with the figure of Māori who have relevant convictions likely to be in the tens of

thousands and Pacific to be in the thousands. However, anyone who is convicted of a specified offence will still be able to apply for an exemption.

Stakeholders' and the general public's opinions largely match this option. During consultation on whether and how eligibility requirements should be changed, a majority of the respondents stated that the eligibility requirements should be amended. The most frequently suggested amendment was the introduction of some convictions resulting in permanent ineligibility even when sentences had been served. Many respondents who suggested this mentioned crimes that involved harm to children and the Children's Act 2014.

Both options (1 and 5) require legislative change to implement. Additional resourcing would be required to conduct the audits.

Limitations and Constraints on Analysis

The scope of feasible options has not been limited by Minister's commissioning or previous policy decisions.

As the issue is pertinent to school board elections, policy options should be progressed before the next mid-term school board elections. There is only one amendment bill to the Education and Training Act 2020 that is upcoming before the next mid-term board elections. Because of these timing constraints, we have not been able to conduct a full public consultation to solicit feedback on all proposed options. However, consultation on a broad question on whether eligibility requirements should be changed and how has been conducted, with 429 responses from stakeholders.

Responsible Manager(s) (completed by relevant manager)

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8 December 2022

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

Panel Assessment & Comment: The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statement "Strengthening School Board Member Eligibility Requirements" produced by the Ministry of Education and dated 18 November 2022. The panel considers that it meets the Quality Assurance criteria.

The RIS provides the necessary information and analysis that supports the preferred options. The options allow school communities to continue to elect representatives according to local preferences while ensuring board members meet their obligations and duties. They increase the likelihood that school communities can have confidence those offering themselves up as board members meet the eligibility criteria. The time available has limited the opportunity for wide consultation but stakeholder views have been obtained and are reflected.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Clauses 9 and 10 of Schedule 23 of the Education and Training Act 2020 (the Act) specify who is ineligible to serve as a member of a school board. They include, for example, persons who are undischarged bankrupts, and people with significant financial interests in contracts with the Board.
2. Clause 9(1)(f) provides that a person is ineligible for membership of a school board if they are: “a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person.”
3. School boards are Crown entities, and this provision mirrors section 30(2)(e) of the Crown Entities Act 2004 in relation to membership of statutory Crown entities.
4. Under clause 9(1)(f), once a person has obtained a pardon, served their sentence, or otherwise completed their penalty they are once again eligible to serve on a school board. This view is consistent with the way that the Public Service Commission considers eligibility for membership of a Statutory Crown entity board.
5. Before being elected, co-opted, or appointed as a board member, persons must confirm to the board they are eligible (clause 11 Schedule 23). This is the key disclosure requirement. In addition, the Education (Board Elections) Regulations 2022 enable candidates to give the returning officer a brief statement about their experience, qualifications, abilities, previous involvement with the school, interests, and reasons for standing for election. Candidates are currently not required to provide such a statement, and, if they choose to do so, they are not required to disclose any information that might undermine their potential candidacy.
6. Section 127 of the Education and Training Act 2020 outlines the four primary objectives of a board. A board must ensure that every student at the school is able to attain their highest possible standard of educational achievement, that the school is physically and emotionally safe for all students and staff, that the school is inclusive of and caters for students with differing needs, and that the school gives effect to Te Tiriti o Waitangi.
7. The school board eligibility and election processes should contribute to these primary board objectives, as well as to broader systems of school board governance and its objectives. For example, section 133 of the Act sets out that a “board must take all reasonable steps to ensure that the policies and practices for its school reflect New Zealand’s cultural diversity.”
8. There is ongoing work to strengthen board capability. As part of the Tomorrow’s Schools reforms, the Government committed to progressing a few different workstreams related to school boards, including establishing a mandatory code of conduct for board members. The code of conduct is in development and it will set minimum standards of behaviour for board members. Sections 166-169 of the Act allow the Minister of Education to issue this code. The Act also enables the Minister of Education, upon application from other board members, to remove a board member for significant or persistent breaches of the code. The code will apply to board members once on a board. It will not impact or change eligibility requirements.

What is the policy problem or opportunity?

9. Recently, there has been public concern about potential candidates for school board elections who have been convicted of an offence, or who might hold views that are inconsistent with school board objectives, or the values and culture of the school. In addition, wider concerns have been expressed about the ability for school communities to be adequately informed about candidates for school boards, in particular, regarding the accuracy and reliability of information about nominees.
10. In response the Ministry has undertaken a review of whether the current eligibility requirements for school board members are fit for purpose.
11. School boards are elected by their school communities (except for co-opted members, appointed members and the principal). The intention for school board elections is for school communities to decide on who can best represent their interests on boards. For this reason, the eligibility requirements set out in the Act are minimal.
12. However, many school board elections do not progress to a vote because schools have difficulty attracting enough candidates to be on their board. In cases where there are not enough nominees to require an election, all candidates who are validly nominated for a board are declared duly elected board members without a vote occurring.
13. From November 2019 – July 2022, according to self-reporting from schools, 49% of parent representative elections went to a vote, with the rest not having enough candidates to require a vote with all candidates nominated becoming board members. For the 2019 triennial elections, 51% of elections went to a vote.¹
14. In addition, co-opted members, ministerial appointed members, and proprietors' representatives are not elected positions on a board. The school community does not vote for these members, yet they are subject to the same minimal eligibility requirements as elected members, which are intended to let communities decide who is appropriate to serve on their board. From 2015-2020, non-elected members made up on average 13% of all board positions.
15. Where an election does progress to a vote, the school community may not be able to make informed decisions and have an adequate level of confidence that eligibility requirements have been met. Nominees are required to confirm to the board that they are, to the best of their knowledge, eligible to be a board member. However, there is no vetting or checking that candidates or members actually meet eligibility requirements. Nominees are also able to provide disclosure statements with information about their interests and qualifications, but they are not required to do so. Those that do provide one are not obligated to express any views that they believe will be controversial or negatively impact their electoral chances.
16. Board members have an important role in providing for the physical and emotional safety of children, which is a primary board objective as set out in section 127 of the Act. This is a point of difference when compared to other statutory Crown entities, and

¹ This data only includes schools whose returning officers complete the required form Appendix 1, Candidate and Election Results of School Board Member Elections to the Ministry of Education.

as such, current eligibility criteria for school board membership could be strengthened beyond what is the standard for members of statutory Crown entities.

What objectives are sought in relation to the policy problem?

