

Considering Education Regulation in New Zealand

Report of the Taskforce
on Regulations Affecting
School Performance

30 May 2014

Chair's foreword

It has been 25 years since Tomorrow's Schools reformed New Zealand's education system through the Education Act 1989 (the Act). New Zealand has changed since then and its education system has also evolved.

Students and their diverse learning needs and pathways have increasingly become the focus of the system and the schooling sector has evolved its practices considerably. The regulatory framework needs to adapt to the current educational environment while also providing a sound platform for the future.

The independent Taskforce on Regulations Affecting School Performance (the Taskforce) was established by the Government to consider how improved legislation and regulation could contribute to the goal of raising the achievement of all students, but particularly the most vulnerable.

The overarching objective of the Taskforce was to provide the groundwork for a review of the Act in 2015.

The Taskforce did not explore resourcing issues in any depth, nor did it consider the role of the Ministry of Education or other education agencies. The underlying intent of Tomorrow's Schools and matters that are currently the subject of government education initiatives were also outside our scope.

Good regulation is one element of a high-performing system. Ensuring that the regulatory framework is aligned with other schooling policies and practices can help New Zealand achieve its education objectives. A durable and flexible regulatory regime can support innovation and evolve with technological changes.

Through our enquiries and consultation the Taskforce has concluded that there is a strong case to review the Act to provide a greater focus on student outcomes and more explicit roles and objectives. The Act also needs to be updated and streamlined for usability and clarity. There are obvious areas of frustration for the schooling sector that should be addressed.

The recommendations of the Taskforce focus on improving the current regulatory framework and we have identified areas that could provide starting points for a review of the Act. We recognise that any review of the Act will require an extensive consultative process.

The Taskforce would like to thank the schools and education sector organisations that shared their expertise and insights with us. We carefully considered all of the feedback and suggestions we received. We would like to acknowledge the support we received from the secretariat provided by the Ministry of Education.

I would also like to thank my fellow Taskforce members for their insights, expertise and hard work.



Murray Jack

Chair, Taskforce on Regulations Affecting School Performance

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ISBN 978-0-478-43925-0 (Print)

ISBN 978-0-478-43926-7 (Web)

Executive summary and conclusions

The independent Taskforce on Regulations Affecting School Performance (the Taskforce) was established by the Government to consider how improved legislation and regulation could contribute to the goal of raising the achievement of all students, but particularly the most vulnerable.

The overarching objective of the Taskforce was to provide the groundwork for a review of the Education Act 1989 (the Act) in 2015. The Act provides the statutory framework for the education system. Further regulation is provided by second and third tier legislation in the form of regulations and guidelines introduced through the Act.

The Taskforce considered the possible benefits of a review of the Act and some aspects of policy which might be included in a review. Its focus was on the parts of the Act relating to schooling.

To undertake its work, the Taskforce considered a wide range of information and evidence; identified issues worthy of further consideration; undertook a short and targeted consultation process to gain input from the education sector; analysed feedback; and provided recommendations.

ASSESSING THE ACT

The Taskforce looked at three aspects when considering the case for a review of the Act. Firstly, it considered whether the Act is doing the most it can to support raising student achievement. The Taskforce found that there is a range of areas where the Act could do this better.

Secondly, the Taskforce considered how the Act compares to principles of best practice regulation. The Taskforce found that the Act is outdated in its structure and some content.

Thirdly, the Taskforce considered how well the Act supports the changing future context for schools. The Taskforce found that the Act is flexible in many areas, but is not designed to respond quickly to a changing educational environment.

The Taskforce believes the Act would benefit from a review. The current Act falls short in a number of respects, namely:

- the Act is focused on administration and does not consider the purpose of the education system or what it should achieve

- the diversity of students and their learning are not visible in the Act
- the Act is not very easy to use (specific provisions are difficult to find and wording is at times confusing) and the education sector does not engage with it often, unlike the National Administration Guidelines, which are clear and easy to understand
- the Act is very detailed in some areas, reducing flexibility in a changing educational environment
- the roles within the schooling system are not clear.

The Taskforce recognises the importance of the schooling system as a whole having a strong and aligned focus on raising educational outcomes for all students. High quality legislation is clear about what it is intending to achieve, to enable system actors (in this case boards and schools) to focus on what is important.

The Taskforce considers that the sections of the Act relating to schools could be made simpler and more enabling. This would see an act centred on a clear purpose relating to improved outcomes for students, quality governance and clear roles and responsibilities. Such an approach would better reflect current good practices.

The Act, as primary legislation, can outline the organisations and structures that make up the system. However, primary legislation is difficult and time consuming to change. The addition of detail in second and third tier regulation (which is easier and quicker to change) means that policies can keep up with a changing educational environment. The Taskforce considers that currently the Act contains detailed provisions, which would better fit in second or third tier regulation.

The Act has been designed as a 'one size fits all' model that, while providing devolved decision making in many areas, does not recognise excellent performance. For example, increasing flexibility for well-performing schools would allow greater scope for innovation while retaining the ability to intervene and support where necessary. This would support an ongoing evolution of the school system in ways that can benefit students and encourage innovation.

The Taskforce has concluded that the Act does not reflect the current practice of education and is no longer fit for purpose.

While the Taskforce is calling for significant change to the text of the Act, the essential structure of the schooling system would remain the same.

While some consultation respondents were not in favour of changing the Act, almost all respondents identified parts of the Act that they consider are not working well.

The Taskforce recommends that:

1. the Act and associated regulations be reviewed with the aim of creating an outcomes-focused, student-centred and usable piece of legislation with a clear purpose
2. the review considers the greater use of second and third tier regulation in order to deliver increased flexibility to keep pace with a changing environment.

SPECIFIC ASPECTS OF EDUCATION REGULATION

If a review of the Act takes place, the Taskforce recommends that this review consider the more specific recommendations outlined below.

Goals and outcomes for the New Zealand schooling system

The Taskforce considers that the Act does not currently provide a clear and visible purpose statement that articulates the broad goals and outcomes desired of the New Zealand schooling system. While designed to provide such high level direction, the National Education Goals (NEGs) are not currently achieving this purpose.

Most respondents to consultation generally agreed with this assertion. Their main concern centred on the possible content of any goal or outcome statement being too narrow. There was strong support expressed for any development of a purpose statement for a revised Act to include broad consultation with the education sector.

Recently drafted pieces of legislation often include a purpose or outcomes statement that frames the intent of the legislation. The Taskforce considers that if a clear purpose statement was added to the Act, this would support the clarity of desired goals and outcomes of the schooling system.

The Taskforce agrees that a purpose statement should be designed in collaboration with the schooling sector through

a wide consultation process. This process could take into account the goals already articulated in the *New Zealand Curriculum, Te Aho Mātua* and the current NEGs.

The Taskforce recommends that:

3. the Act contain a purpose statement outlining the desired outcomes for the schooling system
 - this statement be enduring, inclusive, student-centred and embrace a breadth of desired student outcomes
 - this statement be developed in consultation with the schooling sector
 - consideration be given to the implications for the NEGs as part of this process.

Planning and reporting

Taskforce consultation on planning and reporting made it clear that there are systemic issues with the process. These issues impact on the boards and principals preparing the documents, and also on the Ministry of Education (the Ministry) whose ability to respond to the submission of documents is curtailed by a tight time frame.

The Taskforce considers that the current planning and reporting process is not fit for purpose and has not kept up with the evolution of school management.

It was evident from consultation that most schools do place considerable weight on having an effective cycle of self-review and planning. However, these planning processes generally do not relate well to the process required by the Act.

Understanding the roles of schools, boards, the Ministry and the Education Review Office (ERO) is crucial to establishing clarity about the purpose and content of planning and reporting processes. Once the purposes of the planning and reporting system are clarified then the procedures to be followed should be built around them.

The Taskforce recommends that:

4. the obligation for planning and reporting be clearly defined in the Act. The details and specifications of this process be contained in third tier regulation to better enable requirements to change as best practice evolves, and provide flexibility in their application

5. a more effective planning and reporting process for schools be designed in consultation with central government agencies, the Office of the Auditor-General and the schooling sector
6. in undertaking the design process, the following issues be considered:
 - clarifying what information is needed by the Ministry and other government agencies and the purpose of this information collection
 - clarifying the purpose and requirements of all planning and reporting documents, which currently includes the charter, strategic plan, annual report and analysis of variance
 - ensuring an effective three to five year cycle of strategic planning takes place as a responsibility of the board and school management
 - ensuring an effective annual cycle of self-review and planning takes place as a responsibility of the board and school management
 - developing mechanisms through which boards and schools can receive advice on their planning processes and documents
 - developing mechanisms to identify and disseminate more widely to schools examples of good practice both in terms of planning and the achievement of goals
 - having a flexible time period within which schools can provide planning and reporting documents that fits with the school's data collection and review processes.

The roles and responsibilities of boards and principals

The Taskforce considers that the Act should clearly define the roles and responsibilities of boards. This would be consistent with other legislative examples and other Crown entities.

Consultation indicated that the relationships between the board and the principal are critical to how effectively a board operates, and when these break down the lack of clarity can become a significant issue. Consultation also indicated that boards can struggle to get the full range of desirable skills represented on a board.

Defining the roles and responsibilities of a board would emphasise the aspects of good governance that can benefit student achievement.

In particular, the Taskforce considers that the wording of sections 75 and 76 of the Act (which outline the division of powers between the board and the principal) is outdated and confusing. This view was strongly supported by feedback from consultation.

Discussion of possible changes to sections 75 and 76 of the Act must be part of the wider discussion on how to articulate the roles and responsibilities of boards and principals.

The Taskforce recommends that:

7. the Act provide more clarity on the roles and responsibilities of boards and principals
8. the roles and responsibilities of boards are not limited to but could include:
 - ensuring that school leadership has a focus on raising student achievement
 - setting objectives for the school and monitoring results
 - monitoring and planning progress in relation to a school's charter and annual plans
 - reflecting government priorities
 - having sound fiscal and property management
 - being a good employer
 - ensuring school leadership maintains student and staff safety.
9. this increased clarity should create the flexibility for boards to perform other functions that will improve student outcomes in defined circumstances or with approval
10. the roles and responsibilities for principals could include:
 - professional leadership of the school
 - all aspects of management and operation of the school
11. sections 75 and 76 of the Act be revised as part of a review of the roles and responsibilities of boards and principals.

