

Regulatory Impact Statement

Better supporting schools in difficulty

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education (the Ministry). It analyses a range of options to improve school performance by providing earlier and more graduated intervention options for schools that are experiencing difficulty or performance issues, but which cannot or will not take the necessary steps to improve.

This is one of a suite of RISs on amendments to update the Education Act 1989 (the Act). The analysis and resulting policy proposals focus on meeting the needs of schooling and early childhood education now and into the future.

The Ministry undertook a public consultation on the policy proposals for updating the Act between 2 November and 14 December 2015 and received over 1800 submissions. A report on the submissions is available on the Ministry's website.

The Ministry has identified that it needs to be better able to support schools in difficulty more quickly and with more tailored interventions. Statutory interventions are used only when schools cannot or will not take steps to improve their performance.

The Ministry considers this document to be a fair representation of the analysis of available options.



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Executive Summary

1. The current legislative options for intervention mostly address severe performance issues with schools and boards of trustees. The threshold for intervention is too high to recognise all the issues schools may need support with.
2. The objective is to improve school performance by providing earlier and more graduated intervention options for schools that are experiencing difficulty or performance issues, but which cannot or will not take the necessary steps to improve.
3. Five criteria were used to assess four options (Options A – D) for better supporting school boards that are experiencing difficulties, for the benefit of all children and young people:
 - gives the ability to intervene early
 - offers a graduated range of responses
 - tailors intervention to school need
 - intervenes as necessary while protecting school self-management
 - improves educational outcomes.
4. The preferred option is Option D, which introduces a wider range of interventions to allow more tailored responses to meet schools' needs, and applies a lower threshold to a greater number of interventions.
5. Option D addresses the problem definition and meets the policy objective. This option provides the opportunity for earlier intervention and a more graduated range of interventions.

Status quo

6. Most schools improve their performance through processes, strategies and support that they organise for themselves. There are many non-statutory options the Ministry of Education (the Ministry) provides to support schools and boards of trustees (boards), such as the Student Achievement Function ; Professional Learning and Development; Special Education support; and Positive Behaviour for Learning .
7. The Ministry also provides support by contracting the provision of board support, advice and training. The New Zealand School Trustees Association has been allocated over \$30 million over four years to provide schools with further contract the provision of board support, advice and training.
8. The increasing adoption of Communities of Learning provides more peer support for schools and boards as they are able to help each other and share resources, information and good practice.
9. Statutory intervention options are included in the Education Act 1989 (the Act). They are designed to be used in circumstances where boards or proprietors do not request assistance and do not engage with the Ministry, despite evidence of school performance issues. Interventions target governance issues, to establish a foundation for strong education performance and to avoid cutting across the board's employment responsibilities.

10. Statutory intervention options are designed to protect school self-management, in accordance with the principles underpinning Tomorrow's Schools. This means intervention must only be as necessary.
11. The 2014 Sector Working Group on Interventions reported to the Minister of Education (the Minister) on a review of statutory interventions. The group's report considered improvement to the statutory interventions within the existing legal framework. Many of the group's recommendations have been actioned, which has improved the application of the statutory interventions framework.
12. The current range of statutory interventions is generic. There are three intervention options considered to be for lower level performance issues. These options are:
 - require the board to provide information
 - require the board to engage specialist help
 - require the board to prepare and carry out an action plan.
13. In addition, the Secretary for Education (the Secretary) can dissolve a board and appoint a commissioner if, in certain prescribed circumstances, the governance situation is not clear.¹
14. There are three interventions considered for more extreme issues with school or board performance. These options are:
 - appointment of a Limited Statutory Manager (LSM)
 - the Minister requiring the appointment of a Commissioner
 - the Secretary appointing a Commissioner.
15. The threshold for intervention is the same for four of the six interventions described above. When the Secretary has reasonable grounds for concern about the operation of the school or the education or welfare of its students, the Secretary is able to require the board to provide information. This is the lower threshold for intervention.
16. However when the Secretary or Minister 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, the Secretary can require the board to engage in specialist help or require the board to prepare an action plan. The Minister may direct the Secretary to appoint an LSM or dissolve the board and direct the Secretary to appoint a Commissioner.
17. Around three percent of schools have an intervention at any one time, with 77 statutory interventions in place as of October 2015. The number of new interventions annually in schools is increasing, from 37 in 2012 to 57 in 2014.
18. While only around three percent of schools have an intervention in place, approximately ten percent of schools at any one time experience governance or management difficulties or significant under performance in terms of student achievement. It is often hard for the Ministry to assist in these situations, particularly if the school does not want the Ministry's help. The Ministry estimates that around