17. The objectives sought are to ensure:
 - a. eligibility requirements are fit for purpose and adequately reflect the unique nature of school boards as Crown entities, one of whose primary objectives is to provide a physically and emotionally safe place for all students and staff.
 - b. that students, parents, whānau, and the community can have greater levels of confidence that school board members meet eligibility requirements.
 - c. that the policy is consistent with our Tomorrow's Schools governance model, enabling school communities to play a primary role in determining who represents their interests as board members – every community is different and should be enabled to make decisions relating to their school, whilst keeping central-government requirements at a minimal level.
 - d. representation and participation are encouraged with no unnecessary barriers – eligibility requirements should not unnecessarily deter participation in school board governance. This includes encouraging diverse population groups to participate as board members to reflect the school's identities, needs and aspirations – section 133 of the Act states that “A board must take all reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity.” The importance of a space where diversity is valued is also highlighted in the Statement of National Education and Learning Priorities.
 - e. eligibility requirements are equitable and do not discriminate or adversely impact some populations from being able to participate on boards.
 - f. eligibility requirements recognise successful reintegration – where offenders have been successfully transitioned back into the wider community with crime-free, pro-social, constructive attitudes and behaviours. Reintegration is most successful when offenders take responsibility or ownership of their needs and have strong community engagement.

18. The need to ensure that eligibility requirements reflect the role of school boards to provide for the safety of students should be balanced with the need to ensure school community decision-making as much as possible and that changes made do not restrict participation inequitably or unreasonably.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

19. The options have been assessed against the status quo in terms of their ability to achieve the policy objectives, i.e., the extent to which:
 - a. eligibility requirements provide for schools to be a physically and emotionally safe place for all students and staff
 - b. eligibility requirements are clear, not confusing, and ideally not discretionary (so as not to require returning officers to make eligibility decisions based on personal judgements, which could result in inconsistent decisions and undue administrative burden)
 - c. students, parents, whānau, and the community can have confidence that school board members meet eligibility requirements
 - d. school communities can continue to play a primary role in determining who represents their interests as board members
 - e. eligibility requirements encourage diverse representation and participation with no unnecessary barriers, and are equitable and do not discriminate or adversely impact some populations from being able to participate on boards.
 - f. school board eligibility and election processes do not place excessive and undue administrative and financial burden on schools returning officers, board member candidates, or Police and other departments involved in checking.
 - g. eligibility requirements recognise successful reintegration

What scope will options be considered within?

20. As mentioned previously, concern has been expressed both on potential board members' past convictions as well as people who hold views that may be inconsistent with the school board objectives or the values of the school community. It would not be feasible to legislate to prevent people from running for school boards based on their views. Board elections are designed to enable people with a range of views, including minority views, to stand for election, and for voters to decide on their best representatives. Ensuring boards better represent the diversity of their communities and whānau has been a focus in recent years. Any changes should therefore avoid discriminating against particular views and focus instead on making those views more transparent.
21. Of course, even with voter choice, there is potential for people to be elected to, or selected for, a school board who might hold views contrary to school board objectives or the school's culture and values. If this occurs, the board can use the new code of conduct to manage any behaviour that breaches the code. The code will set out the minimum standards of conduct that each member is required to meet, and individual school boards can decide to expand the minimum standards to reflect local expectations. The board may censure a board member, and the Minister may remove a member for a significant or persistent breach of the code.
22. Policy options therefore focus on addressing concerns with safety of board members as well as the school community's ability to make informed decisions on candidates, and do not seek to prevent people from becoming board members based on their views.
23. As the issue is pertinent to school board elections, policy options should ideally be progressed before the next mid-term school board elections. The only amendment bill to

the Education and Training Act 2020 that is upcoming before these next mid-term board elections is scheduled for policy decisions in December. Because of these timing constraints, we have not been able to conduct a full public consultation to solicit feedback on all proposed options. However, consultation on a broad question has been conducted:

- a. *Do you think that the current eligibility requirements should be amended?*
- b. *Why have you selected the above response? If you selected "Yes – they should be amended," what should be added, removed or changed?*

24. We have received 429 responses from stakeholders.
25. A majority of the respondents (53.13%) stated that the eligibility requirements should be amended. The most frequently suggested amendment was the introduction of some convictions resulting in permanent ineligibility even when sentences had been served. Many respondents who suggested this mentioned crimes that involve harm to children and the Children's Act 2014. Almost the same number of respondents suggested that those with questionable or dangerous views should be made ineligible. However as one respondent noted, it would be very difficult to objectively determine who would fall under this category. Eligibility based on values and beliefs rather than past actions has therefore not been considered. Many other respondents suggested mandatory police vetting.
26. Respondents who were "pro amendment" suggested a variety of amendments that relate to relationships at the school. Some respondents suggested an individual could only be eligible as a board member if they had a child at the school. Others wanted board members to be ineligible if they were a partner or family member of a current board member, teacher, principal, or other school staff member. There were four respondents who highlighted their desire for those who have lost custody of their children to be ineligible to be school board members specifically at their child's school. These are options that have not been explored.
27. Slightly over one fifth of the respondents (22.38%) were unsure about whether the eligibility requirements should be amended or stay as they currently are. Most individuals who selected this answer did not give a reason for doing so. When further comment was made, respondents either made suggestions for amendment that were similar to those from the "yes amendment" group, or they reiterated that they did not have enough knowledge on the matter to express an informed opinion.
28. Almost a quarter of the respondents (24.48%) believed that the eligibility requirements should not be amended, although it should be noted that a very small portion of "no amendment" respondents made amendment suggestions when asked to elaborate on their initial answer. The reasons given against amending the eligibility requirements included that the current requirements "cover enough," encourage people to participate on school boards, allow for a democratic process to take place, allow for people to move on from their mistakes, and that any tightening of the requirement could be a slippery slope towards removing free speech.

What options are being considered?

29. Five options have been considered to both amend eligibility requirements and strengthen compliance checking and information required to be provided about candidates or board members. The options are not mutually exclusive, and any of them can be combined. In particular, choosing one option from each of the categories (amending eligibility requirements and strengthening compliance checking) would result in a policy package that addresses both sides of the problem.

Options to amend eligibility requirements

30. In addition to the status quo, we have considered two broad options to amend eligibility requirements.

Option One – Make individuals convicted of specified Children’s Act offences ineligible to be school board members unless an exemption is obtained

31. This option would supplement the current school board member eligibility standards by adding a new standard making all board members ineligible if they have been convicted of a specified children’s worker offence and have not obtained an exemption. For these offences only, school board members would not be eligible regardless of whether they have served the sentence or suffered the penalty for the offence, unless an exemption has been approved by the Secretary for Education.
32. Section 28 of the Children’s Act provides that people who have been convicted of a specified offence cannot be employed as core children’s workers unless the chief executive of any key agency grants an exemption because they are satisfied that the person would not pose an undue risk to the safety of children. These offences are related (but not limited) to sexual misconduct, mistreatment and harm toward children, and murder.
33. The specified offences in the Children’s Act are a subset of the existing school board member ineligibility offences provided in clause 9(1)(f) of the Education and Training Act 2020. For all other offences that are not covered by the Children’s Act, the existing standards would apply.
34. This option would be more restrictive than the current standards, because it would add a list of specified offences that remove automatic eligibility even if the sentence has been served. The only way those convicted of a specified offence would be able to serve on a board would be to seek an exemption from the Secretary for Education, as children’s workers who have been convicted of specified offences have to do. As is the case for children’s workers, the Chief Executive (in this case the Secretary for Education) must be satisfied that the person would not pose an undue risk to the safety of children if serving on a school board.
35. Aligning the eligibility requirements more closely with those of children’s workers would mean school board eligibility is treated differently from all other Crown entity boards. However, this would more clearly reflect the school governance role of board members and the school board objective of ensuring the emotional and physical wellbeing of students and staff. This option would make clearer the policy intent of the eligibility requirements as they relate to school settings.
36. This option would be subject to the Criminal Records (Clean Slate) Act, which allows certain convictions to be automatically concealed if a number of criteria are met. However, many of the specified offences in Schedule 2 of the Children’s Act are also specified offences in section 4 of the Clean Slate Act, meaning that people who are convicted of these offences are not able to have their convictions concealed.

