

Appendix 1 - Regulatory Impact Statement

Legislation on school Boards of Trustees

Disclosure Statement

This regulatory impact statement has been reviewed by the Ministry of Education (the Ministry). It has been assessed as being adequate according to the objectives defined by Cabinet [Cabinet Office Circular CO (07) 3 refers].

It considers amending the Education Act 1989 to set out that the primary focus of school Boards of Trustees (Boards) should be to promote student achievement.

The recommended approach aligns with the commitments in the Government Statement on Regulation. It is considered necessary to clearly set out in legislation the core focus that Boards should have when fulfilling their duties. It takes a reasonable approach that gives Boards sufficient flexibility to effectively carry out their role, whilst providing clarity of purpose.

That school Boards should be focused on raising student achievement is already set out in guidance and reflected in the National Education Goals (NEGs). It has therefore been assumed that the amendment will result in little change in how the majority of Boards carry out their duties.

This legislative change provides a sound basis for the Ministry of Education's future work programme on governance.

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Executive Summary

This paper seeks to amend the Education Act 1989 (the Act) to set out that the primary focus of school Boards of Trustees should be to promote student achievement. This will provide schools, students and parents with increased clarity as to the primary focus Boards should have as they carry out their duties and exercise their powers.

The approach taken seeks to provide increased clarity, whilst continuing to provide local discretion as to how the school is managed, within the constraints of the law.

Status Quo and Problem

Boards are responsible for the management of the school and as such play a vital role in the New Zealand education system. Unlike all other Crown entities, the core duty of school Boards is not clearly set out in legislation. Instead, section 75 of the Education Act 1989 states:

“Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school’s board has complete discretion to control the management of the school as it thinks fit.”

Whilst most Boards do an excellent job, the extent to which they focus on the educational achievement of all learners can be inconsistent. For example, some Boards try to extend their role to run non-educational activities. Others are focussed on property and commercial matters, but provide insufficient focus on student achievement.

Objective

- To provide Boards, principals, teachers and parents with greater clarity that the primary focus of Boards should be on raising educational achievement of all learners within the school.

Preferred Option

The preferred option is to amend section 75 of the Education Act 1989 (the Act) to set out that Boards must perform their functions and exercise their powers in such a way as to ensure that every child in the school is able to attain his or her highest possible standard of educational achievement. This will provide clarity not only to Boards, but also to their employees (ie. teachers and principals) and to students and their parents (or guardians) that the primary focus of Boards should be raising the achievement of all learners.

Setting a clear expectation that Boards have student achievement at the centre of their thinking when they perform the full breadth of their duties will provide increased clarity, without restricting Boards’ discretion as to how they manage their school. This will help to ensure that in all schools five out of five learners are supported to succeed.

This legislative change provides a sound basis for the Ministry of Education’s future work programme on governance. The Confidence and Supply Agreement between the National Party and ACT New Zealand includes a commitment “to set up a task force to produce a comprehensive report on governance issues relating to policy towards state, integrated and independent schools”.

The terms of reference of this working group are being developed, but it is likely to focus on whether the current roles and responsibilities of Boards are sufficiently focussed on raising student achievement, and any reforms which could be made to promote this. This work will include extensive consultation with school Boards and the education sector.

Following the working group’s work, there are likely to be further changes to the regulatory framework for Boards of Trustees to support their focus on student achievement.

The following issues were raised during consultation and were considered as part of developing the preferred option.

Impact on schools – The amendment supports current best practice and we do not anticipate the majority of Boards having to change their policies or practice.

Local discretion – As in the current Section 75 of the Act, it is anticipated that the amended provision will allow for Boards to have a suitable level of discretion to control the management of the school, within the constraints of the law.

Action on non-compliance - The amendment will place student achievement at the centre of how Boards discharge their duties and powers. No change is being made to Part 7A which responds to situations involving risk. The Minister or Secretary will continue to take action to intervene in a school if he or she has reasonable grounds to believe that there is a risk to the operation of the school, or to the welfare or educational performance of its students.

Potential for Boards to be open to litigation if an individual child does not achieve – It is anticipated that the amendment will be drafted to make it clear that Boards should carry out their duties and exercise their powers so as to ensure that every student at the school is able to attain his or her highest possible standard in educational achievement, rather than that students have a right to achieve to a specific level of achievement. It is therefore unlikely that a new form of legal claim will emerge as a result of the amendment or that there will be a substantive increase in litigation commenced against Boards. The amendment may influence the thinking of Courts and Tribunals in some cases, for example in relation to claims relating to unjustified discrimination. This potential influence, particularly regarding the inclusive nature of education provision, is seen as a bringing more benefit than negative consequence. This influence is consistent with the section 8 of the Act and government policy regarding achievement and inclusion.

Alternative Option

Status quo

If no change were to occur, we envisage that the majority of schools would be unlikely to raise an issue with this gap in primary legislation. Most Boards would continue to carry out their functions as they do currently and as are set out in guidance and in response to the National Administration Guidelines (NAGs) and National Education Goals (NEGs).

However, for some Boards these existing mechanisms have not been effective in ensuring they are sufficiently focused on raising student achievement. Therefore in a minority of schools Boards would continue to provide insufficient support and challenge on educational matters.

Costs and benefits

For the majority of schools the amendments will simply provide greater clarity and embed current practice. Most schools will continue to use practices they currently have in place with any necessary adjustments made to ensure policies are consistent with the legislation.

There are unlikely to be any significant added costs for schools. There may be a need for some Boards to review and update their policies; however, we would expect this to happen as part of their regular planning and reporting processes.

Benefits are unlikely to be able to be measured in monetary terms. An increased focus on student achievement at a governance level is likely to lead to more effective support and challenge being provided, leading to better teaching practices, and increased student achievement. Increased clarity as to the Boards' primary focus will also support parents, students and the community to engage with the Board and how the school is managed.

Implementation and Review

General information on the new requirements will be issued to schools when the amendments come into force. This will be done primarily through guidelines.

No specific, formal review process is planned. The Education Review Office (ERO) currently considers school governance and leadership, as well as student achievement and curriculum, as part of the standard review process.

Consultation

Discussions occurred with the Treasury, State Services Commission and the New Zealand School Trustees Association. These discussions included consideration of the approach taken and the impact on schools. We also plan to discuss the proposed amendment with a number of school Board chairs to get a better understanding of how the change will be viewed on the ground and the further issues that should be considered to support and improve effective governance.