The regulatory burden on small schools

The Taskforce recognises that small schools, particularly those with a teaching principal, can face a significant administration burden.

The strategies for reducing this burden are unlikely to be regulatory, but rather involve more collective ways of working that lift requirements from individual schools.

The availability of opt-in or opt-out schemes for the provision of essential services (like property management or insurance) can reduce schools' individual administration requirements. Collaboration between groups of schools can also be a way of reducing individual burden, for example a cluster for administration services.

In addition, care should be taken not to excessively add to this burden with future regulations.

The Taskforce recommends that:

12. the design of new education regulation should consider the cost-benefit of the compliance burden placed on schools
13. second and third tier regulations be informed where possible by the need to limit the compliance costs faced by small schools
14. the Ministry continue to investigate and support models of collective working, the use of opt-in schemes and other forms of support to assist small schools.

Schools' use of flexibility

The Taskforce considers that the level of flexibility available in the Act is adequate for the majority of purposes. Consultation indicates that schools seldom desire to utilise those flexibilities that require additional application processes or approval by the Minister.

The Taskforce invited respondents to identify any flexibility not currently available in the Act that they felt would raise student achievement. Response to this was limited, and generally referred to the school day (as discussed later in this report).

Administration of the Act may be limiting the use of some flexibilities, where schools are uncertain of the process to follow. The Act allows various flexibilities with ministerial approval; however some schools report being discouraged by the implied level of procedure needed.

The Taskforce recommends that:

15. the use of flexibility to raise student achievement is encouraged through the sharing of innovative ideas and examples of best practice.

Collaboration

The Taskforce considers that the current education system, while providing many benefits, does not incentivise collaboration or adequately signal that each school is part of a wider educational community.

Collaboration takes place along a continuum from informal meetings to the structured combination of functions. All of these options can have benefits, from increasing expertise for individual teachers to creating an effective pipeline for student transitions from early childhood education to secondary school.

While some schools are using collaboration to good effect through sharing expertise or funding, consultation indicates that some schools have little or no contact with other schools. There is also little reported collaboration at the board level.

The current funding system may provide a disincentive to collaboration, although various initiatives have used additional support to promote collaboration (for example, Learning and Change Networks).

Consultation feedback and research agree that forced or mandated clustering is not sustainable. Collaboration should be based on a perception of mutual need and benefit.

The Taskforce recommends that:

16. boards be encouraged to consider opportunities for collaboration in order to raise the achievement of their students
17. any review of the Act recognises the importance of quality pathways and progression into, through and beyond the schooling system and how these can be enhanced through collaboration.

School day and year

The Taskforce considered whether the education sector found the current limits on the school day and year a barrier to raising student achievement.

Generally schools are working well within the current constraints of the Act, but respondents raised some issues. In particular, the Māori-medium sector indicated that the ability to hold lessons on culturally significant public holidays (for example, Waitangi Day and Anzac Day) would allow them to enhance learning opportunities for students and their whānau and to be more culturally responsive. Also, some secondary schools felt the need to start earlier to overcome the impact of senior students finishing early in term 4.

The availability of technology is already leading to teaching and learning opportunities taking place outside general school hours and terms, and this is likely to increase. Over time this may increase pressure on the current school day and year limits.

The Taskforce considers that some benefit to student achievement would be gained from increased flexibility in the school day. However, this would need to be weighed against community and parental priorities and expectations. In addition, any regulations in this area are likely to be better handled through second or third tier regulations than through prescriptive primary legislation.

The Taskforce recommends that:

18. the flexibility available to schools to set the school year could be increased by specifying a minimum number of half days but removing other requirements which are unnecessarily prescriptive.

Regulatory settings for Māori-medium schools

The Māori-medium sector is diverse in its education practices and philosophies. However, it is evident that a strong belief in Māori-medium education as beneficial to Māori students and the importance of autonomy in this form of schooling are shared by all.

Respondents to the Taskforce's consultation process described how some areas of regulation are causing unnecessary burdens. The Taskforce considers that where the successful practices of kura are being impeded by the current regulations to do with planning and reporting, governance structures, and the school day and year, these should be reviewed.

The Taskforce recognises the growing and strengthening nature of the Māori-medium sector. It is essential that Māori-medium education is supported to develop further, without reducing the autonomy of the sector.

The Taskforce recognises that other groups (for example, the Māori-medium reference group of the Cross-sector Forum) are currently considering issues related to Māori-medium education, and that these groups hold considerable expertise. The Taskforce has considered only issues within its own scope, and sees these groups as appropriate avenues for recommendations on wider issues in Māori-medium education.

The Taskforce recommends that:

19. the Māori-medium sector be fully engaged in any review of the Act, especially with regard to legislation relating to board structures, planning and reporting processes, and the school day and year, in order to better support the Māori-medium sector's principles and practices of education
20. the Māori-medium sector be actively involved in the design of new regulation to ensure it is culturally responsive to the core principles and practices of Māori-medium education.

The Taskforce

PURPOSE

The independent Taskforce on Regulations Affecting School Performance (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.

The overarching objective of the Taskforce's work was to undertake the groundwork for a review of the Education Act 1989 (the Act) in 2015. The Taskforce has interpreted this to mean that it should explore some of the key areas that might be relevant to a review of the Act.

The Taskforce was asked to produce a report that identifies the specific policy issues that have emerged from its research and consultation process; provides its analyses of those concerns and opportunities; and recommends areas for further work and more in depth consideration.

MEMBERSHIP

The Taskforce members are:

- Murray Jack (Chair, Deloitte) – chair
- Jill Corkin (Principal, Snells Beach School)
- Howard Fancy (former Secretary for Education)
- Janet Kelly (former President of the New Zealand School Trustees Association)
- Renee Wright (Te Tari Tautoko, Te Rūnanga Nui o ngā Kura Kaupapa Māori o Aotearoa)
- Tim O'Connor (Principal, Auckland Grammar School)
- Warwick Maguire (Principal, Burnside High School)
- Neil Quigley (Deputy Vice-Chancellor, Victoria University of Wellington)

More detailed information regarding the establishment of the Taskforce can be found at www.minedu.govt.nz/TRASP.

SCOPE

The work of the Taskforce was guided by its Terms of Reference (see Appendix A), which included a series of key questions:

- What regulatory barriers to effective governance do boards and managers experience, particularly in relation to raising student achievement?
- How would increased regulatory flexibility relating to governance structures, processes and functions enhance effective governance, particularly in relation to raising student achievement?
- What regulatory barriers to effective school management and raising student achievement do schools experience?
- How would increased regulatory flexibility increase the effectiveness of school management, particularly in relation to raising student achievement?
- To what extent are schools aware of, and to what extent do schools use, existing regulatory flexibility, particularly in relation to raising student achievement?
- How can increased awareness and use of opportunities for flexibility within existing regulations be facilitated?

The Terms of Reference excluded the following matters from consideration by the Taskforce:

- the underlying intent of Tomorrow's Schools, ie schools' status as individual Crown entities governed by boards
- matters that are currently the subject of Government education initiatives
- National Standards reporting
- the role and functions of the Ministry of Education
- ending school types or creating new ones
- changes that would reduce or increase government spending on education.

PROCESS FOLLOWED

The Taskforce undertook a four phase work programme:

1. *Evidence and information gathering.* The Taskforce considered a wide range of background material (this material can be found at www.minedu.govt.nz/TRASP).
2. *Analysis to identify key issues.* After considering the gathered information, the Taskforce identified a number of issues worthy of further consideration.
3. *Targeted consultation.* The Taskforce developed a document to engage stakeholders that outlined the identified issues (this document can be found at www.minedu.govt.nz/TRASP). The Taskforce also provided opportunities for respondents to contribute their own regulatory issues for consideration.

Due to time constraints the Taskforce was only able to undertake a short and targeted consultation process to gain input from the education sector. However, the Taskforce endeavoured to meet with representatives from a broad spectrum of the sector, including Māori-medium, Pasifika, special education, and rural and area schools (Appendix B provides a list of the stakeholders the Taskforce met with).

4. *Reporting.* The discussion section of this report outlines the feedback from the consultation period, the Taskforce's analysis, and recommendations that the Taskforce has made for each of the issues it set out to discuss.

Setting the scene: the legislative framework of the schooling system

In New Zealand the Act provides the statutory framework for the education system. The Taskforce has considered the schooling parts of the Act; however, the Act also contains the establishing provisions for tertiary and early childhood education.

The Act was established in response to an administrative review of the schooling system (these changes are known as Tomorrow's Schools), thus it tends to be procedural in nature. There have been many ad hoc changes to the Act over time (including the repeal of many sections), which has made the structure of it unwieldy.

The Act sets out:

- the establishment and activities of state schools
- the registration of private (independent schools) – the Private Schools Conditional Integration Act 1975 legislates for the process by which a private school can become a state school with a special character

- the rights and obligations of students, parents and boards of trustees
- the processes for electing boards of trustees
- the establishment and functions of education agencies such as the Education Review Office (ERO) and the New Zealand Qualifications Authority.

Further regulation of the system is provided by second and third tier legislation in the form of regulations and guidelines introduced through the Act (see table below). For example, the National Education Guidelines (third tier legislation) are authorised by section 60A of the Act.

		Changed by	Used for
1 st Tier	<div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Education Act 1964 (majority repealed)</p> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Education Act 1989 Primary establishing act for the education system</p> </div> </div>	Acts of Parliament	Important structures, principles and rights that do not need to be changed often
2 nd Tier	<p>Legislative instruments For example:</p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>School Trustee Election regulations</p> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Hostel regulations</p> </div> </div>	The Governor-General in Executive Council and scrutinised by the Regulations Review Committee	Detailed provisions to support legislative frameworks in an act
3 rd Tier	<p>Other instruments For example:</p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 30%;"> <p>National Administration Guidelines</p> </div> <div style="border: 1px solid black; padding: 5px; width: 30%;"> <p>National Education Goals</p> </div> <div style="border: 1px solid black; padding: 5px; width: 30%;"> <p>New Zealand Curriculum</p> </div> </div>	For example: a notice from the Minister in the <i>New Zealand Gazette</i>	Legally binding provisions that are either very operational or need frequent amendment

The Education Act 1964 was the foremost piece of legislation for the education sector before it was replaced by the Education Act 1989. The majority of the Education Act 1964 has been repealed, but a small number of active provisions remain.