37. The proportion of people who will no longer be automatically eligible to be a school board member is likely to be less than 5% of the population. According to Ministry of Justice data, for the 1981 birth cohort, approximately 5% of people had been in prison by the age of 35 (with 95% of 35 year-olds never having been imprisoned). Taking these rates for the current population, around 125,000 people have been imprisoned by age 35 (of approximately 2.5 million aged 35 and over). This data includes imprisonment for all convictions, not only Children's Act specified offences, so the number of people who have been specifically convicted of Children's Act offences would be lower. In addition, these people remain eligible if they obtain an exemption from the Secretary for Education.
38. The impacts on existing school board members will likely be even lower. From 2010-2020, there was an annual average of 13,996 board members across Aotearoa (excluding principals, staff representatives and student representatives). Five percent of this figure is around 700 members. However, it is highly unlikely that a figure close to 700 members will need to be removed as people who currently serve on school boards are not representative of the general population; self-selection bias skews the demographics of school board members to be more representative of those who have never been convicted of offences and are of higher socio-economic status.

Population impacts

39. Children's Act offences are primarily related to sexual offences and violent offences that are punishable by maximum sentences of at least 2 years in prison.
40. According to Ministry of Justice data, for the 1981 birth cohort, approximately 12% of Māori had been in prison by the age of 35 (with 88% never having been imprisoned); this figure is 20% for Māori men. For Pacific people, the figure is 6% (10% for Pacific men). For Māori, this is around 50,000 people (of approximately 413,000 aged 35 and over). For Pacific people, this is around 7,550 people (of approximately 125,900 aged 35 and over). This suggests that, under this option, a greater proportion of Māori and Pacific people, and in particular Māori men, may become ineligible to be school board members than other groups (unless an exemption is obtained).
41. However, this data includes imprisonment for all convictions, not only Children's Act specified offences, so the number of people who have been specifically convicted of Children's Act offences could be lower.
42. Ministry of Justice data is also available on the yearly number of convictions of violent offences, which is defined as murder, attempted murder, manslaughter, acts intended to cause injury, sexual assault and related offences, abduction and kidnapping, deprivation of liberty/false imprisonment, and robbery. Over the last 10 years, the average number of convictions of these offences per year is around 8,000 for Māori, and 6,000 for Europeans. Adding together this data offers an idea of the scale of the impact, though again, a limitation is that the data includes repeat offenders, so it does not elucidate the total number of people with relevant convictions.
43. All of this data suggests that a greater proportion of Māori than other ethnic groups will no longer be automatically eligible to become school board members, with the figure of Māori who have relevant convictions likely to be in the tens of thousands and Pacific people in the thousands. However, the vast majority are still automatically eligible, and there is an ability for all applicants with relevant prior convictions to apply for an exemption to become eligible, so disproportionate impacts on Māori can be partially mitigated. Further mitigation can be achieved through actively engaging with Māori and

Pacific communities and encouraging members of these communities to serve on school boards.

Consultation results

44. From consultation, the most suggested amendment to the eligibility requirements matched this option: the introduction of some convictions resulting in permanent ineligibility. More specifically, many respondents suggested including crimes listed in the Children's Act 2014.

Option Two – Limit eligibility for individuals who have obtained a pardon, served the sentence, or otherwise suffered the penalty imposed for an offence

45. Option two looks at ways to restrict eligibility by removing or amending the current provision that makes eligible everyone who has committed an offence in clause 9(1)(f) if they have obtained a pardon or served the sentence or suffered the penalty imposed.
46. Three sub-options have been considered, in order of most to least restrictive:
 - a. Make ineligible any individual who has been convicted of an offence punishable by imprisonment for a term of 2 years or more (regardless of whether they received a sentence of imprisonment) or who has been sentenced to imprisonment for any other offence. This option would significantly tighten the current eligibility requirements by removing the restoration of eligibility once a sentence is served. Some people who are currently able to become board members would have their eligibility removed. This includes those people who may now be valued members of society with valuable contributions to make.
 - b. Require those who have been convicted of an offence in clause 9(1)(f) to obtain an exemption from a specified Chief Executive of a government agency before they become eligible to serve on a board. This option would also significantly tighten the current eligibility requirements as it would effectively make anyone who has been convicted of a described offence ineligible unless they went through the extra step of obtaining an exemption.
 - c. Make ineligible any individual who has been convicted of an offence punishable by imprisonment for a term of 2 years or more (regardless of whether they received a sentence of imprisonment) or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person AND that person has not committed another offence for a specified period of time. This is a "bright-line test" to allow for individuals who have committed serious crimes in the past to demonstrate rehabilitation. It would enable a tightening of the current eligibility requirements (fewer people would be eligible), whilst also accepting that people can go on to become valued members of society. This option would limit the extent of any disincentives for diversity and participation on boards. It would not require Ministry involvement in granting an exemption, but would rely on accurate disclosure of information to the returning officer.
47. These options are subject to the Criminal Records (Clean Slate) Act. This means that a person who, for example, has been convicted of an offence punishable by imprisonment for a term of 2 years or more but did not receive a sentence of imprisonment for that conviction could still be eligible, provided they meet the other criteria of the clean slate scheme (e.g. if the conviction is not a specified offence, if they had no convictions in the last 7 years).

Population impacts

48. As described above in option 1, the imprisonment data suggests that a greater proportion of Māori and Pacific people than other ethnic groups would no longer be automatically eligible to become school board members, with the figure of Māori who have been convicted of relevant offences likely to be in the tens of thousands and Pacific to be in the thousands. The impact would be even greater than in option 1 as this option includes anyone who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment. The disproportionate impacts on Māori and Pacific people could be mitigated through the exemption process in option 2b or the bright line test in option 2c. However, option 2a has no opportunity for mitigation and the most appropriate length of time for the bright line test in option 2c has yet to be explored. Furthermore, according to research by Department of Corrections, the reimprisonment rate over the following 48 months since release from prison for Māori (55%) is considerably higher than the rate for both NZ Europeans (45%) and Pacific offenders (36%). Their reconviction rate is also much higher (74% for Māori vs 62% for NZ Europeans). This means that even with the bright line test's opportunity to demonstrate rehabilitation, more Māori than other population groups would no longer be automatically eligible to be school board members because of higher rates of reoffending.

