



Education Report: Proposed approach to reflect the Treaty of Waitangi/
Te Tiriti o Waitangi in the Education and Training Bill

To:	Hon Chris Hipkins, Minister of Education		
Date:	23 May 2019	Priority:	High
Security Level:	In Confidence	METIS No:	1184856
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Messaging seen by Communications team:	No		

Purpose of report

This paper seeks your agreement to our proposed approach to reflect the Treaty of Waitangi/Te Tiriti o Waitangi in the Education and Training Bill (the Bill).

Summary

1. As you know, we are developing the Bill for introduction in late 2019. Final policy proposals need to be agreed by Cabinet for inclusion in the Bill by August 2019.
2. The Cabinet Manual requires Ministers to draw attention to any aspects of a bill that have implications for, or may be affected by, the principles of the Treaty/Te Tiriti. Consequently, the analysis of impacts on Māori interests is required. Whilst a collation of current Treaty/Te Tiriti provisions (and any new Treaty/Te Tiriti provisions that might arise from the review of Tomorrow's Schools) might suffice for the purposes of meeting Cabinet Manual requirements, we consider that a broader analysis of whether our education legislation reflects our new Māori Education Strategic Framework is required.
3. We therefore propose a policy work programme with four key components as follows:
 - a. **assess key components of our current legislative framework against the Māori Education Strategic Framework**, with a view to including any amendments in the Bill. At this stage we envisage that these areas would include the curriculum setting provisions and the statutory provisions that provide for the right to education (particularly from a Treaty and inclusion perspective), but we would welcome your feedback on whether these are the highest priority components of our legislation to assess;
 - b. **assess any new proposals for the Bill that might arise from the Government's response to the review of Tomorrow's Schools and other education reviews against the Māori Education Strategic Framework; and**
 - c. **investigate the possibility of a new legislative provision** for the Bill enabling the Minister to issue a statement setting out his or her expectations regarding education system compliance with the Treaty;

- d. **a first principles assessment of all education legislation against the Māori Education Strategic Framework, to be undertaken over the next two years**, for inclusion in a future amendment bill in two to three years' time.

Recommended Actions

The Ministry of Education recommends you:

- a. **agree** to the assessment of key components of our current legislative framework against the Māori Education Strategic Framework, so that appropriate amendments can be included in this year's Education and Training Bill
Agree / Disagree
- b. **agree** to discuss what the key priority areas for review against the Māori Education Strategic Framework should be, including whether these should include the curriculum setting provisions and the statutory provisions that provide the right to education
Agree / Disagree
- c. **agree** to the assessment of any new proposals for the Bill, including any proposals that might arise from the Review of Tomorrow's Schools and other education reviews, against the Māori Education Strategic Framework
Agree / Disagree
- d. **agree** that the Ministry should investigate the possibility of a new legislative provision for the Bill enabling the Minister to issue a statement setting out his or her expectations regarding education system compliance with the Treaty/Te Tiriti
Agree / Disagree *Include in NELP.*
- e. **agree** that the Ministry undertakes a first principles assessment of all education legislation against the Māori Education Strategic Framework over the next two years
Agree / Disagree
- f. **agree** to forward this Education Report to Hon Davis
Agree / Disagree

Proactive Release Recommendation

- g. **agree** that this Education Report be proactively released once the Education and Training Bill has been introduced to the House of Representatives.
Agree / Disagree


Dr Andrea Schöllmann
Deputy Secretary
Education System Policy

23/5/2019


Hon Chris Hipkins
Minister of Education

1/7/19.