Schools are also affected by a range of legislation from other sectors, for example legislation relating to health and safety, employment, and Crown entities. The Taskforce did not consider issues relating to these other pieces of legislation.

New Zealand's education system has fewer levels of decision making and management than other jurisdictions. School boards of trustees are responsible and accountable for almost everything that happens within their schools, and have considerable freedom to determine how their schools are governed and managed.

THE ROLE OF REGULATION IN GUIDING THE SCHOOLING SYSTEM

Regulation¹ is one means by which governments can achieve, or contribute to, policy objectives. Regulation sits alongside other policy and financial levers, but it still can be seen as a key signal of what matters.

While New Zealand's regulatory framework for schools is generally considered to be sound, there may be opportunities to employ regulatory tools to support effectiveness throughout the education system.

Regulation is useful for:

- **granting rights and powers**, such as the right to enrol at a school with an enrolment scheme or the power of a board of trustees to exclude a student
- **defining obligations and duties**, such as the requirement to attend school whenever it is open or the duty of the principal to report to parents on the progress of their child
- **establishing statutory entities** that the government has an interest in influencing or funding, such as boards of trustees or ERO
- **setting and enforcing standards** for safety and quality, such as police vetting or teacher registration
- **providing a process or framework** to enable or ensure that certain things happen, such as the process required before a school can be closed or the curriculum framework that schools must follow.

INFORMATION AND EVIDENCE CONSIDERED BY THE TASKFORCE

The Taskforce reviewed a wide range of information, including key education documents and historical material about the Tomorrow's Schools reforms. In addition, the Taskforce commissioned background papers on a range of topics. During the consultation process, some stakeholder groups also provided the Taskforce with relevant papers.

A bibliography of documents considered by the Taskforce is attached (Appendix C). For further detail, copies of the documents are available on the Ministry's website at www.minedu.govt.nz/TRASP.

This section of the report outlines the key points from this information and evidence that the Taskforce found to be of most relevance to its work.

A schooling system maximising student achievement

The Taskforce considered research that indicates high-performing systems tend to align policies and practices across all aspects of the system, providing coherence over sustained periods of time and ensuring that they are consistently implemented.

In particular, high-performing school systems are equitable. They have developed systems that compensate for disadvantage, allowing all students an equal opportunity to succeed. This is very relevant to the Taskforce's consideration of improving achievement for our most vulnerable students.

Additionally, the Taskforce noted research from McKinsey & Company that found that the best schools are subject to less monitoring, whereas schools that perform less well are subject to more intensive scrutiny.

The best education systems position the processes for monitoring and intervention in the schools themselves, where they are able to identify the students in need of support and provide that support on a continual basis. This is essential to delivering consistently strong performance throughout all schools.

¹The term 'regulation' is used here to include primary (Acts), secondary (regulations) and third tier (rules, gazette notices, mandatory guidelines) legislation

Best practice regulation/principles of good regulation

The Taskforce considered how regulation could contribute to the goal of raising the achievement of all students. Good regulation is able to balance durability, flexibility and certainty. It should also be transparent and provide predictability over time, in order to achieve the objectives of the regulation. These principles of good regulation informed the Taskforce's thinking in relation to the Act.

The New Zealand Productivity Commission has found that regulatory regimes in New Zealand can easily become rigid and obsolete. As a result, regulation can struggle to keep up with changes in technology or public expectations.

In its *Best Practice Regulation Principles* the New Zealand Treasury outlines that a durable regulatory regime is up to date with technological and market changes, and evolving societal expectations.

Flexibility allows provisions that can cope with any different circumstances that may arise, particularly in a highly devolved social sector such as education. However, regulation cannot be so flexible that it results in uncertainty as to what the sector is supposed to do.

The Taskforce considered evidence from the Productivity Commission that shows a lack of clarity of objectives can lead to regulatory failure. Regulatory regimes with clear objectives are more likely to enjoy high levels of compliance and credibility, and regulators with clear and well-understood roles can more easily be held to account. Legislative frameworks that minimise the number of objectives and conflicts and provide a clear hierarchy of objectives help to support consistent and predictable decision making by regulators.

Governance

In New Zealand, legislation and regulation establish the governance arrangements for schools. Research supports a positive association between effective school governance and student achievement. In particular, the Taskforce noted that good governance can be a lever through which to help to equalise opportunity for students.

The Taskforce was interested to find there is widespread agreement in the literature on the characteristics of effective governance. Studies found that 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
- engage with the school and community.

However, reliable and valid measures of these characteristics are needed to assess their contribution to student achievement.

The availability of a variety of governance arrangements can assist in producing better achievement results; however, governance models need to be designed to fit the aims of the organisation.

Priority learners

The Taskforce noted that evidence from the OECD suggests governments can prevent school failure and reduce dropout using two parallel approaches: eliminating system level practices that hinder equity; and targeting low-performing, disadvantaged schools.

From the evidence reviewed, the Taskforce concluded that good regulation and effective governance are elements of high-performing systems that support priority students. Ensuring that they are aligned with other schooling policies and practices can help New Zealand achieve its educational objectives.

Discussion on the regulation of the schooling system

CONSIDERING A REVIEW OF THE EDUCATION ACT 1989

The Taskforce identified various parts of the Act that it suggests could be revised, but it also considered the Act as a whole and the possible focus of a review.

In considering the current state of the Act, the Taskforce investigated the education legislation of other countries and other examples of legislation from New Zealand. The Taskforce also considered a range of evidence relating to quality regulation.

The Taskforce looked at three aspects when considering the case for a review of the Act. Firstly, it considered whether the Act is doing the most it can to support raising student achievement. The Taskforce found that there is a range of areas where the Act could do this better. In particular, the lack of clear guidance on the desired outcomes of the schooling system is problematic.

Secondly, the Taskforce considered how the Act compares to principles of best practice regulation. The Taskforce found that the Act is outdated in its structure and some content. A revised Act with a more explicit focus on achieving broad education outcomes could establish a clearer education framework for decision making. It would also assist in any reframing of the roles and responsibilities of different parties, organisations and levels in the system.

Thirdly, the Taskforce considered how well the Act supports the changing future context for schools. The Taskforce found that the Act is flexible in many areas, but is not designed to respond quickly to a changing educational environment.

As the statutory framework for the education system, the Act holds the potential to positively affect the education system. The Taskforce has identified a range of issues with the structure of the Act as a whole that mean it would benefit from a review.

CONSIDERATION OF THE ACT AS MODERN LEGISLATION

The Act is focused on administration not students

The Act is procedural in nature and, apart from allocating some basic rights to education, largely ignores students. While it sets up the main structures and institutions of the schooling system, it does not consider the purpose of the education system or what it should achieve.

Evidence shows that a lack of clarity of objectives can lead to regulatory failure. Where there are a number of possibly competing objectives, regulated bodies can be unsure of how to make trade-offs between them. High quality legislation is clear about what it is intending to achieve, to enable system actors (in this case boards and schools) to focus on what is important.

The emphasis in the Act on structures and administration (which is something that legislation can do well) has meant that the objectives of education are not very visible. For example, section 6 of the *Health and Disability Act* puts health consumers at the centre of the legislation: “The purpose of this Act is to promote and protect the rights of health consumers and disability services consumers, and, to that end, to facilitate the fair, simple, speedy, and efficient resolution of complaints relating to infringements of those rights.”

Nor is the Act very clear how the structures and administrative requirements contribute to the objectives of education. The Education Amendment Act 2013 introduced the requirement that boards must act “to ensure that every student is able to attain his or her highest possible standard in educational achievement”. But this section sits uneasily amidst sections around keeping enrolment records and boards doing work for other boards.

Section 11A of the Act is a good example of where an administrative focus has distracted from an emphasis on student achievement. This section outlines the purpose of enrolment schemes as to prevent overcrowding; however in practice and intent the principle behind enrolment schemes is that each student will be able to attend his or her local school.

The Act is very detailed in some areas, restricting flexibility

As outlined previously, regulation in New Zealand sits across three tiers that form a continuum, from high level principles and structures to detailed requirements. This is matched by lessening scrutiny and increasing ease of amendment across the tiers.

The Act, as primary legislation, can establish the organisations and structures that make up the system. However, primary legislation is difficult and time consuming to change. The addition of detail in second and third tier regulation means that policies can keep up with an innovative and changing educational environment.

The Act has been designed as a 'one size fits all' model that, while providing devolved decision making in many areas, does not recognise excellent performance. For example, increasing flexibility for well-performing schools through second or third tier regulation would allow greater scope for innovation, while retaining the ability to intervene and support where necessary.

The Taskforce considers that the Act should assign rights and obligations, establish statutory entities, set and enforce standards, and provide processes or frameworks. However the detail of these should sit in second or third tier regulation, to enable flexibility and enhance the durability of the primary Act. Some sections of the current Act, for example the charter requirements, are extremely detailed and restrict flexibility for schools and boards, and the Ministry.

The diversity of students and their pathways are not visible in legislation

The Act contains little reference to students, and almost no recognition of the diversity of students that access our education system. Many groups of students in a modern education system may have different needs or ambitions. Some of these groups – including Māori, Pasifika, children from low socio-economic backgrounds, and children with special learning needs – are recognised as being among our most vulnerable students.

The Taskforce considers that the Act should recognise and support the diversity of students entering the education system and the varied educational pathways these students may follow. Particularly when considering the desired goals and outcomes of the system, the Act should acknowledge the wide variation in definitions of educational success that are held by students and their families/whānau.

The quality of pathways available to students and their progression along these pathways needs to be an essential focus for the education system. Some groups, for example those students with special learning needs, must have the flexibility to access quality pathways that support their individual progression.

Students are already following varied pathways through the education system by accessing specialised educational programmes. These include Māori-medium education for all or part of primary and secondary education, and programmes that allow students to combine work or tertiary study with secondary classes. In addition, with increasing technological advances, opportunities for diverse pathways are increasing.

The Act is not very easy to use

The Taskforce considers that as the statutory basis for the education system, the Act should be an easily accessible and transparent document. The more that education agencies, schools and boards are able to engage with the Act, the stronger its influence on the education of students will be.

