

Regulatory Impact Statement 3:

Clarifying Boards of Trustees' Roles and Responsibilities

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education. It assesses three options to clarify school boards of trustees' roles and responsibilities. It is part of a suite of changes to the Education Act 1989 that set the strategic direction for the education system for children and young people aged 0 to 18 years.

This RIS forms part of a group of four RISs that recommend linked regulatory changes to set the strategic direction for the education system by letting early childhood services and schools know what New Zealand's education objectives and medium-term priorities are, and how they contribute to, and are accountable for them. The group of four RISs include:

- Establishing enduring goals or objectives for education for children and young people aged 0 to 18 years
- Establishing a mechanism for government to set out its medium-term priorities for early childhood education and schooling
- Clarifying Boards of Trustees' roles and responsibilities (this RIS)
- Improving accountability (planning and reporting) for schools.

This group of four RISs form part 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 considers this document to be a fair representation of available options.



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Setting the Strategic Direction for the Education System

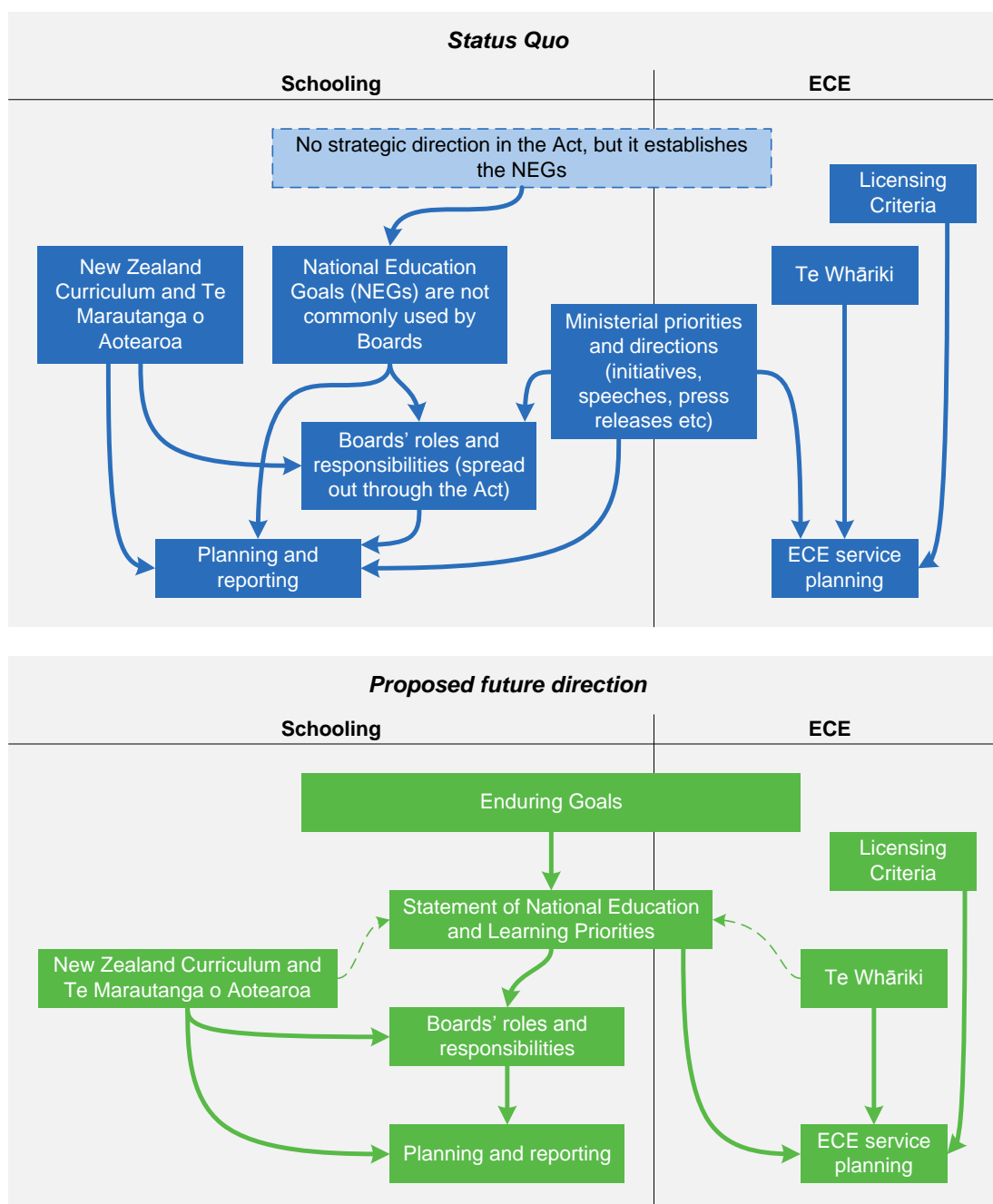
Overview

1. This group of Regulatory Impact Statements (RIS) has been prepared by the Ministry of Education. It comprises the following RISs:
 - Establishing enduring goals or objectives for education for children and young people aged 0 to 18 years
 - Establishing a mechanism for government to set out its medium-term priorities for early childhood education and schooling
 - Clarifying Boards of Trustees' roles and responsibilities
 - Improving accountability (planning and reporting) for schools
2. Together the RISs recommend linked regulatory changes to set the strategic direction for the education system by letting early childhood services and schools know what New Zealand's education objectives and medium-term priorities are, and how they contribute to, and are accountable for them.
3. The Government has a clear vision for an education system that meets the educational achievement challenge for every child and young person. This requires that system policy settings, including regulation, are fit for purpose and support early childhood services and schools to improve practice and decision making on the ground.
4. Currently, early childhood education and schooling do not have a shared set of objectives and medium-term priorities to guide their actions. Statements of objectives are in third-tier legislation and spread across a number of guiding documents which apply inconsistently to early childhood education and schooling. There is no appropriate mechanism for government to set out its priorities for the education of children and young people aged 0 to 18 years.
5. Legislation should support the education system to perform well by letting early childhood services and schools know what New Zealand's education system aims to achieve. It should allow them to prioritise between competing priorities, and focus on raising achievement and learning for every child and young person.