¹For example, if an election result cannot be determined, or if board members have not met for three months (see s78N(3)).

200 to 250 schools would be identified as needing additional support, including the 77 schools that currently have interventions in place.²

Problem definition

19. There are three key problems with the current intervention framework:
 - the Ministry is not able to provide statutory support to schools at an early enough stage
 - the current intervention options are not well-graduated enough to enable the Ministry to incrementally escalate intervention if the problem persists
 - the small number of current intervention options provides a limited range of responses and does not address all issues schools face.
20. The Ministry is unable to provide early enough statutory support for schools because a higher threshold for intervention is required for four of the six interventions, despite the different levels of significance. Only the requirement to provide information is assessed at the lower intervention threshold, where there must be concern over the operation of the school or the education or welfare of its students. This means the Ministry cannot provide statutory support to schools that are facing issues but do not meet the higher threshold for other intervention options. As a result, some schools are not receiving the necessary support.
21. The current mix of six statutory interventions is not well-graduated between low-level and high-level interventions. They do not provide a clear pathway of support for schools. If an intervention does not get a school back on track, there may only be the more serious options of appointing an LSM or Commissioner.
22. Current statutory interventions could be better tailored to support the range of issues schools face. They are targeted at extreme governance and board challenges. Competent governance can have flow on effects to student achievement, but support options could also be broader and address other issues that affect schools.

Objective

23. The objective is to improve school performance and student achievement by providing earlier and more graduated statutory support options for schools that are experiencing difficulty or performance issues.
24. Five criteria were used to assess how the options would improve the performance of schools and boards for the benefit of all children and young people:
 - *Enables early intervention* - The option must enable the Ministry to assist when the first signs of a school or board not performing appear. This prevents issues worsening, increases the likely success of intervention, and reduces the need for future intervention.
 - *Offers a graduated range of responses* - The option must provide a range of responses so that support and interventions are tailored to the level of problem that schools or boards are facing.
 - *Tailors intervention to school need* - The option must be able to provide specific

² This figure reflects Ministry estimates based on a range of information and data about schools' performance.

benefit to each school and must reflect the circumstances of each school.

- *Intervenes as necessary while protecting school self-management* - The option should limit impacts on schools' ability to make their own decisions and be self-managing. This meets the current legislative requirement that the principle of the self-managing school cannot be eroded through the application of interventions. The Ministry will only intervene to limit a board's autonomy when necessary.
- *Improves educational outcomes* - The option should have a positive impact on educational performance, particularly in relation to school and student academic performance, board governance, and the quality of teaching and learning. Achieving competent governance should have a flow on effect to student achievement.

Options and impact analysis

25. The Ministry considered four options to meet the policy objectives:

- **Option A:** Enhanced status quo
- **Option B:** Introduction of a mediation service with agreement to binding outcomes
- **Option C:** Application of the lower threshold for some existing interventions
- **Option D:** Introduce new intervention options and extension of existing interventions, and application of the lower threshold to more interventions

Option A: Enhanced status quo

26. Enhancing the status quo involves improving non-legislative actions, including advice to schools on how they can seek Ministry assistance, and clear guidance on how the Ministry will assist, while retaining the current range of statutory interventions.
27. This would maintain the current interventions of requiring information, the development of an action plan, or requiring the board to get specialist help, and the appointment of a LSM or a Commissioner in place of the board.
28. Schools that do not meet either the lower or higher threshold would receive non-statutory support through advice and guidance. This option offers some levels of intervention and some tailoring to school needs, but there are limited levels of graduation and limited ability to intervene early.

