

Regulatory Impact Statement

Update of the Education Act 1989 – Better management of education provision

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education. It provides an analysis of options to improve the management of education provision.

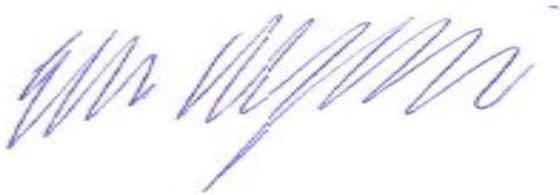
This is one of a suite of RISs on amendments to update the Education Act 1989 (the Act). The analysis and resulting policy proposals focus on meeting the needs of schooling and early childhood education now and into the future.

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 proposals in this RIS address issues where operational practices have evolved since the passing of the legislation; gaps in the legislation hamper the management of education provision; and sections of the Act contain unnecessary duplication. The proposals seek to strike a balance between legal certainty and operational flexibility in the management of schooling provision.

The Ministry has not identified any serious risks, and the preferred options are not likely to impose any significant additional costs for stakeholders or the Crown.

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Status quo and problem definition

1. The government invests substantially in education for the schooling sector and has a significant interest in what education is provided, how it is provided, and what is being achieved. Over \$6 billion was allocated to funding for schooling in the 2015/16 year, and the government holds over \$23.5 billion in Crown property schooling assets.
2. In relation to the provision of education that best meets the needs of all learners in a geographical area, statutory provisions should provide clarity and certainty to stakeholders and decision-makers.

Consultation requirements on closing or merging a school

3. Duplication exists in consultation requirements where the established operational practice for determining education provision under an area strategy has evolved from minimum statutory requirements.
4. Area strategies, which are a non-legislated operational process, are one way in which the Minister may reach a decision to close or merge a school. They are undertaken when demographic change in a location means the provision of schooling requires a review. As the Crown has significant funding and infrastructure in state schools, they are the main focus of area strategies. This includes designated character schools established under sections 155 and 156 of the Act, and special schools.
5. Under the area strategy process, the Minister will extensively consult on proposals to close or merge a school, should it be a potential option to address a surplus of school places. After completing an area strategy, the Minister must comply with section 157 of the Act which sets out the consultation requirements the Minister must follow whenever he or she decides to merge or close a school. This includes consulting with the boards of all state schools whose rolls may be affected by that action.
6. The non-statutory process of undertaking area strategies and the statutory process for closing and merging schools therefore cause duplication of process. If an area strategy results in recommendations for school closures or mergers, section 157 requires the Minister to conduct a consultation even if one has previously been undertaken under the area strategy. This statutory requirement prolongs the process and can lead to uncertainty for schools and their communities, as well as consultation fatigue.
7. There is an opportunity to address the repetition between this operational process and legislative requirements over consultation processes if decisions to close or merge a school have been made following the area strategy consultation process.

Establishing designated character schools

8. The establishment of designated character schools is a decision over which the Minister has absolute discretion. This responsibility is covered in sections 155 (for kura kaupapa Māori) and 156 (for other designated character, including other Māori-medium, schools). The two sections are repetitive and cover many of the same requirements.
9. The duplication within sections 155 and 156 is unnecessary and adds complication to the readability and comprehension of the legislation. The update of the Act provides an opportunity to make the processes for establishing designated character schools more accessible and simple to follow.

10. Additionally, a clause in sections 155 and 156 is no longer needed. This is the requirement that, to ensure there is demand for the school, the Minister must be satisfied that the parents of at least 21 people entitled to enrol at the school have requested its establishment.
11. In operational practice, designated character schools become established through work the Ministry does in the education system, such as through iwi partnerships. At the point the Minister decides to establish such a school, he or she will be well satisfied, through the operational processes undertaken by the Ministry, of its need. This means the statutory requirement of the request from 21 parents is unnecessary.
12. The legislation and processes on establishing designated character schools could be reframed to address the issues with duplication and unnecessary requirements, leading to a more streamlined, clearer process.

Off-site school campuses

13. Schools operating across more than one site are another way of making the best use of education provision. For example, students enrolled at a special school can attend a unit on the site of a regular school to facilitate their inclusion in education with their peers. There are mechanisms in the Act, such as through the rights of schools to lease their property, that allow for this.
14. The government is constrained in its ability to control the use of off-site campuses as there is nothing in legislation setting out its right to ensure they are operating efficiently, or to disestablish inefficient arrangements. This gives schools autonomy over establishing off-site campuses, and, because of this, some practices have arisen that can have adverse impacts on the government's ability to manage education provision. An opportunity exists to ensure that off-site campuses are used in a way that makes best use of education provision in the area.