6. The strategic direction set by the objectives and government's medium-term priorities needs to be given effect through the roles and responsibilities of school boards of trustees, and the planning and reporting requirements for schools as Crown entities. Early childhood services have their own regulatory regime, and would need to take government's priorities into account when setting their strategic direction, and reporting to parents, whānau and government agencies.
7. These regulatory changes support the increasing collaboration that is taking place through Communities of Learning, where groups of early learning providers, schools, and tertiary providers across the learning pathway have come together to raise achievement for children and young people.
8. The changes align with the Taskforce on Regulations Affecting School Performance¹ recommendation that the Education Act 1989 should provide a clear and enduring statement of purpose (objectives) for education for 0 to 18 year olds, from which medium-term priorities and planning and reporting requirements can flow.

¹ The Taskforce was established by the government in November 2013 to consider how improved legislation and regulation could contribute to the goal of raising the achievement of all students, but particularly the most vulnerable.

9. The diagram below shows the status quo and the system with the new strategic direction in place.

How strategic direction flows through the Education system



Status quo

10. New Zealand's schooling system is characterised by a high level of devolution. The Tomorrow's Schools reforms and the introduction of the Education Act 1989 (the Act) shifted responsibility for the administration and management of individual schools to boards of trustees (boards). Devolved, self-managing schools, governed primarily by parents, were expected to foster better teaching and learning and a higher performing education system.
11. Unlike other Crown entities, the duties, functions and powers of boards have never been

comprehensively set down in legislation. Conversely, the Act, which also establishes councils as the governing body of Tertiary Education Institutions, clearly sets out the duties, functions and powers of councils in one place. Because of this lack of clarity, school boards may interpret their roles and responsibilities in diverse ways.

12. Research² supports a positive association between effective school governance and student achievement. There is widespread agreement in the literature on the characteristics of effective governance.
13. Well performing boards focus on student learning and achievement, exercise scrutiny and make data-informed decisions, maintain positive relationships and clear roles, use time efficiently and engage with the school and community. Good governance can help to equalise opportunity for students.
14. The majority of schools are well governed with only a small proportion identified as being at significant risk, but there is room for improvement. While many boards understand that raising student achievement is their primary role, other responsibilities such as property and financial management can dominate the activity of some.
15. The focus for boards on student achievement was established in 2013 when section 75 of the Act (functions and powers of boards) was amended to add:

“A school’s board must perform its functions and exercise its powers in such a way as to ensure that every student at the school is able to attain his or her highest possible standard in educational achievement.” (This is sometimes referred to as boards’ primary duty.)
16. The table below highlights the current expectations, or roles, of boards and references where in the current regulatory framework each is located.