Consultation results

49. A majority of survey respondents who wanted the eligibility requirements to be amended were in favour of tightening standards around past convictions. Many thought that some convictions should result in permanent ineligibility, such as any that have resulted in imprisonment, while many believed that convictions of any kind should result in permanent ineligibility.

Options to strengthen information about candidates

50. In addition to the status quo, we have considered three options to give communities and voters greater certainty about the eligibility of school board members.

Option Three – Strengthen public disclosure requirements

51. Under this option, disclosure requirements could be strengthened to require board candidates to:
- a. declare (or issue a statement about) any convictions resulting in a term of imprisonment of two years or more;
 - b. attest that they understand the mandatory code of conduct, and will abide by it, if elected; and
 - c. attest that they understand school board objectives set out in section 127 of the Act and that they will work with the board to promote the achievement of these objectives.
52. Giving voters more information about the criminal histories of candidates can increase democratic scrutiny of individuals who may pose a risk to the physical and emotional safety of students and staff. This increases the transparency of school board candidates, and communities may be better equipped to vote according to their interests. If combined with the options on amending eligibility requirements, candidates would disclose any convictions they have that do not make them ineligible to be board members.
53. However, this option would not provide additional confidence for co-opted or selected board members.

54. This option is subject to the Clean Slate Act. However, under the Clean Slate Act, one of the criteria for an individual to be eligible under the clean slate scheme (to claim no criminal record) is never having received a custodial sentence (including imprisonment). Therefore, under this option, candidates would still have to declare any convictions that resulted in a term of imprisonment of two years or more.

Population impacts

55. As described above in option 1, the imprisonment data suggests that a greater proportion of Māori and (to a lesser extent, Pacific people) than other ethnic groups would have to disclose their previous criminal convictions to be eligible as school board members. This would discourage their participation which in turn would have an impact on the diversity of board members.

Consultation results

56. A small number of survey respondents, particularly parents, suggested strengthening disclosure requirements.

Option Four – Police vet all incoming school board members

57. This option does not amend the eligibility standards themselves, but would serve as an additional check for compliance with the eligibility standards. This option involves police vetting incoming board members to confirm whether they are eligible to be school board members, in addition to the current requirement for a self-declaration. This check could be administered by either:
- a. the Ministry of Education; or
 - b. the Returning Officer at each school.
58. A police vet is usually used to assess whether a candidate is suitable for a particular position by providing conviction history and relevant and substantiated non-convicted information relating to contact with police. For example, the police vetting of children's workers helps assessors determine whether an individual is suitable to be a children's worker as it relates to safety to children. The vetting service does not make a decision on whether a candidate is suitable for a position, but rather it provides a vetting report. Hence, police vetting is used when there are discretionary decisions to be made about candidates by an assessor.
59. In the context of school boards, the purpose of police vetting would be to check that candidates meet the eligibility requirements where there is no discretionary element. A candidate either meets the eligibility requirements or does not. Therefore, under this option, a police vet would only provide a Conviction History report that provides information relevant to school board member eligibility requirements. However, it would not identify by itself whether the conviction history makes a person ineligible. A Ministry staff member or the returning officer must evaluate the results of the police vet against the eligibility criteria.
60. Police vets of all board candidates at election time would be administratively very difficult and burdensome for returning officers and/or the Ministry of Education. It would be

administratively unworkable for the number of police vets (over 12,000)² that would need to be undertaken in a short timeframe during or before the election period and reviewed/assessed by the returning officers or Ministry of Education staff members. If undertaken by the Ministry, the extra police vets needed would also slow down the processing of applications that should be more of a priority (e.g. early childhood workers).

61. The cost of police vetting is \$8.50 plus GST per vet. At 12,000 vets every three years, the cost would be \$102,000 plus GST, in addition to the extra resourcing for the Ministry staff to conduct the checks if the role is taken on by the Ministry.
62. The police vetting option could also disincentivise people from standing for board election where they met eligibility requirements, because of the perception that information could be disclosed about them that they would not wish to have known by the Ministry or a returning officer of the school.
63. As there is no discretionary element, police vets are not the appropriate tool to use to verify eligibility. Whether candidates meet the conviction-related eligibility criteria could be verified through criminal record checks, which are requested online through the Ministry of Justice, which sends the requestor a PDF document for each candidate. Given the volume of candidates per election (over 12,000), it would be administratively unworkable for the Ministry of Education to request and check records against the eligibility criteria for every candidate. In addition, it would still be unknown as to whether the person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person for the convictions.
64. This option is subject to the Clean Slate Act.

Population impacts

65. Police vets may discourage populations who have greater contact with police from putting themselves forward as a potential school board member, even if they otherwise meet eligibility requirements.

Consultation results

66. The third most suggested amendment to current eligibility requirements through the online survey was the inclusion of police vetting as a prerequisite for all board members. Parents and board members in particular suggested this amendment frequently.

Option Five – The Ministry of Education conducts checks on whether board members are eligible through a random audit

67. This option involves the Ministry of Education conducting random audits of school board member eligibility. This would not need to be undertaken prior to election. The Ministry would randomly select a number of schools to audit. If found to be ineligible, a Board member's office becomes vacant automatically in accordance with clause 12(1)(d) of schedule 23.
68. The audits would be conducted on co-opted members, ministerial-appointed members, parent representatives (elected members) and proprietors' representatives. It would

² In the 2019 triennial elections, 2,337 schools ran board elections. Each board usually has 5 parent representatives, so this would be around 11,685 board members elected. Around half of elections were voting elections, indicating more candidates than members, so the number of candidates is likely to be greater than 11,685.

not be conducted on principals, staff representatives or student representatives as principals and staff are already safety checked under Children's Act requirements.

69. This option involves amending the Act to place an obligation on board members to agree to give all relevant permissions to enable the Ministry to conduct eligibility checks. The Ministry would require a specific legislative power to conduct such checks. A refusal to grant permission for such a check would make an individual ineligible to be a school board member.
70. Te Mahau, under delegated authority from the Secretary, would need to access the information for a randomly selected group of board members, perhaps once a year, and check eligibility. Auditing 10 percent of board members over a three-year period would require additional resourcing for between 1 and 3 full time equivalent roles annually to undertake these audits.
71. This option could provide greater certainty to the public that eligibility requirements are being met and would add incentives for a board member to be honest when declaring their eligibility to the best of their knowledge.
72. This option is subject to the Clean Slate Act.

Population impacts

73. This option should not disproportionately impact any population group as its function is only to perform checks on the actual eligibility requirements.

Consultation results

74. The third most suggested amendment to current eligibility requirements through the online survey was the inclusion of police vetting as a prerequisite for all board members. This indicates an appetite for a check on potential board members to determine their eligibility or suitability. While these audits do not include a police check (but rather, a criminal record check to verify conviction history, in addition to other eligibility checks) and do not provide an indication on suitability, they can verify eligibility for audited members.