School board mergers

15. The "Tomorrow's Schools" reforms of 1989 established elected boards of trustees to govern each school. However, some schools boards consistently perform poorly over a sustained period. This may be due to difficulties in attracting capable trustees. While help exists for boards to improve their capability, and there are last-resort statutory interventions such as a Limited Statutory Manager or Commissioner, some schools experience lengthy periods of weak governance.
16. Section 110 of the Act allows for a combined board to govern more than one school. Two or more schools experiencing serious governance issues could benefit from the wider pool of potential trustees that a combined board, created under section 110, would produce. Although this provides a solution, schools have generally not wished to take up the option of a combined board. Schools have expressed concern that they could lose their individual identity, or that the focus on their school will be lost with a combined board.
17. There is an opportunity to address the gap in the regulatory framework that means the government is unable to compel two or more schools to combine boards when this could address weak governance issues. Addressing this gap could provide an extra tool for the government to ensure that education provision is fit for purpose and ensure better governance in schools.

Problem definition

18. While the existing regulatory provisions are generally aligned with operational processes and are considered to work well, some gaps and repetition in the legislation and operational processes hamper the government in its ability to manage education provision.

Objectives

19. The objective for this proposal is to ensure that the legislative framework enables efficient management and effective decision making on education provision for the benefit of all children and young people in a geographical area.
20. Three criteria were used to assess how options to address the proposal would meet the above objective and address the problem definition. These criteria are that the option:
 - provides legislative tools that support modern operational practice
 - creates a legislative framework that enables the government to efficiently make decisions on effective provision of education in an area
 - reduces repetition in the legislation.

Options

21. The Ministry considered three options to meet the policy objectives:
 - **Option A:** Status quo
 - **Option B:** Operational policy and guidance
 - **Option C:** Amend legislation.

Impact Analysis

Option A – Status quo

22. The status quo does not meet the criterion of providing legislative tools that support modern operational practice in cases where the decision to close or merge a school results from an area strategy. This would mean that the process continued to be inefficient, and may impact negatively on communities who are facing a school closure as they experience an unnecessarily prolonged procedure and repeated consultation. This means the status quo also does not meet the criterion of allowing decisions on education provision to be made as efficiently as possible.
23. The status quo does not meet the criterion of reducing repetition in legislation. The legislation for establishing designated character schools will remain unnecessarily repetitive.
24. The status quo does not address the objective of enabling efficient management and effective decision making on education provision. In particular, gaps would persist concerning the Minister's ability to require school boards to combine and to establish and disestablish offsite campuses for schools. This issue may be exacerbated if schools open more offsite campuses that do not make the best use of education resources. Without a solid legislative ability for the Minister to close down such arrangements, inefficiency could increase.

Option B – Development of additional operational policy with guidance information

25. Under this option, the Ministry would develop more operational policy, within the processes set out in the current Act, to guide network decisions. The Ministry has already commenced this process through its network reference group, which contains a range of representatives from across the education sector.
26. The main advantages of this option are:
- the current processes are longstanding, and therefore tried and tested, with some case law available to guide the development of additional operational policy
 - within the constraints of the Act, operational policy is a flexible tool, that can evolve over time.
27. The main disadvantages of this option are:
- it would not meet the criterion of updating legislative tools to align with modern operational practice. This option will not provide efficiency for schools and communities in the consultation process when the decision to close or merge a school follows an area strategy. In other words, it does not align the current non-statutory process of area strategies with the statutory process of closing and merging schools
 - it would not meet the criterion of creating a legislative framework that enables the government to efficiently make decisions on effective provision of education in an area. Guidance and information would be unable to address the gaps within the Act itself. Gaps will persist concerning the Minister's ability to require school boards to combine and to establish and disestablish offsite campuses for schools. In the future, this issue may be exacerbated if schools open more offsite campuses that do not make the best use of education resources. Without a solid legislative ability for the Minister to close down such arrangements, inefficiency could prevail.

Option C – Amend legislation

28. This option would amend the Education Act to enable the Minister to better manage education provision. Under this option, most of the amendments will have the effect of fine-tuning the legislation to remove repetition or superfluous requirements. The new powers granted to the Minister will be the ability to require school boards to combine, and the ability to establish and disestablish offsite campuses. The table below lists the legislative amendments that would be made:

Amendment	Comment
Streamline the legislative consultation processes for the merger or closure of a school following an area strategy	<p>This would address the repetition between the non-statutory process of area strategies and the statutory process of closing and merging schools.</p> <p>It would continue a statutory requirement for thorough consultation as part of the area strategy process.</p>
Amend the legislation to include a single and flexible process for establishing special character schools, including kura kaupapa Māori schools and other designated character schools	<p>This amendment would repeal some provisions of the Act that deal with the establishment of designated character schools. A new establishment section would include kura kaupapa Māori and other designated character schools. The new section would also repeal the requirement for the parents of 21 potential students to confirm they would enrol in the school should it be established.</p> <p>Parents may feel this reduces the right for them to demand the Minister considers a request to establish a school. However, parents will still have the right to contact the Minister with their request, and the Ministry will continue to work closely with those communities it identifies as being in need of more education options.</p>
Include the ability for the Minister to establish and disestablish offsite campuses with a memorandum of understanding between the Secretary and the boards or bodies concerned	<p>There is a risk that this may be seen as taking autonomy away from schools. However, under the current operational process of establishing off-site campuses, it is difficult for the Minister to ensure that such arrangements suit the best interests of educational need in a geographical area.</p> <p>It is important the Minister is enabled to ensure the best use of education provision in a location. This will be an important tool to accomplish this. The memorandum would mean that schools had a clear offsite campus approval.</p>
Include the ability for the Minister to require two or more boards to combine in certain circumstances where there are serious issues with the governance of a school or schools and those issues could be addressed by having a combined board	<p>This amendment would address circumstances where schools are facing continued intervention due to having problems attracting sufficient capable people to its board of trustees.</p> <p>There is a risk that this may be seen as reducing a schools ability to self-govern. However, the Minister must be enabled to ensure schools can perform well and this can sometimes be achieved through extending the potential pool of capable trustees.</p>