There has not been a full review of education legislation since 1964. The present Act implemented the education reforms of 1989 and 1990 in the early childhood, schooling and tertiary sectors. These reforms were mainly administrative in nature and areas of the Education Act 1964 that were not part of the reforms were carried over into the new Act unchanged or left in a truncated 1964 Act. This piecemeal approach has been particularly characteristic of the parts of the Act that deal with the schooling sector.

Since 1989, there has been an overlay of amendments that makes it increasingly difficult for readers to find their way around the legislation or to see how various sections fit together. Some of the language and drafting styles are now outdated and many of the current sections are repealed.

The roles within the system are not clear

While flexibility allows provisions that can cope with different circumstances that may arise, regulation cannot be so flexible that it creates uncertainty about what people and agencies are supposed to do. Taskforce consultation showed that some respondents are not certain of their own role within the education system, and are equally unclear about the roles and responsibilities of the Ministry and the other education agencies.

In particular, the Taskforce considers that the intersection between the Ministry and ERO around the accountability of schools is not clear. This issue is demonstrated by the planning and reporting process followed by schools, and the lack of clarity around which agency they should actually be reporting to or receiving feedback from. This issue is discussed in detail later in this paper.

It is the role of regulation to establish entities and to describe processes. The Taskforce considers that the Act is not providing enough clarity or certainty in this area.

COMMENTS FROM STAKEHOLDERS ON THE ACT

During the consultation process undertaken by the Taskforce, respondents commented on many aspects of the wider Act. These comments built up a picture of an act that is not engaged with frequently by the schools and boards, but generally does not form a barrier to school practice.

While some respondents felt that the Act was outdated and a review was timely, most respondents had not considered this until conversations with the Taskforce identified areas of possible change.

Third tier regulations in the form of the National Education Goals (NEGs) and the National Administration Guidelines (NAGs) are where schools get their guidance. Respondents reported that the NAGs have the greatest influence on schools and are followed carefully. However, the NEGs, while well known, do not seem to significantly impact day-to-day decision making.

This may be reflective of the fact that the NEGs have not been significantly changed since 1989, while the NAGs are updated once a year on average. It is also easier to implement the NAGs, which contain specific administrative requirements with articulated time frames, than the NEGs which are high level goals.

There was a strong view regarding the desirability of the Act being revised to better suit the Māori-medium sector. Most respondents from this sector considered that the current regulations (excepting those sections designed for Māori-medium, such as section 155) are not designed with kura in mind. This sector would like the opportunity to design their own regulations that fit with their educative principles and cultural context. The specific issues from the Māori-medium sector are discussed in more detail later in this report.

There was widespread support for the *New Zealand Curriculum* (the NZC) reported throughout the consultation process. The NZC was developed collaboratively and the resulting document has significant ownership from across the schooling sector. Many respondents felt the NZC contains clear guidance on the goals of the education system.

THE TASKFORCE'S CONCLUSION ON A REVIEW OF THE ACT AND ASSOCIATED REGULATIONS

The Taskforce has concluded that the Act does not reflect the current practice of education and is no longer fit for purpose. The Act is not sending clear signals across the sector it regulates of the purpose and goals of the education system.

While some consultation respondents were not in favour of changing the Act, almost all respondents identified parts of the Act that they consider are not working well.

Many amendments to the schooling part of the Act since 1989 have resulted in an act that is difficult to understand and use. The Taskforce considers that a review of the Act could produce a more up-to-date, usable and streamlined piece of legislation. A readable, student-focused Act could give clear direction to a diverse education system.

The Taskforce considers that the Act should assign rights and obligations, establish statutory entities, set and enforce standards, and provide processes or frameworks. However the detail of these should sit in second or third tier regulation, to enable flexibility and enhance the durability of the primary Act.

While the Taskforce is recommending significant change to the text of the Act, the essential structure of the self-managed school system would remain the same.

The Taskforce recommends that:

1. the Act and associated regulations be reviewed with the aim of creating an outcomes-focused, student-centred and usable piece of legislation with a clear purpose
2. the review consider the greater use of second and third tier regulation in order to deliver increased flexibility to keep pace with a changing environment.

Discussion on the identified issues

THE CONSULTATION PROCESS FOLLOWED BY THE TASKFORCE

During the consultation phase, the Taskforce met with 26 individuals or groups from education sector representative groups and a small selection of schools. Generally consultation respondents were pleased to have the opportunity to engage with the Taskforce. They put forward a wide range of views and provided significant input into the thinking of the Taskforce. Some respondents commented that the limited time period was not ideal and that the Taskforce would have benefited from a wider consultation.

In order to focus the consultation discussions, the Taskforce provided all respondents with a consultation document in advance. Generally most respondents felt that the document did include the regulatory issues that were of most relevance to the sector.

This document identified potential regulatory issues for discussion, including:

- the goals of the Act
- planning and reporting
- the roles and responsibilities of boards
- the role of the board and the principal in the Act
- the regulatory burden on small schools
- schools' use of flexibility
- collaboration
- the school day and year.

THE GOALS OF THE ACT

Improving student outcomes, particularly for the most vulnerable, is the focus of our education system. This is not clearly conveyed by the Act and related regulation. Instead, schools receive a range of messaging from government about the desired goals and outcomes for the schooling system through various pieces of legislation, regulation and guidance. For example, some of the Government's Better Public Service goals relate to education.

The NEGs are found in third tier legislation. The NEGs have rarely been amended since 1989, although schooling has changed considerably since then. The lack of clarity about desired goals and outcomes may create uncertainty for schools about what they are expected to achieve.

High-performing education systems tend to align policies and practices across all aspects of the system. They make them coherent over sustained periods of time and ensure that they are consistently implemented.

The Taskforce was concerned that the Act does not provide a visible statement of the desired goals and outcomes for the schooling system.

Feedback from consultation

Most respondents generally agreed with the concept that the Act does not provide an easily identifiable statement of desired goals and outcomes. There was also agreement around the idea that the NEGs are very seldom considered by boards or principals.

However, respondents were broadly split on the question of whether it matters in practice. Some respondents considered that most schools are clear on their own desired goals and outcomes and that any change to legislation would not alter these.

Other respondents spoke positively about the potential of system-wide goals to clearly link the parts of the system (including the work of education agencies) down to the goal making and planning of individual schools.

Anecdotal evidence was presented by some respondents of boards and schools having difficulty prioritising different goals. At times boards may prioritise the most recently changed requirements or goals, which may not be the most important to their practice.

There was widespread nervousness among respondents about the possibility of any desired goals and outcomes being framed too narrowly. Respondents did not want a focus on just literacy and numeracy, but felt that these needed to be set within a holistic concept of student achievement. The NZC was mentioned by many respondents as a source of guidance on the goals of the education system.

There was strong agreement that if goals and outcomes were to be developed for the education system, this must take place through wide consultation.

Those respondents who were supportive of clarifying desired goals and outcomes for the schooling system, generally agreed that they should:

- be aspirational
- provide scope for schools to interpret the goals according to the context of their communities
- have a wide definition of achievement
- be designed through wide consultation
- not be changed frequently.

Some respondents felt goals should be located in the Act, while others preferred reviewing the NEGs to make them more relevant.

The Taskforce's view

The Taskforce considers that the Act does not currently provide a clear and visible purpose statement that articulates the broad goals and outcomes desired of the New Zealand schooling system. While the NEGs are goals for the system, they are seldom considered by boards or schools. Other guidance on the goals of the system may be provided through Government priorities and targets. The NZC also provides some guidance in this area, which is highly valued by the education sector.

Recently drafted pieces of legislation often include a purpose or outcomes statement that frames the intent of the legislation. For example, the *New Zealand Public Health and Disability Act 2000* outlines how the purpose of the Act is to “provide for the public funding and provision of personal health services, public health services, and disability support services ... in order to pursue” a list of clear objectives for New Zealanders.

Regulation frameworks support good decision making when they keep the outlined objectives and goals to the lowest possible number and provide a clear hierarchy of objectives. A lack of clarity of objectives can lead to regulation not functioning as intended. Where there are a number of possibly competing objectives, regulated bodies (in this case boards and schools) can be unsure of how to make trade-offs between them.

The Taskforce considers that if a clear purpose statement was added to the Act this would support the clarity of desired goals and outcomes of the schooling system. This purpose statement would need to reflect the diversity of desired student outcomes and should be articulated in a way that all parties in the education sector are able to subscribe to it. This statement would need to encompass the diversity of pathways and visions of success for all students, including those of vulnerable students (for example, students with special learning needs).

In order to design a purpose statement that can be of sufficient breadth to encompass the variety of desired outcomes for our schooling system, while being specific enough to provide clarity, the Taskforce suggests that a wide consultation process would need to take place. This process could take into account the goals articulated in NZC and *Te Aho Mātua*, as these are both documents which were developed collaboratively and have strong ownership by the schooling sector. The current NEGs may also form a starting point for this process.

Recommendations

The Taskforce recommends that:

3. the Act contain a purpose statement outlining the desired outcomes for the schooling system
 - this statement be enduring, inclusive, student centred and embrace a breadth of desired student outcomes
 - this statement be developed in consultation with the schooling sector
 - consideration be given to the implications for the NEGs as part of this process.

PLANNING AND REPORTING

For schools, planning and reporting is based on the National Education Guidelines (government's requirements), the charter (how the board will give effect to the National Education Guidelines and the board's own priorities) and the annual report (the board's assessment of how well it has performed). The requirements can be focused on compliance, rather than emphasising the role of planning and reporting as a tool for raising student achievement.

The regulated process through which charters are reviewed means that schools have to provide their charter by a single date and the Ministry has only a short time to review all charters.

Effective planning and reporting regimes are a key tool for improving outcomes, both in the education sector and in many other areas. They can support evidence-based planning, implementation and self-review. They can also provide evidence of the activities of an organisation and how it is achieving its desired goals and outcomes.

The Taskforce was concerned that regulation relating to schools' planning and reporting does not reflect the processes associated with best practice strategic planning, self-review and continuous improvement.

Feedback from consultation

There was strong agreement from almost all respondents to this issue. Respondents felt the current planning and reporting process detailed in the Act and the NAGs had significant problems. In particular, respondents commented that:

- the timing of the planning and reporting process does not fit with school practices or the availability of data
- the level of compliance around planning and reporting takes away from the core business of improving student outcomes
- there is a lack of clarity about the purposes of these documents and whether they are suitable for these purposes.