How do the options compare to the status quo/counterfactual?

1. Table 1 compares each option against the status quo using the policy objectives/criteria and stakeholder feedback. It identifies the preferred option as the one that best meets the policy objectives and is expected to deliver the highest net benefits. The options are split into two categories: options to amend eligibility requirements and options to strengthen information about candidates or board members.

<p>Objectives/Criteria:</p> <ul style="list-style-type: none"> • Physically/emotionally safe – the extent to which eligibility requirements provide for schools to be a physically and emotionally safe place for all students and staff • Clear, not discretionary – the extent to which eligibility requirements are clear, not confusing, and ideally not discretionary • Confidence in system – the extent to which students, parents, whānau, and the community can have confidence in school boards • Community authority – the extent to which school communities can play a primary role in determining who represents their interests as board members • Participation and representation – the extent to which eligibility requirements are equitable and encourage diverse representation and participation with no unnecessary barriers • Administrative burden – the extent to which school board eligibility and election processes do <i>not</i> place excessive and undue administrative and financial burden on schools returning officers, or other departments involved in checking • Recognises reintegration – the extent to which eligibility requirements recognise successful reintegration 	<p>Key for qualitative judgements:</p> <ul style="list-style-type: none"> +++ much better than the status quo ++ better than the status quo + somewhat better than the status quo 0 about the same as the status quo - somewhat worse than the status quo -- worse than the status quo --- much worse than the status quo
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Table 1: Analysis of options to amend eligibility requirements and to strengthen information about candidates or board members

Options	Objectives/Criteria								Analysis and preferred option
	Physically /emotionally safe	Clear, not discretionary	Confidence in the system	Community authority	Participation, representation, equity	Administrative burden	Recognises reintegration	Overall assessment	
<p>Status Quo: a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or has been sentenced to imprisonment for any other offence, is ineligible unless the person has obtained a pardon, served their sentence or otherwise completed their penalty.</p> <p>There are no formal checks in place to verify eligibility.</p>	0	0	0	0	0	0	0	0	Feedback from consultation indicates that a slim majority of 53.15% of people believe that the eligibility requirements need to be amended. A quarter of respondents (24.48%) thought that the current eligibility requirements were suitable and did not need amendment.
Options to amend eligibility requirements									
<p>Option 1: Make individuals convicted of specified Children’s Act offences ineligible to be school board members unless an exemption is obtained – Section 28 of the Children’s Act provides that</p>	+++	+	++	-	-	0	-	+3	Option 1 is the preferred option. This change would be more reflective of the school governance role of board members and the school board objective of ensuring the emotional and

Table 1: Analysis of options to amend eligibility requirements and to strengthen information about candidates or board members

Options	Objectives/Criteria								Analysis and preferred option
	Physically /emotionally safe	Clear, not discretionary	Confidence in the system	Community authority	Participation, representation, equity	Administrative burden	Recognises reintegration	Overall assessment	
<p>people who have been convicted of a specified offence cannot be employed as core children's workers unless the chief executive of any key agency grants an exemption because they are satisfied that the person would not pose an undue risk to the safety of children. The same would apply to school board members, with exemptions being granted by the Secretary for Education. This would supplement rather than replace existing criteria – for all other offences that are covered by the current ineligibility criteria, the existing standards apply.</p>	<p>relevant serious offence, will be allowed to serve on a school board (unless exempted), making this option more reflective of the school governance role of board members and the school board objective of ensuring the emotional and physical wellbeing of students and staff.</p>	<p>the same convictions will make both board members and children's workers ineligible (unless an exemption is obtained).</p>	<p>question their role within a school, but maintains eligibility for less relevant or serious crimes. The school community is likely to have confidence that certain convictions are excluded but not all relevant ones are.</p>	<p>but these individuals are still able to apply for an exemption on the basis of their conviction.</p>	<p>ineligible to serve unless an exemption is obtained. This will likely cause higher numbers of Māori, and to a lesser extent Pacific people, to be no longer automatically eligible than other groups. However, this is restricted to certain serious crimes that are particularly significant or relevant to a school setting, the vast majority of the population would remain automatically eligible, and individuals convicted of these offences are still able to obtain an exemption.</p>	<p>The chief executive will have to process exemption requests but the quantity is anticipated to be minor.</p>	<p>counted as rehabilitated for the purposes of serving on a school board after they have served a sentence. However, there is opportunity for rehabilitation to be recognised through the exemptions process.</p>		<p>physical wellbeing of students and staff.</p> <p>While it would be more restrictive than the current settings because it would add a list of specified offences that remove automatic eligibility even if the sentence has been served, there is opportunity for an individual to be granted an exemption and become eligible even if convicted of a specified offence.</p> <p>Feedback from consultation indicated that Option 1 was a preferred option by the public. Making some crimes, including Children's Act crimes, equate to permanent ineligibility was the most suggested amendment by respondents.</p> <p>Population analysis suggests that the disproportionate impacts this option may have on Māori and Pacific people, particularly Māori men, can be mitigated partially by the ability to apply for an exemption.</p>
<p>Option 2(a): Make ineligible any individual who has been convicted of an offence punishable by imprisonment for a term of 2 years or more (regardless of whether they received a sentence of imprisonment) or who has been sentenced to imprisonment for any other offence. This option removes the current rule that once a person</p>	<p>+++ No individual who has demonstrated prior harm to children through a criminal conviction, or any other relevant serious offence, would be allowed to serve on a school board, making this option more reflective of the school governance role of</p>	<p>+ The eligibility requirements will be clear and non-discretionary.</p>	<p>+ The school community will have confidence that those serving on a school board have never committed any offence involving imprisonment, but confidence could be reduced because of the perception that people who otherwise could contribute valuable</p>	<p>-- This option completely rules out anyone who has been convicted of a described offence or sentenced as described. This does not allow the community to decide whether or not a candidate is suitable as some candidates could have been convicted of offences</p>	<p>-- This option imposes extra barriers to participation as those who have committed any offence that is punishable by imprisonment for a term of 2 years or more are ineligible to serve, without possibility of exemption. This would have a significantly</p>	<p>0 This option has no impact on this criterion as it is not related to settings on compliance.</p>	<p>--- This option comports with the idea that individuals who commit certain offences should not ever be counted as rehabilitated for the purposes of serving on a school board after they have served a sentence. Some of these offences may not be relevant to children,</p>	<p>-2</p>	<p>Option 2(a) is not preferred. This option would significantly tighten the current eligibility requirements. Although it would make ineligible all those who have been convicted of serious offences against children, many other non-relevant offences would also be captured and there is no opportunity to demonstrate rehabilitation for any offence. This would be detrimental to encouraging greater participation and diversity on boards.</p>

Table 1: Analysis of options to amend eligibility requirements and to strengthen information about candidates or board members