Current expectation of boards	Location in regulation
Ensure that every student is able to attain his or her highest possible standard in educational achievement.	Sections 61 (2), 75 and 77 (b), National Education Goals (NEGs) 1 and 2.
Meet any requirements for what is taught i.e. the curriculum.	Section 60A, NEGs 3 and 5, National Administration Guidelines (NAGs) 1
Assess students both against national benchmarks and qualifications and to evaluate their individual progress	NEGs 6 and 8, NAGs 1(b) and 2A
Provide a safe physical and emotional environment.	NAG 5, section 77 (provision of guidance and counselling)
Keep the school in good financial health.	NAG4, section 61(4)(c).
Meet any priorities set by the government of the day.	Section 60A(1)(a), 61(2), 87(2)(e), and sections 5, 107 and 114 of the Crown Entities Act 2004
Plan for and report on all the above activities.	Section 61(4)(c)

² Ministry of Education report: The impact of school governance on student achievement - a selective review of the evidence (November 2012).

17. The status quo means that boards might not necessarily know that their governance role covers things like employing the principal or overseeing schools finances. For example, the majority of trustees do not consider oversight of finances and the employment of the principal to be key aspects of the role of a board³.
18. Boards receive a range of guidance and support from the Ministry of Education (the Ministry) and the New Zealand School Trustees Association (NZSTA), the national body representing over 90 percent of boards.

Problem definition

19. The Taskforce on Regulations Affecting School Performance (the Taskforce) identified that the responsibilities of boards are unclear in the Act, and this creates uncertainty about what it is they should, and can legally, do. Their roles and responsibilities are scattered over different sections of the Act and the NEGs. In some cases, they are not explicitly stated and must be inferred.
20. In addition, the current wording in the Act relating to the general provisions for boards and principals can create a lack of clarity between governance and management in schools. A board has complete discretion to control the management of the school as it thinks fit, and a principal has complete discretion to manage the school's day-to-day administration as he or she feels fit. However, the principal must comply with the board's general policy directions.
21. Boards themselves are unclear on roles and responsibilities and agree that increasing clarity and visibility would be helpful. In its submission on the update of the Act, NZSTA agreed with the Taskforce's finding that the provisions of the current Act can create uncertainty about what it is that boards should, and can legally, do among other agencies, including the Ministry itself. It recommended that:
 - the Act define the role of boards as being to govern the school community in such a way as to give effect to the national vision and objectives for education, and
 - any other specific responsibilities be defined through regulation rather than in the Act.

Objective

22. The objective is to improve school governance by providing clarity on what boards must do to carry out their primary role and focusing boards on what matters for raising student achievement.
23. Three criteria were used to assess how options to address the problem definition would meet the objective:
 - *Improve clarity of role for boards of trustees* - The proposal should be specific enough to improve boards' understanding of their role and remove the need for boards to infer what they are meant to be focussing on.
 - *Focus boards of trustees on student achievement* - The proposal should enable boards to prioritise activities that support student achievement.
 - *Clarify the distinction between the respective roles of boards and principals* – The proposal should resolve the current lack of clarity between these roles.

Options and impact analysis

³ New Zealand Council for Educational Research (NZCER) National survey of secondary school boards (2012).

24. Three options were considered to achieve the objective:

- **Option A:** Maintain the status quo - no clear articulation of the roles and responsibilities of boards in the Act. Boards' roles and responsibilities are communicated through guidance from the Ministry and NZSTA.
- **Option B:** Section in the Act setting out a governance statement and generic governance roles – a new clause broadly stating that the role of a board is governance and adding a list of generic governance roles to guide their work. This option would retain the primary duty clause (section 75 of the Act).
- **Option C:** Section in the Act setting out the roles and responsibilities specific to a school context – this option would also broadly state that the role of a board is governance and set out the roles and responsibilities of boards of trustees specific to a school setting. This option would also retain the primary duty.

Option A: Status quo (non-regulatory option)

25. Under the status quo, there is no explicit articulation in the Act of the roles and responsibilities of a board. Therefore a lack of clarity for boards on their roles and responsibilities would persist. This would mean that what boards have to do will still need to be largely inferred from the legislation and boards may continue to interpret their roles and responsibilities in diverse ways. This situation would continue to differ from that of other Crown entities.
26. Under this option, the primary duty clause would continue to focus boards of trustees on student achievement. The status quo could be enhanced by updating guidance and support from the Ministry and NZSTA.

Criteria	Assessment
Improve clarity of role for boards.	No, lack of explicit statement in the Act continues.
Focus boards of trustees on student achievement.	To some extent. The primary duty remains, but boards have to infer the other activities they should be undertaking to support student achievement.
Clarify the distinction between the respective roles of boards and principals.	No, the current lack of clarity continues.