The charter process and some of the required content was seen as problematic by almost all respondents. Many respondents commented that completing the charter is only for compliance purposes and this has made the charter lose its value.

Schools have their own annual and strategic planning processes in place that do not always relate to the charter requirements. Often the detail from these planning processes is not included in the charter, limiting the picture it provides of the school's planning.

The timing of the charter requirements also limits the feedback the Ministry of Education is able to provide. Respondents reported that they only received feedback

on their charter or annual plan if something was wrong, although they would have appreciated constructive feedback, even on approved charters or during the planning process.

There was a strong feeling that the entire planning and reporting process should be reviewed. However many respondents were not sure exactly what a new process should look like. Concepts mentioned by multiple respondents included:

- extending the time for the strategic planning elements of the charter (two to five years)
- increasing the role of the ERO in reviewing charters or advising on preparation
- retaining an annual plan and analysis of variance
- providing opportunities for professional conversations about planning and reporting with someone outside the school (such as a senior advisor from the Ministry).

The Taskforce's view

The Taskforce consultation on planning and reporting made it clear that there are systemic problems with the process. These problems impact on the boards and principals preparing the documents, and also on the Ministry whose ability to respond to the submission of documents is curtailed by a tight time frame.

The requirements surrounding the planning and reporting process are contained in the Act and in the NAGs. The Taskforce considers that an in-depth review of this regulation should take place in consultation with the education sector. The Office of the Auditor-General, the Treasury and the State Services Commission have statutory responsibilities for schools as Crown entities and therefore would need to be involved in this work.

Understanding the roles of schools, boards, the Ministry and ERO is crucial to establishing clarity about why planning and reporting is required. Once the purposes of the planning and reporting system are clarified then the procedures to be followed should be built around them.

It was evident from consultation that most schools are committed to having an effective cycle of self-review and planning. This process is essential to identifying, planning for and achieving desired outcomes. However, these generally do not relate well to the process required by the Act.

A key part of the planning and reporting process is the school charter. The charter is currently attempting to perform multiple functions. It is an accountability document, a strategic plan, a way of communicating with the community, a guide for the principal of the board's intentions and a contract between the school and the Crown.

It is unlikely that one document can effectively fill so many functions. Further consideration is needed of which of these functions a charter is most suited to performing and how other functions can be accommodated elsewhere.

The Ministry has a responsibility to the Crown to ensure that funding for education is spent wisely and effectively. It also has a responsibility to collect data to inform system decision making. Consideration should be taken of how these responsibilities can be fulfilled in a way that best supports well-performing schools.

Recommendations

The Taskforce recommends that:

4. the obligation for planning and reporting be clearly defined in the Act. The details and specifications of this process be contained in third tier regulation to better enable requirements to change as best practice evolves, and provide flexibility in their application
5. a more effective planning and reporting process for schools be designed in consultation with central government agencies, the Office of the Auditor-General and the schooling sector
6. in undertaking the design process, the following issues be considered:
 - clarifying what information is needed by the Ministry and other government agencies and the purpose of this information collection
 - clarifying the purpose and requirements of all planning and reporting documents, which currently includes the charter, strategic plan, annual report and analysis of variance
 - ensuring an effective three to five year cycle of strategic planning takes place as a responsibility of the board and school management

- ensuring an effective annual cycle of self-review and planning takes place as a responsibility of the board and school management
- developing mechanisms through which boards and schools can receive advice on their planning processes and documents
- developing mechanisms to identify and disseminate more widely to schools examples of good practice both in terms of planning and the achievement of goals
- having a flexible time period within which schools can provide planning and reporting documents that fits with the school's data collection and review processes.

THE ROLES AND RESPONSIBILITIES OF BOARDS

The Act establishes boards as Crown entities. However, unlike other Crown entities, the roles and responsibilities of boards are not set out clearly in legislation and boards may interpret their roles and responsibilities in diverse ways.

In contrast, other governing bodies established by the Act, such as tertiary institution councils, are provided with clear guidance on their roles and responsibilities. These include that tertiary councils should plan for the institution's long-term strategic direction and ensure that the institution operates in a financially responsible manner that maintains the institution's long-term viability. A range of other roles and responsibilities are also included in the Act.

Additionally, if the mandate of a statutory body, such as a school board, is not explicitly stated in legislation, the body can only do what can be reasonably inferred from what is set out in the legislation. This creates uncertainty, especially around the legality of many of the 'add-on' activities that boards of trustees might want to become involved in (for example, running out of school programmes).

Boards are currently responsible for the governance and the control of the management of the school. A recent addition to the Act articulates that boards' primary duty is to raise student achievement. However, this sits alongside other responsibilities, such as property and financial management, which can dominate board activity.

The board is the employer of all staff in the school, is responsible for setting the school's strategic direction in consultation with parents, staff and students, and ensuring that its school provides a safe environment and quality education for all its students. Boards are also responsible for overseeing the management of personnel, curriculum, property, finance and administration.

The capability of boards can be an issue, particularly for small schools and those in rural and socio-economically disadvantaged areas. The New Zealand School Trustees Association (NZSTA) has a role in providing human resource support and guidance to boards. This is currently the main lever for lifting the capability of boards.

The Taskforce is concerned that the roles and responsibilities of boards of trustees are unclear in the current Act and this can create uncertainty about what it is they should, and can legally, do.

Feedback from consultation

There was general agreement from respondents that the roles and responsibilities of boards of trustees are unclear in the current Act. However, respondents indicated that the relationships between the board and the principal are critical to how a board operates, and it is mainly when these break down that the lack of clarity becomes an issue.

It was acknowledged by almost all respondents that schools from different areas have varying degrees of capable people to choose from for this complex role. This can mean that the principal takes a greater leadership and decision making role to compensate.

Several respondents also noted the following:

- Concern about boards appointing the principal. Some respondents also felt that it may be more appropriate for the principal to be responsible for the staff rather than the board.
- That a board member with an educational background would be helpful.

A number of respondents felt that more guidance about the roles and responsibilities of boards and best practice governance is needed rather than changing legislation.

A couple of respondents suggested that there could be a pool of people, coordinated by either the Ministry or NZSTA, or both, that are prepared, eligible, skilled and vetted to be on boards. Schools could draw on this group to assist with general governance or specific issues such as property and finance.

The Taskforce's view

The Taskforce considers that the Act should clearly define the roles and responsibilities of boards. This would be consistent with other legislative examples and other Crown entities.

Consultation has indicated that the lack of definition in the Act between the roles of the board and the principal has caused problems in some instances. These are generally related to the lack of clarity between governance and management. Matching clarity about the role of the principal in the Act will reduce any confusion between the roles of the board and the principal.

Defining the roles and responsibilities of a board would emphasise the aspects of good governance that can benefit student achievement. Clarification of what boards should be doing, can be matched with the ability to perform other functions in defined circumstances or with approval. This would allow boards to take on other roles in situations where greater flexibility is needed to raise student achievement.

One potential function that boards could take on is the running of early childhood education (ECE) centres on school sites, in order to support student achievement through effective transitions to school. Boards are currently prohibited by the Act from running ECE centres themselves, or using school funds for this purpose. However, an independently run ECE centre may lease the land from the Crown and have similar individuals on their board as on the school board.

This issue has limitations that sit outside the schooling provisions of the Act. Many of the barriers to this practice are contained within ECE regulations and funding practices. There would also be Crown liability implications from boards, as Crown entities, running ECE services as this sector is currently privately run. These limitations would need to be addressed.

Training is key to becoming an effective board member. However this is not a regulatory matter. If a board member is unable to access training, a clear articulation of their role and responsibilities will provide some guidance.

Capability and the availability of board members can be an issue for the education sector. A skilled board will include members with experience in the areas of human resources, finance, law, governance and education. The Taskforce's consultation has indicated that some boards struggle to find experience in these skill areas. However, the majority of boards do maintain strong links to the wider community and their input is valuable from this perspective.

Boards need to be more aware of the options available to assist them in fulfilling their responsibilities, for example the option to co-opt skilled people onto the board or source advice from experts.

Boards are also able to delegate almost all of their functions and powers to the principal or other appropriate staff member. This is common practice for many functions and will be outlined in the board's policies. For example, it is possible to delegate the employment of teaching staff to the principal.

Recommendations

The Taskforce recommends that:

7. the Act contain more clarity on the roles and responsibilities of boards and principals
8. the roles and responsibilities of boards are not limited to but could include:
 - ensuring that school leadership has a focus on raising student achievement
 - setting objectives for the school and monitoring results
 - monitoring and planning progress in relation to a school's charter and annual plans
 - reflecting government priorities
 - having sound fiscal and property management
 - being a good employer
 - ensuring school leadership maintains student and staff safety.
9. this increased clarity should create the flexibility for boards to perform other functions that will improve student outcomes in defined circumstances or with approval
10. the roles and responsibilities for principals could include:
 - professional leadership of the school
 - all aspects of management and operation of the school.

THE ROLE OF THE BOARD AND PRINCIPAL IN THE ACT

A specific issue relating to the lack of information about boards' roles and responsibilities discussed in the previous section is the way the Act currently deals with the relationship and division of powers and responsibilities between the board and the principal.

Sections 75 and 76 of the Act may come into conflict as the powers granted to boards and principals are both wide reaching. It is not clear where the boundaries of these powers lie, and there may be some overlap.

Section 75 gives a school's board complete discretion to control the management of the school as it thinks fit.

Section 76 gives a school's principal complete discretion to manage as he or she thinks fit the school's day-to-day administration. However, the principal must comply with the board's general policy directions.

The Taskforce considered whether the respective roles of the board and principal are not clearly expressed in legislation.

Feedback from consultation

A majority of respondents agreed with this issue and it was clear from the feedback provided that there can be a conflict between the respective roles. However, this is seen by many to mainly be an issue when the relationship between the board and the principal breaks down.

Both board members and principals felt that the current wording of sections 75 and 76 is ambiguous and that the sections almost contradict each other. This has created a grey area in some circumstances that can lead to different interpretations. Respondents stressed that a clear difference between governance and management was important for the relationship between the board and the principal.

Respondents preferred either:

- changing the Act to clearly reflect the difference, or
- more guidance being provided.