Context

Treaty of Waitangi provisions in legislation

1. Current best practice is for legislation to include a Treaty/Te Tiriti clause. This generally involves listing provisions that reflect Treaty/Te Tiriti rights and obligations. This approach is consistent with recently drafted Treaty/Te Tiriti clauses (for example the Children's Act 2014, Heritage New Zealand Pouhere Taonga Act 2014, and the Environmental Protection Authority Act 2011).
2. This approach is preferred by Parliamentary Counsel and Crown Law over the more general clauses used in older legislation, such as the State-Owned Enterprises Act 1986 which provides that "*Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi*". The State-Owned Enterprises Act approach relied on a uniform understanding of what the principles of the Treaty/Te Tiriti are, and gives rise to uncertainty in the law.
3. We have sought advice from Crown Law, PCO and Te Arawhiti who agree that the appropriate design for a Treaty/Te Tiriti clause would be a clause which brings together in one place all of the provisions relating to Māori-Crown rights and duties.
4. However, merely reflecting our current obligations as expressed in the Education Act 1989 in the new Education and Training Bill misses an important opportunity to ensure our education system, including the legislative framework, is set up to enable Māori to enjoy and achieve education success as Māori.
5. The approach set out in this paper is intended to result in more equitable outcomes for Māori learners and will reflect the Government's commitment to the Māori-Crown relationship.

Māori Education Strategic Framework

6. As you know, we have developed an initial draft Māori Education Strategic Framework [METIS 1150053 refers]. The Māori Education Strategic Framework is intended to be used as a tool by policy makers to address issues and opportunities for Māori education across the overall Education Work Programme (Annex 1). The Māori Education Strategic Framework has been approved by Hon Kelvin Davis in his capacity as the Associate Minister of Education (Māori Education) and Māori-Crown Relations. It has also been discussed at a strategy session, and is incorporated within the upcoming Education System Transformation Cabinet paper.
7. We consider that the Māori Education Strategic Framework is the most appropriate tool for reviewing and designing education legislation to ensure that it reflects the Treaty/Te Tiriti to enable Māori to enjoy and achieve education success as Māori. The Māori Education Strategic Framework is based on:
 - a. our analysis of Māori Development and Māori Education theory and literature;
 - b. an assessment of the current iterations of Ka Hikitia and Tau Mai Te Reo (2013-2018);
 - c. relevant Waitangi Tribunal jurisprudence;
 - d. ongoing discussions with whānau, hapū and iwi, in particular resulting from the Māori Education Wānanga;
 - e. Māori education experts; and
 - f. colleagues within the education system.
8. The key design principles in the Māori Education Strategic Framework are:
 - a. Tino Rangatiratanga – Māori to exercise their authority and agency in education;

- b. Whānau – Education provision response to Māori learners within the context of their whānau;
- c. Mana Whakapapa – Māori population is diverse and we must respond to this diversity;
- d. Mana Tikanga – Māori language and culture matter for Māori learners; and
- e. Mana Tangata – Māori are free from racism, discrimination and stigma in education.

Recommended approach to reflect the Treaty/Te Tiriti in education legislation

- 9. We propose a phased approach to reviewing all education legislation against the Māori Education Strategic Framework. Phase One represents policy work that can be completed in time for possible inclusion in the Bill. Policy development in Phase One will be strongly informed by the feedback provided by Māori and other stakeholders through the wānanga process. Further consultation with Māori in this policy phase is not proposed.
- 10. Phase Two consists of the review of all remaining education legislation against the Māori Education Strategic Framework (i.e. all other legislation which was not reviewed as part of Phase One) over a period of up to two years. For Phase Two, engagement with Māori stakeholders will be required.

Phase One: Reflecting the Treaty/Te Tiriti in the Education and Training Bill

- 11. We are proposing a three pronged approach to reflect the Treaty/Te Tiriti in the Bill:
 - i. assessing key cross-cutting components of our current legislative framework against the Māori Education Strategic Framework;
 - ii. assessing against the Māori Education Strategic Framework any new proposals for the Bill that might arise from the Government's response to the Review of Tomorrow's Schools and other education reviews; and
 - iii. investigating the possibility of a new legislative provision for the Bill enabling the Minister to issue a statement setting out his or her expectations regarding education system compliance with the Treaty/Te Tiriti of Waitangi. The statement could be similar to the NELP, or the requirement for school boards of trustees to give effect to curriculum statements.