Options	Objectives/Criteria							Analysis and preferred option	
	Physically /emotionally safe	Clear, not discretionary	Confidence in the system	Community authority	Participation, representation, equity	Administrative burden	Recognises reintegration		Overall assessment
has served their sentence, they are eligible once again.	board members and the school board objective of ensuring the emotional and physical wellbeing of students and staff.		skills and have not had a serious conviction are now barred.	that the community deems irrelevant for school board participation. There is no option to obtain an exemption.	disproportionate impact on Māori and Pacific people, without the opportunity for the impact to be mitigated.		but would still render a board member unsuitable.		<p>Feedback from public consultation indicated that Option 2(a) would likely be popular with the public, particularly with parents and teachers. These two groups rated the option to make all crimes lead to permanent ineligibility very highly.</p> <p>Population analysis suggests that this option would have a disproportionate impact on Māori and Pacific people which cannot be easily mitigated.</p>
<p>Option 2(b): Require those who have been convicted of an offence in clause 9(1)(f) to obtain an exemption from a specified Chief Executive of a government agency before they become eligible to serve on a board. This option removes the current rule that once a person has served their sentence, they are automatically eligible once again – an exemption must be obtained to become eligible.</p>	<p>+++</p> <p>No individual who has demonstrated prior harm to children through a criminal conviction, or any other relevant serious offence, will be allowed to serve on a school board (unless exempted), making this option more reflective of the school governance role of board members and the school board objective of ensuring the emotional and physical wellbeing of students and staff.</p>	<p>+</p> <p>The eligibility requirements will be clear.</p>	<p>+</p> <p>The school community will have confidence that those serving on a school board have never committed any offence involving imprisonment (unless exempted), but confidence could be reduced because of the perception that people who otherwise could contribute valuable skills and have not had a serious conviction are now barred.</p>	<p>-</p> <p>This option rules out anyone who has been convicted of a described offence or sentenced as described. This does not allow the community to decide whether or not a candidate is suitable as some candidates could have been convicted of offences that the community deems irrelevant for school board participation. However, there is an opportunity to obtain an exemption.</p>	<p>-</p> <p>This option imposes extra barriers to participation as those who have committed any offence that is punishable by imprisonment for a term of 2 years or more are ineligible to serve, unless they obtain an exemption. This would have a significantly disproportionate impact on Māori and Pacific people, but affected people have the ability to apply for exemptions.</p>	<p>0</p> <p>This option has no impact on this criterion as it is not related to settings on compliance.</p> <p>The chief executive will have to process exemption requests but the quantity is anticipated to be minor.</p>	<p>--</p> <p>This option comports with the idea that individuals who commit certain offences should not automatically be counted as rehabilitated for the purposes of serving on a school board after they have served a sentence. Some of these offences may not be relevant to children, but would still render a board member unsuitable. However, there is an opportunity to obtain an exemption.</p>	<p>+1</p> <p>Option 2(b) is not preferred. This option would significantly tighten the current eligibility requirements. It would make anyone who has been convicted of a described offence ineligible unless they went through the extra step of obtaining an exemption. Although this would increase safety and confidence by applying to all those who have been convicted of serious offences against children, many other non-relevant offences would also be captured. This would be detrimental to encouraging greater participation and diversity on boards.</p> <p>No respondent during public consultation suggested this as a way to amend the eligibility requirements.</p> <p>Population analysis suggests that the disproportionate impacts this option would have on Māori and Pacific people can be partially mitigated by the ability to apply for an exemption.</p>	
<p>Option 2(c): Bright Line Test. Make ineligible any individual who has been convicted of an</p>	<p>+</p>	<p>+</p>	<p>+</p>	<p>-</p>	<p>-</p>	<p>0</p>	<p>-</p>	<p>0</p> <p>Option 2(c) is not preferred. It would enable a slight tightening of the current eligibility requirements, whilst also</p>	

Table 1: Analysis of options to amend eligibility requirements and to strengthen information about candidates or board members

Options	Objectives/Criteria								Analysis and preferred option
	Physically /emotionally safe	Clear, not discretionary	Confidence in the system	Community authority	Participation, representation, equity	Administrative burden	Recognises reintegration	Overall assessment	
<p>offence punishable by imprisonment for a term of 2 years or more (regardless of whether they received a sentence of imprisonment) or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person AND that person has not committed another offence for a specified period of time. This is a "bright-line test" to allow for individuals who have committed serious crimes in the past to demonstrate rehabilitation.</p>	<p>Individuals who have demonstrated prior harm to children through a criminal conviction, or any other relevant serious offence, will not be allowed to serve on a school board unless they have demonstrated some rehabilitation, making this option more reflective of the school governance role of board members and the school board objective of ensuring the emotional and physical wellbeing of students and staff. However, the bright-line test will only be one subjective metric of rehabilitation. It is possible that people who have met the bright-line test will not actually be sufficiently "rehabilitated" to serve on a school board.</p>	<p>The eligibility requirements will be clear and non-discretionary.</p>	<p>The school community will have increased confidence that school board members have either never been convicted of a described offence or have shown some rehabilitation. However, since evaluations of the bright-line test are subjective, questions may be raised about whether the timeframe specified is enough.</p>	<p>Individuals who have been convicted of offences that are not relevant or significant to participation in a school setting may still be barred from running for school board for a set time period, which could go against the community's preferences.</p>	<p>This option imposes extra barriers to participation as those who have committed any offence that is punishable by imprisonment for a term of 2 years or more are ineligible to serve for a specified time period following the conviction. Higher numbers of Māori than other population groups would be ineligible without possibility of exemption under this option, even with the bright line test's opportunities for rehabilitation.</p>	<p>This option has no impact on this criterion as it is not related to settings on compliance.</p>	<p>This option comports with the idea that individuals who commit certain offences should not automatically be counted as rehabilitated for the purposes of serving on a school board after they have served a sentence. However, it does recognise rehabilitation through lack of re-offending for a specified time frame.</p>	<p>accepting that people can go on to become valued members of society. However, bright-line tests do not capture the nuance of individual cases and thus cannot be an accurate measure of whether one has rehabilitated from a serious conviction of an offence against children, which would not greatly improve confidence in the system.</p> <p>Feedback from public consultation indicated that option 2(c) would be somewhat popular. Out of all amendment suggestions, a bright line test ranked 7th out of 20.</p> <p>Population analysis suggests that the disproportionate impacts this option would have on Māori may not be easily mitigated due to reconviction rates.</p>	
Options to strengthen information about candidates or board members									
<p>Option 3: Strengthen public disclosure requirements. This option would require board candidates to:</p> <p>a. declare (or issue a statement about) any convictions resulting</p>	<p style="text-align: center;">+</p> <p>Giving voters more information about the criminal histories of candidates (other than convictions that make someone ineligible) can</p>	<p style="text-align: center;">0</p> <p>This option has no impact on this criterion as it does not seek to change the criteria.</p>	<p style="text-align: center;">+</p> <p>This increases the transparency of school board candidates. However, there is still no formal mechanism to</p>	<p style="text-align: center;">+</p> <p>Community preferences are not limited in any way. The community could gain more knowledge about the candidates, thereby</p>	<p style="text-align: center;">-</p> <p>Individuals who have a past criminal conviction but are eligible to serve may be discouraged from participating. Imprisonment data</p>	<p style="text-align: center;">0</p> <p>Although candidates would have to complete additional attestations, the administrative burden on returning officers and the Ministry</p>	<p style="text-align: center;">-</p> <p>Candidates are forced to declare and therefore be evaluated against convictions that may have no relevance to their ability to serve on a</p>	<p style="text-align: center;">+1</p>	<p>Option 3 is not preferred. A requirement to declare a previous conviction, or serious conviction, may contribute to reduced diversity on boards.</p> <p>The benefits are also not strong. Even with these changes, there is potential</p>