The Taskforce's view

This issue is a more specific version of the wider question of roles and responsibilities discussed in the previous section. The Taskforce considers that the wording of sections 75 and 76 of the Act is outdated and confusing. While this is clearly not impeding the functioning of effective boards and principals, it is desirable for the legislation to establish a clear separation between the governance and management of schools.

Discussion of changes to sections 75 and 76 of the Act should be part of the wider discussion on how to articulate the roles and responsibilities of boards and principals.

The Taskforce considers that clarifying the roles and responsibilities of the board and principal would address the current confusion created by sections 75 and 76 of the Act.

Recommendations

The Taskforce recommends that:

11. sections 75 and 76 of the Act be revised as part of a review of the roles and responsibilities of boards and principals.

THE REGULATORY BURDEN ON SMALL SCHOOLS

The Taskforce identified concerns about the disproportionate burden regulation may place on small schools. If the school is spending a large amount of time on administrative functions, this may reduce the time given to focusing on raising student achievement.

Small schools (primary schools with less than 150 students or secondary schools with less than 300 students) make up 43 per cent of schools in New Zealand. These schools are often located in rural areas, adding a geographic element to the difficulties faced by the principals of these schools.

This is not only a problem for regulatory functions; it is often the accumulation of regulatory and non-regulatory tasks that makes this a burden. Responses may not be regulatory. Instead they may lie in collaboration with other schools, or extra support for small schools (for example, as is being trialled through the Ministry's *Property 8 Point Plan*). Another relevant initiative is the Ministry's *Red Tape Clutter Buster* project, designed to reduce or stop those activities that take up time for schools and deliver little or no value.

The Taskforce considered whether small schools have an extra administrative burden as they are required to carry out the same regulatory functions as larger schools.

Feedback from consultation

There was general agreement on this issue and that it was a real issue for small schools. However, a number of respondents also noted that there is an administrative burden for most schools, particularly those schools that cannot access the required expertise.

A number of stakeholders also commented that:

- there is a large amount of work for principals who are needed in the classroom and then need to fulfil reporting and compliance requirements
- it is hard for small schools to share as they are often rural (not close geographically).

Of the respondents who offered a solution to the extra administrative burden for small schools, most noted that a successful solution is unlikely to be regulatory.

Several stakeholders also felt that:

- boards in a geographic area could support each other to address common issues
- collaboration between schools and sharing services and community resources could be helpful
- a role, like a superintendent, could work for financial and property oversight.

The Taskforce's view

The Taskforce recognises that small schools, particularly those with a teaching principal, can face a significant administration burden. However, these schools are in part resourced to address this situation.

The strategies for reducing this burden are unlikely to be regulatory, but rather ways of collective working that lift requirements from individual schools. The current availability of opt-in or opt-out schemes for the provision of essential services (like insurance or property management) can provide ways for small schools to reduce their individual administration requirements. There may be other areas where these schemes could be expanded or introduced, for example, health and safety compliance.

Collaboration between groups of schools can also be a way of reducing individual burdens, for example a cluster for administration services. This practice is on the rise: “in 2013 more schools took part in administrative support clusters that could pool resources to provide services that individual schools could not afford or keep viable on their own: 26 percent, compared with 10 percent in 2010.”²

While this issue, based generally on geographic limitations, is a reasonably intractable one, the Ministry should consider small schools in its policy making. Various strategies for collective working seem to be mitigating the burden on small schools at present and care should be taken not to excessively add to this burden with future regulations.

Recommendations

The Taskforce recommends that:

12. the design of new education regulation should consider the cost-benefit of the compliance burden placed on schools
13. second and third tier regulations be informed where possible by the need to limit the compliance costs faced by small schools
14. the Ministry continue to investigate and support models of collective working, the use of opt-in schemes and other forms of support to assist small schools.

SCHOOLS’ USE OF FLEXIBILITY

The Act provides flexibility in many areas, including governance, the curriculum and student management. It allows schools to depart from the standard requirements of the Act if this best suits their individual circumstances.

Particularly in relation to governance, the Taskforce noted this flexibility was not used often. For example, only 10 per cent of boards use the power to co-opt members which could potentially broaden the skill base of the board and improve capability.

Less than one per cent of boards has taken advantage of the ability to have a different constitution from the one prescribed by the Act. The Taskforce was interested to explore the reasons for this low uptake.

² Wylie, C., & Bonne, L. (2014). *Primary and intermediate schools in 2013: Main findings from the NZCER national survey*. p10. New Zealand Council for Educational Research.

The Taskforce considered whether or not schools often use the flexibility available to them in the Act to enable them to carry out their primary function of raising student achievement.

Feedback from consultation

Most respondents agreed or provided a neutral response to this issue. There was agreement from some respondents that, while there is sufficient flexibility in legislation, schools are not using what is available to them. However, other respondents commented that schools use flexibility when needed, but not when it is not.

There was a feeling that the barriers against using flexibility lie in tradition and the collective agreements. In addition, impediments to flexibility have come from the Ministry through, for example, bureaucratic processes that take more time than some respondents consider necessary.

In regard to co-opting board members, there was a general feeling that some boards clearly benefit from doing this, while also noting that all boards benefit from drawing on expertise in certain areas at certain times. However, co-opting members is very difficult for some schools, including area schools as there are often not the people available with the necessary skills.

During consultation, some respondents felt that the Taskforce’s identified issues assumed a link between increased regulatory flexibility and student achievement that is not necessarily borne out by evidence. A few respondents considered that problems within the education sector were actually caused by the amount of regulatory flexibility available.

The majority of those who offered a suggestion to address this issue commented that it is unlikely that more flexibility is needed. These respondents noted that perhaps more information and guidance about the options for schools could be communicated.

Another solution offered was to encourage schools to work together to share people with expertise.

The Taskforce’s view

The Taskforce considers that the level of flexibility available in the Act is adequate for the majority of purposes. Consultation indicates that schools seldom desire to utilise those flexibilities that require additional application processes or approval by the Minister of Education (the Minister).

There is a range of areas where the Taskforce considers that flexibility is not used as much as it could be. Firstly, the number of boards using co-option (10 per cent) is low considering feedback raised the capability of boards as an issue in many cases.

Co-option can be an effective way of strengthening the board in a particular skill area, and means that the board does not bear the cost of professional expertise. The process outlined in regulation for co-opting board members did not cause any issues for respondents, who felt that the barriers to co-option are more likely to be lack of knowledge of the possibility or inability to identify people to co-opt.

Secondly, very few schools have taken advantage of the ability to have an alternative constitution. Many of these are kura, but given feedback on the diversity of governance arrangements preferred by the Māori-medium sector, more kura may wish to take advantage of an alternative constitution. Pasifika communities may also benefit from an alternative structure that recognises their desire for schools to be governed by a wide group of parents and community members.

Administration of the Act may be limiting the use of some flexibilities, where schools are uncertain of the process to follow. The Act allows various flexibilities with ministerial approval. However in practice these powers have often been delegated to the Secretary or senior managers within the Ministry. Some schools are discouraged by the need to gain ministerial approval and more guidance may be needed for schools on procedures.

Consultation indicates that the most effective way of changing practices may be the sharing of positive examples. When schools and boards can see how another school has successfully used flexibility to enhance student achievement, they are more likely to take innovative steps themselves.

Recommendations

The Taskforce recommends that:

15. the use of flexibility to raise student achievement is encouraged through the sharing of innovative ideas and examples of best practice.

COLLABORATION

The self-managing school model supports autonomy, flexibility, responsiveness to local communities and innovative practice. Collaboration is not a strong feature of the current model. While collaboration among schools is possible under the Act, the current regulatory system lacks incentives that encourage boards and school management to work together to raise student achievement. In some cases, competition among schools may be to the detriment of student outcomes.

Collaboration can be seen as a continuum from informal collaboration, such as meetings between subject experts from different schools sharing practice, to formal joining of schools, such as the introduction of a combined board.

The Act allows schools to do various things that are designed to support collaboration. For example, multiple schools can share funds and decision making to share a particular programme or resource, but there needs to be a lead fund-holding school. The Act does not currently allow a group of schools to form a separate legal entity to collaborate in specific areas, while maintaining their autonomy.

The Act also allows more structured and permanent collaboration in the form of combined boards over two or more schools. These provisions (especially combined boards) are seldom used.

A new initiative, *Investing in Educational Success*, focuses on raising student achievement by supporting the education profession to build quality and consistency of teaching and leadership across the system. This initiative will further build collaboration in a way that does not require regulatory change.

Increasingly, experience shows that when schools collaborate, there can be mutual benefits for boards, teachers and students. The Taskforce was interested in exploring whether aspects of the regulatory framework were placing barriers in the way of increased collaboration between schools.

The Taskforce considered why schools are not taking up opportunities to collaborate with other schools, for the benefit of students.

Feedback from consultation

Just under half the respondents agreed that schools are not taking up opportunities to collaborate with each other.

There was a feeling that most collaboration takes place across different levels (such as a secondary school and feeder schools) and at a subject level through interactions among teachers. It was generally agreed that having established relationships helps collaboration.

In regard to clusters, a number of respondents said that such arrangements are less likely to work if they are forced or mandatory. For clusters to work effectively there needs to be a common purpose with common goals.

Several respondents noted that there was nothing in the Act preventing clustering from happening at the moment; in fact, there is a huge potential for it to happen. However, clustering takes a lot of time and resource, and someone to start and drive the process.

It was felt that, to allow schools to take up opportunities for collaboration, an operational response with funding from the Ministry was required. In addition, the Ministry could also provide greater guidance to boards on the benefits of collaboration and the flexibility available to them.

The Taskforce's view

Tomorrow's Schools established a system of independent boards running individual schools. This system has promoted a competitive approach that can incentivise innovation and success. Communities feel ownership of their school and the community leadership has resulted in many schools that reflect the diversity of their students and their students' needs.

However, this system lacks incentives for collaboration and the concept of each student as part of a wider educational community. While some schools are using collaboration to good effect through sharing expertise or funding, consultation indicates that some schools report little or no contact with other schools. There is little reported collaboration at the board level.

Collaboration can have many benefits, from increasing expertise for individual teachers to creating an effective pipeline from early childhood education to secondary school.

When a community of schools can consider the educational pathways of students through multiple entities, then the community as a whole is likely to raise student achievement for all. The change in approach has been described as moving from schools to schooling.