Ability to intervene early

29. Option A does not enable earlier interventions. There are limited low level support options unless a school seeks the Ministry's help, which means schools may experience greater difficulties. There is a risk that education performance, teaching quality and student outcomes will not improve if schools do not receive more tailored support in an appropriate timeframe.

Offering a graduated range of responses

30. Currently there is a small number of interventions and a big step up from the low to high level of intervention. There are also some schools that, while not identified as poor performing, could benefit from some level of intervention. This option does not offer a response for these schools.

Tailors intervention to school need

31. The enhanced status quo option does allow intervention to be tailored to school need, by improving non-legislative support. However, the statutory options would remain limited and may not address all the issues that schools face.

Intervenes as necessary while protecting school self-management

32. The enhanced status quo respects the concept of the self-managing school.

Improves educational outcomes

33. This option may improve educational outcomes to some extent but does not effectively support schools with teaching and learning issues. The specialist help role is the only one among the current range of interventions that can assess teaching or learning issues. Schools are not specifically required to accept the help or follow the advice of the specialist advisor.

Option B: Introduction of a mediation service with agreement to binding outcomes

34. The Ministry could seek agreement from the schooling sector that, where the Ministry and a school do not agree that Ministry support or intervention is needed, the Ministry and the school would participate in independent mediation, with the recommendations of mediation being binding on the parties.
35. This would extend non-legislative actions, with the advantage of involving an independent party in the process.
36. This would not change the statutory threshold applying to the interventions for the development of an action plan or requiring the board to get specialist help. This would effectively mean that, while a mediator's recommendations might cover these sorts of actions, a statutory intervention would not be possible unless the test applying to these interventions was met.
37. Schools that sought Ministry support for emerging performance difficulties would continue to receive advice and guidance as now, because mediation would not be needed.
38. This option is likely to have financial implications.

Ability to intervene early

39. The option enables earlier intervention by engaging with schools at an early stage.

Offering a graduated range of responses

40. This option creates another stage of intervention support that addresses school and board issues.

Tailors intervention to school need

41. The option allows intervention to be more tailored to a school's needs as the recommendations of the mediation would address the particular issues faced by the school.

Intervenes as necessary while protecting school self-management

42. The option protects school self-management and does not intervene unnecessarily.

Improves educational outcomes

43. This option can directly address academic performance or teaching quality issues, as well as other educational performance issues, by discussing these during mediation. Having binding outcomes can help ensure teaching as well as other issues are addressed.

Option C: Application of the lower statutory threshold to more existing interventions

44. The Act would be amended to apply the current lower threshold³ to two more of the existing interventions.
45. Under this option, the lower threshold would apply to the Secretary's ability to:
- require boards to provide information (lower threshold currently applies)
 - require boards to engage specialist help (move to lower threshold)
 - require boards to prepare and carry out an action plan (move to lower threshold).
46. The higher threshold would continue for the higher level interventions of appointing an LSM and appointing a Commissioner.

Ability to intervene early

47. The option allows for earlier intervention, as the lower intervention threshold applies to more intervention options.

Offering a graduated range of responses

48. The option allows interventions to be applied at different thresholds, which creates a more graduated range of responses.

Tailors intervention to school need

49. The option somewhat tailors intervention to school need, by enabling some existing intervention options to be used earlier.

Intervenes as necessary while protecting school self-management

50. The option protects school self-management and does not intervene unnecessarily.

Improves educational outcomes

51. The option improves educational outcomes to the same extent as the status quo but may not be fully effective in targeting academic or teaching performance issues.

Option D: Introduction of new intervention options, extension of existing interventions and application of the lower threshold to more interventions

52. Option D would add some new interventions, extend three existing interventions to make them more effective, and apply the lower threshold to more interventions. Together these changes would create a wider, more graduated range that would enable the Ministry to deliver more tailored statutory supports for schools.
53. There would be four new interventions:
- instigate a specialist audit to provide more information on complex problems,

³ The lower threshold for interventions is where the Secretary has concerns about the operation of the school or the education or welfare of its students.

such as unauthorised computer use or possible fraud

- call a case conference
- issue a performance notice
- appoint a statutory appointee to the board for a limited period of time. Such an appointee may be appointed as Chair.

