

# **Regulatory Impact Statement**

## **Strengthening Collaborative Governance**

### **Agency Disclosure Statement**

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education. It provides analysis of options designed for schools and Communities of Learning to have effective collaborative arrangements at a governance level.

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



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## Background

1. The “Tomorrow’s Schools” reforms of 1989 changed the administrative unit for New Zealand schools to a, primarily elected, board of trustees (board) governing each school. While this has led to stronger community involvement in the operation of individual schools, the model of individual boards has resulted in limited collaboration between schools and a degree of inefficiency in administration as each board works to carry out the many responsibilities involved in governing a school.
2. However, promoting collaboration that is purposeful and evidence-driven is a feature of education systems that show sustained improvement. Successful systems create deliberate opportunities for teachers to open up their practice to observation and discussion with colleagues within and across schools in ways that stimulate improvement.
3. In 2014, Investing in Educational Success (IES) was launched. IES has two themes:
  - To enable collaboration between teachers, leaders, schools and communities across the national network
  - To improve career pathways for teachers and leaders. IES provides recognition for classroom and content expertise, and for leadership of improved outcomes for students.
4. One of the main features of IES is the voluntary formation of Communities of Learning (CoL). Schools join together to form a CoL to identify a common achievement challenge to the achievement and progress of their students. They agree on how they will work together to address this. Extra staffing is provided. Some CoL also include early childhood services, particularly if their achievement challenge focuses on improving transitions.
5. When CoL are established schools sign a Memorandum of Agreement with each other that sets out the details of the achievement challenge the CoL agrees to work on over several years. The Minister of Education (the Minister) signs off on the achievement challenges. The average CoL has about 8 members. There are 117 established CoL, encompassing every education region, with 1000 schools and over 320,000 students.
6. CoL are primarily accountable for their achievement challenge to their members rather than to central government. This was a feature of the original design in order to build CoL ownership of achievement challenges.
7. To build on the new operational framework that CoL offer, Cabinet has approved the Ministry investigating how bundled packages of services for CoL could be developed, creating a menu of external providers. Early opportunities are already being explored in property management and ICT support. There is potential for bundling and streamlining other services such as social support for children and young people, and back office business services. Taking this approach should generate economies of scale and enable principals and teachers to focus more on their core business of raising student achievement.

## Status quo

8. CoL are seen as the primary lever to increase collaboration within the schooling system. CoL decide on their own form of governance, since a CoL is not a legal entity. As collaboration among CoL members deepens and evolves to take on other functions, there

may be a demand for different governance arrangements that are more suited to those expanded functions.

9. The Education Act 1989 (the Act) does provide some avenues for more collaborative governance or operational arrangements.
10. Section 110 of the Act allows for a combined board to govern more than one school. There has been relatively little use of this section. Schools have expressed a concern that the individual schools will lose their identity or that the focus of their school will be lost with a combined board. Currently there are only ten combined boards.
11. The Act also allows boards to do work for other boards, but this ability has also been infrequently used.
12. Many secondary schools will be familiar with the process for a statutory agreement which is used for secondary-tertiary partnerships such as trades academies. The Act allows a group of secondary and tertiary providers to be recognised as a secondary/tertiary partnership, and to enter into an agreement with the Secretary for Education (the Secretary) about the services they will provide and the way that planning for and reporting on these activities will be reported to the Secretary. This does not create a new legal entity, but provides a more formal structure within which their accountability to each other and to the Secretary can be set.

## **Problem definition**

13. To support the resolution of achievement challenges, some CoL may wish to take on more functions or responsibilities, or may wish to combine the individual resources of their members. This will require the reduction or removal of barriers to effective collaboration. Four issues have been identified.

### *Problems with constitutions of combined boards*

14. Section 110 allows boards to combine, but the arrangements for the composition of the combined board are unclear and become unwieldy when there are more than three schools. For example, if each school had a principal and staff trustee as well as elected parent representatives, the board could become so large as to be inefficient.
15. Section 105A of the Act permits the Minister to prescribe an alternative constitution for a board. This allows a constitution that departs from the standard requirement for membership set out elsewhere in the Act. But the Minister can only do this for a combined board where the boards concerned request it.

### *Light touch accountability*

16. Current accountability through the Memorandum of Agreement makes CoL members accountable to one another. This is appropriate when the focus is on professional collaboration, and the resourcing is provided mainly through Investing in IES-related staffing. However, supporting the achievement challenge, for example through the bundled support packages where there may be more financial responsibility, may require a different sort of accountability regime.