This change can be particularly important for students taking diverse pathways through the education system. Students in Māori-medium education or who have special learning needs can gain significant benefit where schools collaborate to manage their transitions between schools and programmes.

Enrolment schemes may in some cases form a barrier, and in others reduce barriers to collaboration. Where schools feel that they are competing for students, this is a disincentive to collaborate. However, if an enrolment scheme means that student numbers are less of an issue (for example if both schools have a scheme or are already at their maximum roll), this may make it easier for collaboration to take place.

The current funding system may provide a disincentive to collaboration, although various initiatives have previously used funding as a lever to promote collaboration and to reduce the barriers to participation that small schools experience (for example, Learning and Change Networks). However, where current funding mechanisms have been shifted to delivery through a cluster mechanism (where those that do not take part miss out), this has been viewed with suspicion.

Consultation feedback and research agree that forced or mandated clustering is not sustainable. Collaboration should be based on mutual need and benefit. Consultation indicated a common, unstructured form of collaboration was between subject teachers at secondary level to share professional expertise.

A recent New Zealand Council for Educational Research survey showed that most primary and intermediate schools are interacting, mainly to share professional learning. However, "three-quarters of the principals said they would like to extend their working relations with other schools."³

The Taskforce has considered ways of encouraging and supporting collaboration. Defining the roles and responsibilities of boards could provide an opportunity for incentivising collaboration, by including reference to the need for boards to consider opportunities for collaboration. Similarly, ERO could look for evidence of how schools are contributing to a community of schools in their review process.

³Wylie, C., & Bonne, L. (2014). *Primary and intermediate schools in 2013: Main findings from the NZCER national survey*. p10. New Zealand Council for Educational Research.

Recommendations

The Taskforce recommends that:

16. boards be encouraged to consider opportunities for collaboration in order to raise the achievement of their students
17. any review of the Act recognises the importance of quality pathways and progression into, through and beyond the schooling system and how these can be enhanced through collaboration.

THE SCHOOL DAY AND YEAR

Some members of the Taskforce raised concerns about schools' ability to vary both the length of the school day and the school year so as to be able to support students to achieve their potential. This issue may be more of a problem for secondary schools than primary schools. The move to a four-term year has meant that the terms are less well synchronised with the examination cycle for senior secondary students.

There are also concerns about the now well-documented phenomenon of loss of learning over the long summer break. This has been shown to be particularly damaging for students from low socio-economic backgrounds.

Currently, the Act allows the Minister to prescribe the number of half days on which schools must be open during the year, and the terms of the school year. Primary schools must be kept open five days in each week for at least four hours each day, of which two hours must be in the morning and two in the afternoon.

Recent changes to the Act allow schools, who have consulted with their communities, to operate multiple timetables with the permission of the Minister.

The Taskforce was interested in exploring whether the education sector found the current limits on the school day and year a barrier to raising student achievement. The Taskforce was concerned that schools may not have sufficient flexibility to set the school day and year to maximise student achievement.

Feedback from consultation

There were mixed views on this issue. Some respondents noted that the benefits are likely to be more at the secondary level, where often the last term is lost to exams. There was general agreement that any changes should not mean staff working more.

A number of issues identified with possible changes to the school day and year are:

- the collective agreements
- the impact on families
- the timing around the schooling calendar is very ingrained.

A couple of stakeholders felt that an option provided for in the Act to have timetable flexibility and the ability to implement it at a local level would be beneficial. This could help students to access education services in different locations, and help students who have and need a part-time job.

It was also recognised that there could be opportunities to get more out of the current school property stock. Some said that the starting day for term should be similar for all as this could reduce timing conflict issues for parents and schools.

There was a variety of suggestions to address this issue, including:

- collaboration across primary, intermediate and secondary to help families coordinate timing
- the opportunity to run classes from 3–6pm
- the ability for schools to modify the number of half days to fit in with the school year and the community needs
- providing more guidance on current flexibility within the regulations.

The Taskforce's view

The Taskforce considered whether the education sector found the current limits on the school day and year a barrier to raising student achievement. The response to this was mixed.

Generally schools are working well within the current constraints of the Act, but many respondents mentioned small issues that had impeded their ability to structure teaching and learning in the way that best suits their students and communities.

In particular, the Māori-medium sector indicated that the inability to hold lessons on culturally significant public holidays (for example, Waitangi Day and Anzac Day) can impede learning and does not allow them to be culturally responsive. Also, some secondary schools felt the need to start earlier to overcome the impact of senior students finishing early in term four.

Changes in the methods of teaching and learning are likely to exacerbate this issue in the future. The availability of technology is already leading to teaching and learning opportunities taking place outside of general school hours and terms, and this is likely to increase. Current activities like Network for Learning are encouraging these changes.

The Taskforce considers that some benefit to student achievement would be gained from increased flexibility in the school day. However, this would need to be weighed against community and parental priorities and expectations. The Taskforce recognises that any changes would require consultation between the school and its community.

Setting the school terms is already a power of the Minister, via notice in the *New Zealand Gazette* (third tier regulation), and this may be the appropriate level for all regulations relating to the school day and year.

The school starting age (between a child's fifth and sixth birthday) can cause difficulties for primary schools when planning for the first year of schooling. New students often arrive without warning, and the application of truancy provisions can be difficult for those under six years old. The current provisions around the school starting age may need to be considered in a review of the Act.

Recommendations

The Taskforce recommends that:

18. the flexibility available to schools to set the school year could be increased by specifying a minimum number of half days but removing other requirements which are unnecessarily prescriptive.

MĀORI-MEDIUM EDUCATION

Regulatory settings for Māori-medium schools

Māori-medium education is where students are taught all or some curriculum subjects in the Māori language for at least 51 per cent of the time. These settings are diverse and include:

- immersion schools (generally teach in the Māori language for at least 80 per cent of the time)
- immersion and bilingual units
- classes attached to English-medium schools.

As at 1 July 2013 there were 111 kura or schools⁴ providing Māori-medium education, with 9,217 students in Māori Language Immersion levels 1 and 2.

Legislation

One of the recommendations of Tomorrow's Schools was that Māori communities be able to establish and govern their own schools.

The Act provides for three main types of Māori-medium schools. These are outlined below, along with the legislation that establishes them. Almost all the provisions in the Act that relate to state schools also relate to Māori-medium schools.

Te Kura Kaupapa Māori

The Act includes Section 155 Kura Kaupapa Māori which provides for the Minister of Education to designate, and thereby establish, a state school as a Te Kura Kaupapa Māori by notice in the *New Zealand Gazette*.

The Education (Te Aho Mātua) Amendment Act 1999 (the Te Aho Mātua amendment) amended section 155 making it a requirement for Kura Kaupapa Māori to adhere to the philosophy, principles and practices of *Te Aho Mātua*, the foundation document of Kura Kaupapa Māori. This amendment also recognised Te Rūnanga Nui o nga Kura Kaupapa Māori (Te Rūnanga Nui) as the kaitiaki, or guardians, caretakers and architects, of *Te Aho Mātua*.

⁴These figures include kura or schools that are not full Māori Language Immersion.

Te Rūnanga Nui is the organisation that supports, protects and gives direction to the development of Kura Kaupapa Māori. It also advises the Minister, oversees and supports the establishment of new Kura Kaupapa Māori, and supports new or change of Year Level Applications.

The role of the board of Kura Kaupapa Māori is the same as those of other state schools. All Kura Kaupapa Māori use *Te Marautanga o Aotearoa* (the national curriculum for Māori medium).

Other Kura Kaupapa Māori under Section 155

Because it was recognised that not all existing Kura Kaupapa Māori would agree with the *Te Aho Mātua* amendment, some schools are exempt from its provisions. Section 155D outlines the provisions that apply to those Kura Kaupapa Māori.

Section 155D only applies to schools that were in existence when the *Te Aho Mātua* amendment was passed, and no new schools can be established under this section. There are a small number of schools still operating under this designation. It is possible for these schools to apply to the Minister to be redesignated as either Kura Kaupapa Māori or special character schools if they desire.

Ngā Kura-ā-Iwi o Aotearoa

Section 156 of the Act allows for a process whereby the Minister can establish a state school as a special character school. This special character may relate to cultural, language or religious elements.

Kura-ā-Iwi (tribal immersion kura) are state schools established under section 156. The curricula of Kura-ā-Iwi are tailored to reflect the philosophy and language of the respective iwi within the framework of *Te Marautanga o Aotearoa*.

Ngā Kura-ā-Iwi o Aotearoa (The Iwi Education Authority) has a constituency of 23 Kura-ā-Iwi. Unlike Te Rūnanga Nui, Ngā Kura-ā-Iwi o Aotearoa is not recognised in the Act.

Consultation with the Māori-medium sector

The Taskforce met with a number of Māori-medium representative groups and kura. The different educational context and perspectives of the Māori-medium sector provided valuable insight for the Taskforce. The Taskforce also met with Pasifika representatives whose comments, while from a different perspective, held general agreement with most of those expressed by the Māori-medium sector.

The regulations considered by the Taskforce apply equally to English- and Māori-medium schools and kura. However the respondents outlined how the experience of implementing regulations varied significantly.

General comment on the Education Act 1989

The most predominant overarching comment was that the current regulations (excepting those sections designed for Māori-medium, for example section 155) are not designed with kura in mind. The Māori-medium sector would like the opportunity to design their own regulations that fit with their educative principles and cultural context.

Changes have been made to legislation and regulation without considering the impact on Māori-medium education. Respondents were clear that top-down changes will not work for this sector; everything needs to be done with or by the sector, not to it.

Some organisations commented that the Treaty relationship is not reflected in current education legislation. In a wider sense, the competitive design of the education system does not support the collaborative way of working that the Māori-medium sector sees as essential to success.

There is a need to remove political interference and ideological directions imposed on schools. Investing in effective support and quality teaching and leadership is more important. Any reduction in autonomy would be strongly resisted.

Respondents commented that the establishment of new kura can take an excessive amount of time (up to 10 years). This means that the intended students have generally graduated by the time the kura is open for instruction.

Direct responses to the Taskforce’s consultation document

Some of the Taskforce’s identified issues were not seen as relevant to the Māori-medium sector. For example, the sector by philosophy and necessity collaborates significantly and does not see a lack of collaboration as an issue.

Respondents commented significantly on three issues, to do with:

- planning and reporting
- the roles and responsibilities of boards
- the school day and year.