Option B: Section in the Act setting out a governance statement and generic governance roles

27. It is important for any organisation to have a clear mandate as this can help promote focus, accountability, compliance, legitimacy, and predictability. In addition, clarity is not just about how roles, functions and duties are laid out in statute or a framework, but in how an agent's actions align, and are perceived to align, with these purposes.
28. Under this option, the Act would be amended to include a statement that the board is the governing body of the school, retain the primary duty provision and insert a list of generic governance roles into the Act. The governance roles could be similar to the State Services Commission's guidance on the roles of boards of Crown entities to:
- set the entity's strategic direction
 - exercise the entity's powers and functions itself or, through delegation, empower the CEO and others to implement the board's policies
 - appoint and oversee the performance of the CEO
 - ensure the entity's functions are performed efficiently and effectively

- manage risk and ensure compliance
 - provide assurance of fiscal responsibility
 - maintain appropriate relationships with key stakeholders
29. This option would make it clear that the role of a board is to govern a school, and would focus them on the primary duty and well-established aspects of good governance. It would align boards with other Crown entity boards as covered in the Crown Entities Act 2004.
30. This option would go some way towards helping boards prioritise their work. However, each board would need to work out how to adapt the generic governance duties to the school setting, and in particular, determine how to carry out the roles to support student achievement. Further guidance, training and other types of assistance would be necessary to support them to do this.
31. There is a risk in allowing this much freedom of interpretation to boards. In the absence of an explicit translation of governance roles to the school context some boards may continue to focus on the things that are not directly relevant to raising student achievement and perpetuate inconsistencies in how boards understand their role.
32. The lack of clarity between the role of the board and the principal would be resolved.

Criteria	Assessment
Improve clarity of role for boards	Yes, makes it clear that a board's role is to govern and provides a generic guide as to what this role entails.
Focus boards of trustees on student achievement	Yes, primary duty remains but individual boards would need to adapt the generic governance roles to the school setting.
Clarify the distinction between the respective roles of boards and principals	Yes, the role of the board and the CEO (principal) is explicit in the list of governance roles.

Option C: Section in the Act setting out tailored roles and responsibilities for boards

33. This option would amend the Act to include a statement that the board is the governing body of the school, retain the primary duty provision, and insert a list of tailored, schooling-specific governance roles in one place. The roles would cover:
- ensuring students reach their highest possible educational standard (existing primary duty)
 - setting, monitoring, undertaking internal evaluation and reporting on a strategic plan
 - setting policies for management to implement
 - being the employer of staff (existing requirement)
 - giving practical effect to the Treaty of Waitangi, including ensuring that all reasonable steps are taken to provide instruction in tikanga Māori and te reo Māori where requested (existing requirement)
 - operating in a financially responsible way
 - ensuring a safe physical and emotional environment for staff and students
 - ensuring an inclusive school
 - ensuring that there is consultation and collaboration with families and whānau, the school community and the school's Māori community

- ensuring collaboration with other schools and entities on matters related to students' education and well-being.

34. This option would provide a statutory basis for boards to understand what they should prioritise when undertaking their work. The list of roles includes governance responsibilities closely linked to student achievement – for example, a safe physical and emotional environment is necessary for students to achieve their highest possible educational standard.
35. Setting out the roles and responsibilities of boards of trustees in the Act would make it easier for trustees to understand what it is they should focus their time on. This would be especially helpful for new trustees, given the triennial election cycle, and consequent turnover of trustees.

Criteria	Assessment
Improve clarity of role for boards	Yes, makes it clear that a board's role is to govern and provides a school specific guide as to what this role entails.
Focus boards of trustees on student achievement	Yes, it expands beyond the primary duty through a list of responsibilities tailored to the schooling setting.
Clarify the distinction between the respective roles of boards and principals	Yes, through a statement that the board is the governing body of the school and the specific list of responsibilities.

Assessment of policy options by criteria

36. A summary of the options as assessed by the above criteria is included below.

Criteria	Option A: Status quo	Option B: Section in Act setting out a governance statement and generic governance roles	Option C: Section in the Act setting out tailored roles and responsibilities
Ensure clarity of role	Does not meet	Somewhat meets	Meets
Focus on student achievement	Somewhat meets	Somewhat meets	Meets
Clarify distinction between boards and principals	Does not meet	Meet	Meets

Consultation

37. In late 2015, public consultation was held on what the roles and responsibilities of boards should be as part of the update of the Act consultation process. The Ministry received over 1800 submissions. A report on the submissions is available on the Ministry's website.

Summary of feedback received

38. Submitters were asked to respond to the following question:

“What should the roles and responsibilities of a school or a kura board be?”