29. The key advantages of this option are:

- It would meet the criterion of providing legislative tools that do align with modern operational practice by improving the efficiency of the consultation processes relating to area strategies that recommend school mergers or closures
- It would meet the criterion of creating a legislative framework that enables the government to efficiently make decisions on effective provision of education in an

area as it will address the gaps within the legislation and improve the government's ability to make appropriate decisions on the use of the education network.

Processes would be better aligned and streamlined, and the Minister would gain the ability to use offsite campuses and compel boards to combine

- It would also meet this criterion through ensuring that unnecessary requirements are ameliorated. The Minister will already have gone through extensive consultation over establishing a designated character school – removing the requirement for the parents of 21 potential students to signal their intention to enrol their children in the school will not lead to schools being established where there is no sufficient demand
- including offsite campuses in legislation as an education network decision would lead to improved outcomes for learners as consideration is given at a Ministerial level as to the best use of educational resources in a location
- the amendments to allow the Minister to require that school boards combine can be useful in cases where schools have ongoing difficulty in attracting a high quality board because there is not a large enough pool of capable people who are willing to stand to be a trustee.

30. The main disadvantages of this option are:

- there may be some minor additional compliance costs for schools as they work with the Ministry on memoranda of understanding for establishing satellite campuses and become acquainted with the new legislation
- there is a risk that schools may continue to implement their own offsite campuses or seek a review of decisions to require their boards to combine. This may incur costs in addressing these issues.

Criteria analysis

Criterion	A	B	C
Create a legislative framework that enables the government to efficiently make decisions on effective provision of education in an area	Does not meet	Does not meet	Meets
Reduce repetition in the legislation	Does not meet	Does not meet	Meets
Provide legislative tools that support modern operational practice	Does not meet	Does not meet	Meets

Consultation

31. Public consultation on the update of the Act was held from 2 November to 14 December 2015.¹ The consultation received responses from teachers, parents, family and whānau, board of trustee members, other education sector professionals and education sector groups, members of iwi groups or Māori organisations, members of community groups, businesses or business groups, other stakeholder groups and interested citizens.
32. The discussion document asked the question:
“How should area strategies be decided, and how should schools, kura and communities be consulted?”
33. Fewer than half of submitters responded to that question. Most of the responses centred on who should be consulted and who should be the final decision maker. The key messages that emerged were that consultation processes should be transparent, fair, and evidence based. The specific proposal to streamline consultation requirements following an area strategy was not addressed in the consultation document.
34. The specific proposals to amend the legislation on the establishment of designated character schools, to give the Minister the ability to establish and disestablish offsite campuses and to require school boards to combine were also not included in the consultation.

Conclusions and recommendations

35. In summary, Option C to amend legislation best meets the policy objective and addresses the problem definition by ensuring the legislative framework enables efficient management and effective decision making on education provision for the benefit of all children and young people in a geographical area.
36. This proposal mainly involves fine-tuning the legislation to enable the Minister to better manage education provision. The Minister has not been given any new powers to close or merge schools – rather the proposal will help to increase schools’ and communities’ understanding of the reasoning behind such decisions. The only new power granted to the Minister will be the ability for him or her to require school boards to combine, and the ability to disestablish offsite campuses.
37. The amendments to the legislation would be given effect by amending the Education Act 1989 to:
 - include the ability for the Minister to:
 - establish and disestablish offsite campuses
 - require school boards to combine
 - remove the requirement for consultation on a decision to close or merge a school when that option has previously been consulted on as part of an area strategy
 - implement a new section to cover the establishment of all designated character schools.

¹ More detail on the consultation can be found at <http://www.education.govt.nz/ministry-of-education/consultations-and-reviews/recent-consultations-and-reviews/education-act-update/>

Implementation plan

38. This proposal would affect operational policies relating to the reviewing of schooling in an area and to the opening and closing of schools.
39. Once legislation is passed, the Ministry will issue guidance and provide information to schools about the change.
40. The Minister and Ministry of Education would be responsible for implementing and administering these changes to the legislation.
41. Advice and guidance for the sector would be ready to be implemented once legislation is passed.

Monitoring, evaluation and review

42. Ministry officials working directly with schools and school boards will consider the impact of the legislative changes. The desired outcome will be that the Minister is able to make effective use of education provision, and improvements in the processes on closing and merging schools, or establishing designated character schools.
43. The effectiveness of the changes will be assessed by school and board feedback, and through feedback received by the Ministry in its operational business.