Planning and reporting

Most issues with the current planning and reporting process are shared by the Māori- and English-medium sectors. The timing of documents and frequency of reporting can cause problems.

Changes to make the process more relevant to Māori-medium practices and simplify the requirements are supported. Some respondents believed that the biggest accountability should be to the parents/whānau, rather than the Ministry.

For Kura Kaupapa Māori, *Te Aho Mātua* is the charter and governs reporting. The whānau has to believe in it and uphold the idea of continuous improvement and the focus on the individual child.

The roles and responsibilities of boards

Respondents described how the current school board system did not work for many kura. They preferred the governance bodies be as large as possible to include all interested whānau, and the system of board elections runs contrary to this preference. In practice, the ‘board’ only exists on paper to ensure the law is upheld.

Often board positions are set aside for mana whenua, who own the knowledge and tikanga that run the kura. There is a critical role played by such people in ensuring the authenticity of Māori knowledge and content.

Respondents felt that a range of governance structures is appropriate for kura and the regulatory framework must support that full range. Models for effective governance are not necessarily aligned with the Act.

Allocating the roles and responsibilities of boards is not relevant for kura until their governance structures are recognised.

The school day and year

Respondents felt that the school day and year needed to accommodate learning during holidays and at the weekends. Examples were given of the need for the whānau to come together on Anzac Day and Waitangi Day and that this involves learning and performance by the students about the meaning of the day.

The Taskforce’s view

The Māori-medium sector is diverse in its education practices and philosophies. However, it is evident that a strong belief in Māori-medium education as beneficial to Māori students and the importance of autonomy in this form of schooling are shared by all.

The guardians of the unique principles and practices of Māori-medium education are the mana whenua and the practitioners of Māori-medium education. Their expertise needs to be recognised in any changes that may affect the Māori-medium sector.

Respondents to the Taskforce’s consultation process described how some areas of regulation are causing unnecessary burden. The Taskforce considers that where the successful practices of kura are being impeded by the current regulations to do with planning and reporting, governance structures, and the school day and year, these should be reviewed. Flexibility in these areas may also benefit English-medium schools that have a high proportion of Māori students or simply want to operate more innovatively.

The Taskforce recognises the growing and strengthening nature of the Māori-medium sector. Some groups are well developed and established, while others are just in the beginning stages. It is essential that Māori-medium education is supported to develop further, without reducing the autonomy of the sector.

The Taskforce has considered whether the current Act is flexible enough to enable development of new models or philosophies of Māori-medium education. Currently the Act provides recognition to Te Kura Kaupapa Māori as a model of Māori-medium education, but other models are all covered by the designation of special character schools (which also applies to religious and other character schools).

The Taskforce recognises that other groups (eg the Māori-medium reference group of the Cross-sector Forum) are currently considering issues related to Māori-medium education, and that these groups hold considerable expertise. The Taskforce has considered only issues within its own scope, and sees these groups as appropriate avenues for recommendations on wider issues in Māori-medium education.

Recommendations

The Taskforce recommends that:

19. the Māori-medium sector be fully engaged in any review of the Act, especially with regard to legislation relating to board structures, planning and reporting processes, and the school day and year, in order to better support the Māori-medium sector's principles and practices of education
20. the Māori-medium sector be actively involved in the design of new regulation to ensure it is culturally responsive to the core principles and practices of Māori-medium education.

Appendix A:

Terms of reference

Terms of Reference: Taskforce on Regulations Affecting School Performance (the Taskforce)

An independent taskforce has been established to consider how improved legislation and regulation could contribute to the goal of raising the achievement of all students, but particularly the most vulnerable.

Background

The ACT/National Confidence and Supply agreement requires a taskforce to be established "to produce a comprehensive report on governance issues relating to policy towards state, integrated and independent schools". This proposal builds on the Inter-Party Working Group's report on school choice *Step Change: Success the Only Option* during the previous parliamentary term and the minority report *Free to Learn* of the Group's two ACT Party MPs.

New Zealand's education system performs well for most students, but not for our most vulnerable students. Both parties are eager to make it easier for schools to raise achievement for all students by identifying and addressing any issues in the legislative framework that are holding schools back.

On 11 November 2013, Cabinet agreed to establish a taskforce to engage the wider education sector (including parents and communities) in a discussion on the extent to which regulation may distract or hinder schools from focusing on raising student achievement [SOC Min (13) 24/5 refers].

The overarching objective for the Taskforce is to provide the groundwork for a review of the Education Act in 2015. To do so effectively, the Taskforce will need to consider how the Education Act 1989 and related regulations should provide a suitable, fit for purpose statutory basis for our schooling system, now and into the future.

The agreed Taskforce review is important and timely. Since 1989 the Education Act and related regulations have been added to and edited in an ad hoc manner, and a fresh view is needed. The legislation may be imposing undue reporting and administrative burdens on schools, impairing operating flexibility and making it harder for them to achieve the Government's targets for the education system. These targets include 85 per cent of 18-year-olds achieving NCEA Level 2, or an equivalent qualification, and 85 per cent of students achieving 'at' or 'above' National Standards by 2017.

Addressing these concerns will complement the many other educational initiatives the Government has taken and continues to take. These include the review of the New Zealand Teachers Council, the Ministerial Cross Sector Forum on Raising Achievement, the establishment of partnership schools/kura hourua and the review of schooling property.

Improved outcomes and value for money from education can also make an important contribution to the Government's wider priorities, including responsibly managing the Government's finances, building a more competitive and productive economy, and delivery of better public services.

The scope of the review

The Taskforce will consider how improved legislation and regulation could contribute to the goal of raising the achievement of all students, but particularly the most vulnerable.

Key questions:

- What regulatory barriers to effective governance do boards and managers experience, particularly in relation to raising student achievement?
- How would increased regulatory flexibility relating to governance structures, processes and functions enhance effective governance, particularly in relation to raising student achievement?
- What regulatory barriers to effective school management and raising student achievement do schools experience?
- How would increased regulatory flexibility increase the effectiveness of school management, particularly in relation to raising student achievement?
- To what extent are schools aware of, and to what extent do schools use, existing regulatory flexibility, particularly in relation to raising student achievement?
- How can increased awareness and use of opportunities for flexibility within existing regulations be facilitated?

The Taskforce will not consider:

- re-litigating the underlying intent of Tomorrow's Schools, ie schools' status as individual Crown entities governed by boards
- matters that are currently the subject of Government education initiatives
- National Standards reporting
- the role and functions of the Ministry of Education
- ending school types or creating new ones, or
- changes that would reduce or increase government spending on education.

The Ministry already has a 'red tape' blitz underway on things we ask schools to do that don't add value to student learning. To avoid duplication, it is therefore important that the Taskforce maintains a clear focus on the legislative and regulatory aspects of the schooling system.

The Taskforce's approach

The Taskforce will undertake a short and targeted consultation process, based on an issues paper that focuses on a few key questions.

The Taskforce will undertake a series of focused meetings with relevant representative groups, eg the New Zealand School Trustees' Association. The Taskforce will also meet with a selection of boards and principals that can comment on the issues the Taskforce is considering; for example, these may include schools with combined boards, a high proportion of priority children, or innovative governance arrangements.

In all its work the Taskforce will recognise the place and rights of Māori within our education system. The review will take place in accordance with the principles of the Treaty of Waitangi.

Reporting

The Taskforce will provide regular updates to the Minister of Education (the Minister) as agreed with the Chair of the Taskforce.

The Taskforce will produce a report by 30 May 2014 that: identifies the specific policy issues that have emerged from its research and consultation process; provides its analyses of those concerns and opportunities; and recommends areas for further work and more in depth consideration.

The Taskforce's report should provide the groundwork for a review of the compulsory schooling parts of the Education Act in 2015.

The Minister of Education will decide when and how to release the report to the public. All information gathered by the Taskforce in the course of its activity, and any reports that the Taskforce produces, will be held by the Ministry and will be subject to the Official Information Act.

Resources

The Ministry will provide a secretariat to support the Taskforce chair. The secretariat will be able to funnel 'red tape' matters into the Ministry for rapid resolution, leaving the Taskforce to focus on the Act and regulations. A senior Ministry official will be available to attend all consultation meetings.

Timeline

Taskforce established in the December quarter 2013.

Terms of reference for the Taskforce finalised by late January 2014.

Report provided to the Minister by 30 May 2014.

Appendix B:

List of organisations/schools consulted

Organisation/school

Association of Proprietors of Integrated Schools (APIS) and New Zealand Catholic Education Office	New Zealand School Trustees' Association
Auckland Primary Principals' Association	New Zealand School Trustees' Association – Auckland Executive
Canterbury Primary Principals' Association	New Zealand Secondary Principals' Council
Education Review Office	Newlands College
Mairehau High School	Ngā Kura-ā-Iwi O Aotearoa (Iwi Education Authority)
National (Te Akatea) Māori Principals' Association	Ōtāhuhu College
New Zealand Area Schools Association	Post Primary Teachers' Association
New Zealand Association For Intermediate & Middle Schooling	Secondary Principals' Association New Zealand
New Zealand Council Educational Research	Special Education Principals' Association
New Zealand Educational Institute	Sumner Primary School
New Zealand Independent Schools	Te Kura Kaupapa Māori O Ruamata
New Zealand Pasifika Principals' Association	Te Rūnanga Nui o nga Kura Kaupapa Māori o Aotearoa
New Zealand Principals' Federation	Westlake Boys' High School

Appendix C:

Information sources

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Background documents produced by the Ministry of Education for the Taskforce (all available at <http://www.minedu.govt.nz/theMinistry/EducationInitiatives/TaskforceOnRegulationsAffectingSchoolPerformance.aspx>)

- Overview of the Education Act 1989 – as relevant to primary and secondary education
- A selective review of evidence about the regulation of schooling systems
- Regulating education – the legislative framework for education in New Zealand
- Part 7 of the Education Act and its impact on schools
- What are the essential things education regulation should address?
- Governance of state schools
- Enrolment schemes
- What gets done by schools and what gets done at the centre?
- Features of a well-performing regulatory system
- The New Zealand state school resourcing system
- Information requested from the Ministry of Education from 17 Feb 2014 meeting
- The roles and responsibilities of boards of trustees
- Regulatory settings for Māori-medium schools