39. Sixty-seven percent (1243) of submitters on the update of the Act answered the question. Ideas from submitters raised a wide range of potential roles and responsibilities for boards. The most common themes cited were:

- governance (as opposed to management)
- ensuring learners reach a high educational standard
- providing a safe environment for staff and students.

Should the roles and responsibilities of boards of trustees be in the Education Act?

40. The question in the discussion document did not ask whether boards' roles and responsibilities were currently unclear. However, some education sector organisations expressed views on these matters. There was a lack of agreement on whether the roles and responsibilities should be defined in the Act.

41. Eighty-four submitters specifically did not support either any change or putting the roles and responsibilities in the Act.

Clarifying governance and management

42. Submitters talked about delineating between the board's role of governance as opposed to the day-to-day management of a school. Clarifying a principal's responsibilities and authority in relation to the board was also raised. However, it was noted that governance and management are interconnected in Kura Kaupapa Māori where boards and whānau operate collaboratively in decision making.

43. Te Rūnanga Nui o Ngā Kura Kaupapa Māori suggested that the Act should reflect the role and mana of the whānau in decision making and participation in governance and management.

44. The New Zealand School Trustees Association (NZSTA) agreed with the Taskforce on Regulations Affecting School Performance, that the principal's core roles and responsibilities should include professional leadership of the school, and all aspects of management and operation of the school.

Further feedback

45. A list of ten proposed roles and responsibilities for boards was discussed at the Ministerial Cross-Sector Forum on Student Achievement on 11 March 2016. Workshops were also run at four regional forums. Material on the consultation was available on the Ministry's website and included a facility for the public to email their comments. . The material was also promoted through bulletins to leaders of schools and early childhood services.

46. Most submitters who answered the question supported the proposed roles and responsibilities for boards. Eight out of eighteen submitters opposed requiring boards to collaborate with other schools. Five submitters who answered this question also objected to requiring boards to ensure educational achievement as they saw this as being outside of boards' control.

47. Suggestions for additional responsibilities included boards working with principals, ensuring a safe environment for staff and requiring boards to be good employers. Three out of 17 submitters who commented on the question stated that there were too many roles and responsibilities.

48. The Ministry made some minor changes to the wording of the proposed roles and responsibilities in response to the feedback received.

Conclusions and recommendations

49. The proposal aims to clarify the roles and responsibilities of boards, and help them focus on the things that matter in raising student achievement. Based on the assessment above, the preferred option is Option C, establishing roles and responsibilities in the Act that are tailored to the schooling setting.
50. Option C best meets the policy objectives by:
 - improving clarity of role for boards, including governance, by setting out schooling-specific roles and responsibilities
 - focusing boards on governance responsibilities that support the primary duty of boards
 - resolving the lack of clarity between the roles of the board and the principal.
51. This change is being considered as part of broader changes to the Act which will link the roles and responsibilities with the objectives for education; the establishment of a mechanism for government to set out its medium-term priorities for early childhood education and schooling; and proposed changes to the accountability framework (planning and reporting).

Implementation plan

52. Any changes to boards' roles and responsibilities would come into effect once the Bill has been passed. The proposed objectives for education would also come into effect once the Bill is passed. The statement of National Education and Learning Priorities and planning and reporting regulations would come into effect later, if the suite of changes to set the strategic direction for early childhood education and schooling goes forward. This means there may be a two to three year period when boards need to operate through a transition phase as the new strategic direction framework is implemented.
53. To prepare for this, the Ministry and NZSTA will work together on a change management plan to ensure boards have the support they need. This will include strengthening current and developing new guidance to ensure boards understand and make the best use of the improved clarity and focus. This will be part of the Ministry and NZSTA's business as usual support for boards.
54. The timeframe for the introduction of any new planning and reporting requirements is dependent on the enactments of the objectives for education and a statement of National Education and Learning Priorities. The intention is that the new system will be fully operational by the beginning of 2019.
55. There will be one-off costs to update guidance material and this will be scoped and budgeted for, with costs met within baselines.

Monitoring, evaluation and review

56. The Ministry expects to see an improvement in the performance of boards of trustees and a better understanding of their role.
57. The main mechanism for monitoring, reviewing and evaluating the performance of schools is through regular Education Review Office reviews, Office of the Auditor-General audits and NZCER surveys. We expect that any changes to the regulatory settings would be reflected in these assessments over time.
58. The combined impact of the proposals to set the strategic direction will be monitored through the alignment of teaching and learning outcomes to the strategic direction.

Analysis of school and early childhood performance that occur at regular intervals can be used to evaluate the efficacy of the policy.