54. Two existing interventions would be extended to ensure that schools give effect to the external support. The extension of the current intervention is shown in italics.

- Giving the Secretary power to require the board to provide information and, if required, *provide an analysis of that information when the Secretary has concerns about the operation of the school or the education or welfare of its students.*
- Giving the Secretary power to require the board to get specialist help, and if required, *to get an independent assessment of an aspect of the school. The Secretary should have the ability to require a report from the specialist adviser.*

55. Four interventions would remain as they are currently in the Act:

- The Secretary having the power to require board of trustees to develop an action plan.
- The Minister having the power to require the appointment of a Limited Statutory Manager to take over some of the functions of the Board.
- The Minister having the power to require the appointment of a Commissioner.
- The Secretary having the power to appoint a Commissioner.

Summary of proposed interventions and thresholds

Low threshold interventions

56. When the Secretary has reasonable grounds for concern about the operation of the school, or the welfare or educational performance of its students, the Secretary would have powers to:

- require the board to provide information and, if required, an analysis of information - extension of existing intervention
- require the board to prepare and carry out an action plan - move to lower threshold
- require the board to engage specialist help. Any person(s) engaged would provide a report to the Secretary and the board at a time nominated by the Secretary - extension of existing intervention and move to lower threshold
- call a case conference - new
- undertake a specialist audit - new
- issue a performance notice - new.

High threshold interventions

57. When the Secretary or Minister 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, they would be able to:

- require the appointment of an LSM - existing
- require the appointment of a Commissioner (by the Secretary or by direction that an appointment be made by the Minister in accordance with existing law) -

existing

- appoint a statutory appointee to the board for a limited period of time. Such an appointee may be appointed as Chair – new.

Analysis of new interventions

58. The new interventions would add to the existing interventions and extend them to create a wider range of options to better fit diverse situations. Interventions could then be initiated before serious problems develop, and concluded more quickly. This would mean that the Ministry could prioritise some of the schools that are facing significant challenges but are not currently subject to an intervention within existing resourcing. The new interventions may also be useful for some schools with an intervention currently in place.
59. A case conference could be used to get parties to agree on a course of action that would be recorded in writing and become binding on the relevant parties. The Secretary would be empowered to call the conference and specify who was required to attend. Representatives of the board, the principal and other relevant actors, such as the proprietor of an integrated school, would attend and this right would be included in the Act as a reassurance that decisions are not being made without their input. A case conference can assess if there are issues with teaching or student performance, and provide direct support to resolve these issues.
60. A performance notice requires the board to remedy a breach of performance by a certain time. This is useful where there are breaches of the law or obvious issues that the board needs to address - for example, when school property needs urgent remedial action.
61. Instigating a specialist audit could help provide more information on complex problems, such as unauthorised computer use or teaching capacity. This can directly address how to improve performance outcomes for students.
62. Having the Minister appoint a person to the board could provide a managed transition back to self-governance as there would be experienced guidance for the board. That person could be appointed as Chair.
63. There would be no change to the current circumstances where the Secretary, rather than the Minister, can appoint a Commissioner for technical reasons set out in the Act, such as if a board has not met for three months.
64. There is a risk that schools may be concerned that the government will use the increase in interventions to intervene more often and in more ways. This can be mitigated by the Ministry demonstrating that intervention powers will only be used when schools are not progressing with other support or when schools refuse to use other methods to progress outcomes.
65. There is also a risk that poorly targeted or tailored interventions negatively impact on school boards and their staff, particularly if interventions do not align with their needs. This can be mitigated by communicating with schools about how new interventions will be used and how the new threshold for interventions will be applied.

Ability to intervene early

66. The option provides the ability to intervene early, as the lower threshold would apply

to a wider range of options.

Offering a graduated range of responses

67. The option creates a wider range of more graduated interventions and the threshold for each intervention is better aligned with the nature of the response.