### *Potential Instability*

17. CoL depend on relatively informal arrangements. The achievement challenge agreement has no legal status. The CoL itself, as an unincorporated group, should not be an employer or hold funding. To do so would incur liability for the individual people who make up the management of the group. When there is a voluntary group, there is also a risk that it will become unstable if members join and leave at short notice.

### *Limits on boards doing work for others*

18. Some CoL have early childhood services as members, especially if their achievement challenge is focused on better transitions. Some are building links with social services agencies. In the future, CoL may include or have much stronger links with tertiary institutions. Section 74 of the Act restricts boards to doing work for other boards, and does not allow a board to do work for other education institutions or social services.

## **Objective**

19. The objective is for schools and CoL to have effective collaborative arrangements at a governance level for the educational benefit and well-being of children and young people within the CoL.
20. The options are assessed against the following criteria:
- *Governance options that will enable boards to collaborate more*
  - *Providing arrangements that enable multi-board accountability for a wider range of functions*
  - *Providing arrangements that create stability for CoL membership*
  - *Allowing schools to collaborate better with other educational institutions and social services for the benefit of their students*

## **Options**

21. CoL are at the beginning of their development. Any options need to retain the voluntary nature that is a feature of CoL design, but create some pathways for future development.
22. Two options were considered and rejected. Both would establish legal entities that CoL could have used.
23. The first option was to clarify and adapt the law relating to multi-parent subsidiaries, so that, like other Crown entities, boards could join together to set up a registered company. While this would have allowed a secure basis for employment and fund holding arrangements, running a company would be a high risk, high compliance option for many boards, with costs for directors' fees and other Companies Act obligations.
24. The second option was to establish a new type of Crown entity for CoL. This would have required setting out in legislation the functions of the entity, and it is too early to accurately determine what these might be. Given that there could be about 250 CoL, this option would have been a significant and costly machinery of government change that is not currently warranted.
25. Two options that better address the current situation are identified and assessed. They are:

- **Option A:** Encourage boards to collaborate - this option would involve deliberate work to encourage boards to use their CoL collaboration as a springboard for other aspects of working together. The option could promote the benefits of having a combined board, and encourage boards to ask for an alternative constitution to get a workable combined board.
- **Option B:** Legislative changes to enhance existing provisions for governance collaboration - a package of legislative changes could smooth the way for greater collaboration. This package includes:
  - establishing a process for a statutory agreement in the Act. The parties in a CoL would be identified through a Gazette notice issued by the Secretary for Education (the Secretary). The CoL would then enter into an agreement with the Secretary that sets out what the group is to do. The Secretary could prescribe requirements for planning and reporting
  - giving the Minister the ability to prescribe an alternative constitution if more than three boards choose to combine
  - expanding section 74 of the Act to allow boards to do work for other educational services and social services where this would benefit the students or institutions covered by the CoL. This could, for instance, be used for a board to employ a person to be an IT specialist or a health or welfare specialist to work across the CoL.

## Impact Analysis

26. Under both options, there is the ability for schools to move to a combined board. The decision for a board and its school community to give up its own board in favour of a combined board is likely to take time and result in strong debate.
27. Both options have the potential to increase the formality of CoL relationships, which may increase compliance costs for individual schools. Neither option incurs extra financial costs.
28. Because both options are voluntary, they would have little impact on boards and CoL if they do not choose to make any changes.

## Criteria analysis

### Option A. Encouraging boards to collaborate

29. Option A is an enhanced status quo. It would encourage boards to collaborate more by focusing on the benefits for schools. This could involve communications to principals and boards highlighting the existing statutory opportunities for collaboration, and the benefits and potential uses of each. The New Zealand School Trustees Association's assistance in explaining and promoting the opportunities could be sought.
30. It is difficult to judge whether more explanation and encouragement would overcome boards' current reluctance to enter more formal arrangements, such as combined boards. Developing proposals for combined boards with alternative constitutions would remain a significant undertaking for individual CoL, particularly if the combined board is to avoid being overly large and complex.

31. Enhanced accountability requirements could be added to the current Memorandum of Agreement if a CoL took on extra responsibilities beyond its achievement challenge but the informal nature of the agreement may mean that some boards are reluctant to commit.
32. This option would do little to improve stability. Boards and other CoL members would be able to move in and out of CoL membership at short notice. Stability would be important if there are shared services with financial commitments involved.
33. This option would encourage CoL to work with other educational institutions and social services, but it would not provide a mechanism for boards to provide these services beyond schools.