Table 1: Analysis of options to amend eligibility requirements and to strengthen information about candidates or board members

Options	Objectives/Criteria							Analysis and preferred option	
	Physically /emotionally safe	Clear, not discretionary	Confidence in the system	Community authority	Participation, representation, equity	Administrative burden	Recognises reintegration		Overall assessment
<p>in a term of imprisonment of two years or more;</p> <p>b. attest that they understand the mandatory code of conduct, and will abide by it, if elected; and</p> <p>c. attest that they understand school board objectives set out in section 127 of the Act and that they will work with the board to promote the achievement of these objectives.</p>	<p>increase the democratic safeguard against individuals who may pose a risk to the physical and emotional safety of students and staff.</p> <p>There is no improvement for elections that do not go to a vote, and selected, co-opted, or appointed members.</p>		<p>verify that candidates tell the truth.</p>	<p>being able to reflect their preferences more accurately.</p>	<p>indicates that this would discourage Māori (and to a lesser extent Pacific people) from participating at greater rates than other ethnic groups.</p>	<p>of Education is relatively low.</p>	<p>school board, which could be unfair.</p>		<p>for people to be elected to a school board who might hold views contrary to the school board objectives or the school's culture and values, or have been convicted of a serious offence against children.</p> <p>Additionally, concerns around safety still exist for elections that do not go to a vote, and selected, co-opted, or appointed members.</p> <p>Feedback from public consultation indicated that parents want stronger requirements for disclosure statements. However, other stakeholder groups did not prioritise this option as much.</p> <p>Population analysis suggests that this option would have a disproportionate impact on Māori and Pacific people and discourage their participation.</p>
<p>Option 4: Police vet all incoming school board members. This option would require a police vet of potential board members to evaluate whether they are eligible to be school board members, in addition to the current requirement for a self-declaration. This check could be administered by either the Ministry of Education or the Returning Officer at each school.</p>	<p style="text-align: center;">+</p> <p>This option ensures all board members meet eligibility requirements.</p> <p>However, taken alone, it makes no changes to the actual eligibility requirements.</p>	<p style="text-align: center;">-</p> <p>A police vet would have to be judged discretionarily by the Ministry or a returning officer at each school.</p>	<p style="text-align: center;">++</p> <p>The school community has confidence that any ineligibility criteria are actually being met.</p> <p>However, taken alone, it makes no changes to the actual eligibility requirements.</p>	<p style="text-align: center;">0</p> <p>Community preferences are not limited in any way.</p>	<p style="text-align: center;">-</p> <p>This option could disincentivise people from standing for board election as conviction history could be disclosed about them to Ministry staff or returning officers, where they otherwise meet requirements. This is particularly pertinent for groups that have had more police contact, even without conviction. It would also discourage people who</p>	<p style="text-align: center;">---</p> <p>Administratively unworkable for the Ministry of Education. There would be an additional 12,000 police vets to be conducted every three years, with most taking place at once around triennial elections. The extra police vets needed would also slow down the processing of applications within the Ministry that should be more of a priority (e.g.</p>	<p style="text-align: center;">0</p> <p>This option has no impact on this criterion..</p>	<p style="text-align: center;">-2</p>	<p>Option 4 is not preferred. Police vets of all board members at election time would be administratively very difficult and burdensome for the Ministry of Education.</p> <p>Furthermore, to ascertain whether a candidate meets the eligibility criteria around convictions, it is not necessary to obtain a police vet, which provides Conviction History reports and other relevant non-convicted information. A criminal record check would return the relevant information to check a board member against the eligibility requirements (though this is also administratively unworkable).</p>

Table 1: Analysis of options to amend eligibility requirements and to strengthen information about candidates or board members

Options	Objectives/Criteria							Analysis and preferred option	
	Physically /emotionally safe	Clear, not discretionary	Confidence in the system	Community authority	Participation, representation, equity	Administrative burden	Recognises reintegration		Overall assessment
					have any contact with police or other convictions from running for school board because of the (erroneous) perception that this information could be used against them, as police vets in other contexts are usually to assist with discretionary decisions.	early childhood workers). The results of a police vet would have to be evaluated against eligibility criteria by the Ministry or a returning officer at each school.			Feedback from public consultation indicated police vetting would be very popular with the public. It was the third most frequently mentioned suggestion and highly valued by school board members and parents. Police vets may discourage populations who have greater contact with police from putting themselves forward as a candidate for school board.
Option 5: The Ministry of Education conducts checks on whether board members are eligible through a random audit. This option would allow for random audits to verify board members' eligibility, would take place during a board member's term, and if found to be ineligible, a board member's position would become vacant.	+ This option discourages individuals from falsely claiming eligibility, and it applies to both elected and selected/co-opted/appointed members, including elections that do not go to a vote. However, taken alone, it makes no changes to the actual eligibility requirements.	0 This option has no impact on this criterion as it does not seek to change the criteria. An audit would not involve a discretionary judgement if eligibility requirements are clear.	++ The school community has confidence that board members are formally checked against eligibility requirements. However, taken alone, it makes no changes to the actual eligibility requirements.	0 Community preferences are not limited in any way.	0 This option has no impact on participation as it is not related to settings on ineligibility criteria.	- This option adds some administrative burden to the Ministry to conduct these audits, as well as minimal burden on returning officers of schools that are audited. However, the quantity of audits can be scaled according to need.	0 This option has no impact on this criterion.	+2	Option 5 is the preferred option. This option could provide greater certainty to the public that eligibility requirements are being met and would add incentives for a board member to be honest when declaring their eligibility to the best of their knowledge. The Ministry requires additional resourcing to support the new auditing function, but this option can be scaled to balance increasing confidence in compliance and administrative feasibility. Feedback from public consultation indicated that this would be a popular option. While not explicitly suggested by any respondent, this option encourages honest disclosure (which was popular with parents) and identifies if members have lied about being convicted of specific offences (such as Children's Act offences). This option should not disproportionately impact any one population group as its function is only

Table 1: Analysis of options to amend eligibility requirements and to strengthen information about candidates or board members

Options	Objectives/Criteria							Analysis and preferred option	
	Physically /emotionally safe	Clear, not discretionary	Confidence in the system	Community authority	Participation, representation, equity	Administrative burden	Recognises reintegration		Overall assessment
									to perform checks on the actual eligibility requirements.