Tailors intervention to school need

68. The option allows intervention to be more tailored to school needs by offering a wider variety of options.

Intervenes as necessary while protecting school self-management

69. The option protects school self-management and does not intervene unnecessarily. The case conference specifically involves the board and other relevant actors or organisations in the resolution of issues. More serious interventions still have a higher threshold. The lower level interventions can better support schools to get back on track, avoiding the more serious interventions.

Improves educational outcomes

70. This option helps address poor student achievement, as well as other educational performance issues. The new range of interventions is broader and can be more specifically targeted to teaching or learning issues.

Summary of analysis of options for statutory interventions

71. A summary of the options as assessed by the criteria set in paragraph 24 is included below.

Criterion	Option A: Status quo	Option B: Mediation	Option C: Lower threshold to some existing interventions	Option D: New intervention options; extension of interventions; Lower threshold to more interventions
Ability to intervene early	Does not meet	Somewhat meets	Meets	Meets
Offers graduated levels of intervention	Somewhat meets	Somewhat meets	Meets	Meets
Intervenes as necessary while protecting school self- management	Meets	Meets	Meets	Meets
Tailors intervention to school needs	Somewhat meets	Somewhat meets	Somewhat meets	Meets
Improves educational outcomes	Somewhat meets	Somewhat meets	Somewhat meets	Meets

Consultation

72. Consultation on the proposal was carried out from 2 November to 14 December 2015 as part of the update of the Education Act 1989. Nearly 1000 submissions responded to the question on:

“What additional support or responses could be used to address problems that arise in schools and kura?”

73. Consultation did not ask for comments on the effectiveness or perception of current intervention options.
74. Most submitters suggested non-legislative support options. Most sector groups opposed making any changes to existing legislation. Submitters commented that they wanted a supportive regime that was not punitive.

Conclusions and recommendations

75. In summary, Option D best addresses the problem definition and meets the policy objective. Implementing Option D enables earlier intervention using more tailored, and better graduated options to get schools back on track quickly for the benefit of all children and young people.
76. The Ministry anticipates that the types of interventions that are undertaken will shift towards the lower level options. Similarly, the mix of expenditure across statutory interventions would change, but overall expenditure would not significantly increase and would be met within departmental baselines.

Implementation plan

77. The preferred option would be implemented by amending the Act. The 2014 Working Group on Intervention’s recommendations will continue to be implemented. The Ministry will administer and implement the changes.
78. The changes would come into effect after Royal Assent and would then apply to schools and kura. Schools and kura would be required to comply with these new requirements in the same manner as they are required to comply with the current requirements. Because the Ministry recommends a statutory intervention for application by either the Minister or the Secretary, schools and kura must comply with these.
79. If it proceeds, this proposal would affect operational matters for schools and the Ministry. It will require clear and sustained communication with the schooling sector about the policy objective, the new graduated range of interventions and how it will be applied. Information on the changes will be included on the Ministry’s website and through Gazette notices.
80. There will need to be operational changes within the Ministry to ensure that it is well positioned to assist schools in implementing and monitoring interventions.
81. It is unlikely that the Ministry will face barriers to implementing the new interventions. There are no significant risks associated with implementing the new interventions
82. The Ministry will continue to work to improve its risk monitoring so that it has rich,

timely data on which to base intervention decisions.

Monitoring, evaluation and review

83. The new interventions will be monitored and evaluated as part of the existing monitoring framework. The Ministry formally reviews interventions annually and more frequently if there is evidence of an alteration of risk.
84. The effectiveness of the changes will be assessed by school and board feedback, and the number and type of interventions that are applied to schools or kura.
85. The current evidence criteria on escalating risk would apply to new interventions. These include:
 - increase in level of intervention;
 - amendment of an existing level of intervention; or
 - the use of more than one intervention.
86. The current evidence criteria on reducing risk and/or sustainable progress would apply. The criteria are:
 - reduction of intervention;
 - amendment of an existing level of intervention; or
 - revocation of statutory intervention.
87. Current monitoring arrangements listed below would be used for new interventions:
 - Appointees' reports and/or boards' reports
 - Meetings with appointees and/or boards
 - Education Review Office evidence reports.