#### **Option B. Legislative changes to enhance existing provisions**

34. Option B would encourage boards to collaborate by making legislative changes that would make it easier for them to do so. The enhanced formality of an optional agreement with the Secretary, and the certainty of a viable combined board may give boards more confidence to pursue these paths to broaden their joint activities.
35. CoL would be able to access more rigorous accountability requirements through agreements with the Secretary to plan and report on partnership activities. Statutory accountability is a stronger mechanism than the current Memorandum of Agreement, and would be more appropriate as the activities of CoL expand. The requirement is flexible enough to allow CoL to develop in ways beyond the current achievement challenges and the bundled packages, but provides a mechanism for more formal accountability arrangements to be put in place if required.
36. Option B creates a climate of greater stability through the Gazetting of the partners in a CoL. If members wish to withdraw from the CoL, they would have to request that the Secretary change the gazette notice.
37. Expanding who boards can do work for creates the opportunity for a CoL to offer services to other agencies to address other issues beyond quality teaching that affect their students' educational outcomes and resolve achievement challenges. Enabling CoL to enter into contracts with other organisations also creates the potential for a more joined up pathway for students as they move through their education.

#### **Comparison of options against criteria**

<b>Criterion</b>	<b>Option A: Encouraging collaboration</b>	<b>Option B: Package of legislative changes</b>
Encourage more collaboration by boards	Unlikely to greatly increase collaborative governance arrangements	Takes away a barrier to collaborative governance arrangements, and provides boards with more confidence about collaborative arrangements through option of a statutory agreement

Criterion	Option A: Encouraging collaboration	Option B: Package of legislative changes
Broadened accountability	Could improve accountability through adding to the Memorandum of Agreement	Broadens accountability mechanism within CoL to enable expanded activities in a way that protects the interests of both individual schools and the Crown
Improve stability of CoL relationships	Would not improve stability	Has the potential to help improve stability, by offering more formal collaboration options
Better collaboration with other educational institutions and social services for the benefit of students	Could improve collaboration but practical, tangible support is limited	Provides a mechanism to permit more practical, tangible support

## Consultation

38. A public discussion document on the update of the Act asked for responses and thoughts on the question:

*“What ways could boards work more closely together?”.*

39. Nearly half of submissions (48 percent or 897) addressed the ways in which boards could work more closely together. There was a range of responses to how boards could work together more, and also on the degree to which this should occur.
40. Many submitters were happy with the way boards currently work together, especially with the flexibility to choose how and when they collaborate. Some submitters identified the need for more information sharing between boards, especially for students at transition points. There was support for improving board expertise through joint professional development and shared functions such as secretarial, legal and financial services. Shared governance of schools as a way to maximise limited resources and skills was also raised.

## Conclusions and recommendations

41. The policy objective is for schools and CoL to have effective collaborative arrangements at a governance level to support the achievement and well-being of children and young people within the CoL. The preferred option needs to balance the early stage of development that CoL are at, with opportunities for future expansion.
42. The Ministry’s preferred option is a package of legislative changes that makes some relatively minor changes to current legislation, and builds on an existing model for a statutory agreement. This will achieve the objective better than enhancing the status quo which would retain existing barriers and provide more limited opportunities for CoL to adopt collaborative governance arrangements.
43. Although there is a risk that boards could lose their focus on student achievement if they expand their collaborative activities, we think that this risk is minimal given the focus on

student achievement through the achievement challenges and the other amendments in this Bill such as the statement of National Education and Learning Priorities and the clarification of boards' roles and responsibilities. Strengthening collaboration at governance level is likely to be directly focused on activities related to student achievement and well-being, or on sharing administrative services to free up principals and teachers.

## **Implementation**

44. The changes would come into effect following passage of the Bill including Royal Assent and would then apply to schools and kura.
45. The Ministry will prepare information about the changes for the consideration of boards and CoL. These options may be promoted, if appropriate, in business as usual work that the Ministry does with CoL. The Ministry will also prepare a draft statutory agreement as a basis for use by any CoL that are considering this option.

## **Monitoring, evaluation and review**

46. The Ministry already has systems to gather data about CoL and the details of their achievement challenges. This will allow us to monitor whether CoL are discussing and adopting the arrangements that the legislative changes will address. In addition both a combined board and a statutory agreement will require approaches to the Ministry. The Education Review Office is developing a methodology for evaluating CoL which will also assist with review and monitoring of these proposals.