Proactively Released

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 75. A combination of Options 1 and 5 is the preferred option. Option 1 adds the children’s worker offences (as set out in the Children’s Act) to the Act, and the inclusion of Option 5 would mean that the Ministry of Education conducts checks on whether board members are eligible through a random audit.
- 76. This combination best meets the decision-making criteria outlined at the beginning of section 2 and again in the analysis tables above.
- 77. The combination of Options 1 and 5 means that different areas of concern are addressed. Option 1 provides a safeguard for when an election does not proceed to a vote, and applies to non-elected members such as co-opted members. It would be more reflective of the school governance role of board members and the school board objective of ensuring the emotional and physical wellbeing of students and staff. This would also align better with the standards for teachers and core children’s workers. A greater proportion of Māori than other ethnic groups will no longer be automatically eligible to become school board members, with the figure of Māori who have relevant convictions likely to be in the tens of thousands. For Pacific people, there is a slight disproportionate impact, with the number of people who have relevant convictions likely to be in the thousands. However, this option partially mitigates for this by giving the opportunity for an individual to be granted an exemption and become eligible even if convicted of a specified offence.
- 78. Option 5 allows for an administratively feasible way for the school community to be more confident that candidates and non-elected board members are being honest. This option discourages individuals from falsely claiming eligibility, and it applies to both elected and selected/co-opted/appointed members, including elections that do not go to a vote. While it adds some administrative burden to the Ministry to conduct these audits, the quantity of audits can be scaled according to what the Ministry deems as necessary to increase confidence in compliance with eligibility requirements and feasibility.
- 79. While this package of options (in addition to the other options listed) does not seek to restrict eligibility based on board members potentially having views that are contrary to board objectives or community values (for reasons mentioned previously), it will sit alongside a new code of conduct for members once they are on a board, which sets out minimum standards of behaviour that are aligned to school board objectives.
- 80. On balance, the benefits of reflecting the role of board members in regards to student safety more accurately and helping to create a safer school environment for students and staff outweighs the detriments of having tighter requirements.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
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Additional costs of the preferred option compared to taking no action			
Regulated groups (school board members, prospective school board members including candidates)	Some individuals will no longer be able to participate if they cease to meet all eligibility requirements	Low. A small proportion of the population will be affected by the changes made. In addition, those that are affected can apply for an exemption and still be eligible.	High
Regulators (Ministry of Education)	Additional resources will be needed to support the new auditing function, depending on the scale of the quantity of audits determined to be necessary and feasible.	Depends. The quantity of audits undertaken can be scaled.	High
Others (Students, parents, caregivers, whānau)	No additional costs placed	Low	High. The only change is to who is eligible to stand as a board member, not to who can vote.
Total monetised costs			
Non-monetised costs		<i>Low</i>	
Additional benefits of the preferred option compared to taking no action			
Regulated groups (school board members, school board candidates)	Ongoing benefit of reduced confusion through aligning more closely to children's worker standards	Medium	High
Regulators (Ministry of Education)	On-going benefit of helping provide for the safety and wellbeing of students and staff at school	High	High
Others (Students, parents, other caregivers, whānau)	Caregivers and whānau know that board members who make decisions about their child's school do not pose an undue risk to the safety of children	High	High. Parent submitters commented that they did not want those who had committed any crimes or harm against children to be eligible to be a board member. They also wanted

			candidates to be subject to greater scrutiny.
Total monetised benefits			
Non-monetised benefits		<i>High</i>	

Section 3: Delivering an option

How will the new arrangements be implemented?

81. Legislative change is required to implement this option. If it is agreed to, it will be added to an upcoming amendment bill.
82. Communication of this change will be provided through the Ministry's standard publications and other channels ahead of the next mid-term school board elections, which will likely take place in November 2023. Clear guidance on the eligibility requirements will be provided by the Ministry of Education regional staff to returning officers at schools.
83. The commencement date for the new eligibility provisions will be six months after the enactment of the Bill to allow for these communications to reach school boards and for affected board members to take action (for example, seek exemptions as necessary). For the auditing function, implementation would begin in 2025, to allow time for boards to fill any vacancies and undertake elections as required.
84. The number of audits can be scaled according to implementation needs. The audits will be conducted on co-opted members, ministerial-appointed members, parent representatives (elected members) and proprietors' representatives. From 2010-2020, there was an annual average of 13,996 of these types of board members in total across Aotearoa. Principals, staff representatives and student representatives have not been counted in this as their eligibility does not need to be checked – principals and teachers are already subject to safety checking requirements from the Children's Act 2014. The audits can be conducted at any time of the year – it is not necessary to conduct them during elections.
85. The number of audits can also be adjusted in response to the Ministry's monitoring processes. The audit process will be monitored to assess if it is successful in encouraging disclosure of accurate information. For example, if monitoring finds significant non-compliance over a sustained period, it could be an indication that the audits are not performing their intended purpose, whether because we are not performing enough audits or another design issue. If compliance is high, the number of audits could also be adjusted as confidence in the auditing process is built.
86. Additional funding may be required to support implementation of the new audit function. What the auditing function will likely entail is detailed below, including indications of how much resourcing is required depending on the number of audits to be conducted.
87. An expanded audit function could include some or all of the following checks (if eligibility requirements were amended according to option one):
 - a. Conduct an insolvency check
 - b. Conduct a criminal record check

- c. Conduct a banned director check
 - d. Verify details of their financial affairs as far as they include any contracting with the Board
 - e. Access any Orders made in respect of them under the Protection of Personal and Property Rights Act 1988
 - f. Request information held on them by Immigration New Zealand
88. If audits were conducted on 10 percent of board members every three years, that would result in around 1,400 audits, or around 450 audits annually. With the assumption that there is no existing capacity or process to build on, the estimated annual resourcing needed for this would be 2-3 full time equivalent roles.
89. If audits were conducted on 5 percent of board members every three years, that would result in around 700 audits, or around 230 audits annually. With the assumption that there is no existing capacity or process to build on, the estimated annual resourcing needed for this would be 1-2 full time equivalent roles.
90. Alternatively, if 100 audits were conducted annually, with the assumption that there is no existing capacity or process to build on, the estimated annual resourcing needed for this would be no more than 1 full time equivalent role.

How will the new arrangements be monitored, evaluated, and reviewed?

91. The Ministry of Education will monitor and evaluate the impact of the proposal on school boards, returning officers, and the wider school community. The Ministry has a number of channels for this, such as seeking feedback in Ministry publications, setting up face to face meetings with key stakeholders such as the New Zealand School Trustees Association (NZSTA) and issuing new and better guidance.

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