Priority assessment areas

- 12. Current Treaty of Waitangi provisions in the Education Act 1989 are either very technical in nature (e.g. concerning land law), relate to the provision of education to Māori learners, or Māori participation in education settings (such as consultation requirements and appointments). Reviewing the existing provisions does not provide a good starting point, because they are limited and narrow in nature. For example, there are numerous provisions in the Education Act 1989 that support establishing the Kura Kaupapa Māori schooling system. Some of these provisions relate specifically to teaching and learning and approaches that must be adopted and given effect to by kura. Across the whole education system, all Māori learners need their rights protected and nurtured.
- 13. Given the timeframes for the Bill, we propose to review a limited number of key aspects of the legislation that impact all Māori learners and that have the potential to make the greatest difference for Māori learners. With this in mind we are considering reviewing:
 - a. what provisions and rights should be included in the legislation with respect to the setting of curriculum/marautanga; and

- b. whether we need to strengthen the entitlement to education for Māori learners.
14. We have chosen these two areas because our initial assessment is that they will have the greatest impact on student success and equity, are unlikely to be covered by the Tomorrow's Schools Review and the review of vocational education, and can be reviewed within the timeframe for developing the Bill. Work on these priority assessment areas would, however, also complement work already underway in preparation for the Bill.
15. We would appreciate your thoughts and views on whether these two areas are the best starting point for a review of legislative provisions against the Māori Education Strategic Framework and for inclusion in this year's Bill.

Assessing against the Māori Education Strategic Framework any new proposals that might arise from the Government's response to the Review of Tomorrow's Schools and other education reviews

16. As you know, the Tomorrow's Schools Independent Taskforce has been exploring the impact of the governance, management and administration of the schooling system on the ability of schools to meet the needs of all Māori students. The Government response to the Taskforce's report may lead to change in the education system. This should include changes to improve the experiences and outcomes for Māori children, young people, their whānau and iwi. We propose to assess any new proposals arising from the Review of Tomorrow's Schools and other education reviews against the Māori Education Strategic Framework.

Investigating a Ministerial power to issue a Treaty statement or principles for use in education

17. We would like to investigate the potential value in creating a new legislative instrument enabling the Minister to gazette (similar to the NELP) a set of Treaty/Te Tiriti priorities that would apply to the education system. One possibility here may be to mirror the approach taken to requiring boards to follow the national curriculum. From 1 January 2020, boards will be required under new section 61(a) of the Education Act 1989 to ensure that school principals and staff develop and implement teaching and learning programmes that give effect to foundation curriculum policy statements and national curriculum statements gazetted by the Minister.
18. For example, the legislation could be amended to require boards or other parts of the education system to also ensure that the school's principal and staff develop and implement teaching and learning programmes that give effect to the Treaty or priorities co-constructed with Māori and iwi and any statement issued by the Minister of Education and Minister for Māori Crown Relations Te Arawhiti.
19. This is a new idea that we would like to develop and consider before advising you further. We will assess the viability of this option and provide further advice to you in the next two months.

Phase Two: Reviewing all education legislation against the Māori Education Strategic Framework

20. In addition to the immediate work described above, which is intended to be given effect through the Bill, we also propose to commit to a longer term review of all education legislation using the Māori Education Strategic Framework. This work will enable us to identify, through the Framework, how system change can be achieved to ensure equitable outcomes for all students.

21. This work would include assessing and reviewing provisions in education legislation that enable powers that affect Māori, for example school establishment and curriculum settings. We anticipate that this work will take up to two years and is likely to result in further legislative change being required. The Ministry intends to continue using the feedback provided through the wānanga to inform the work in Phase Two.
22. The overall approach to engagement on the long term review of the education legislation would be to work in partnership with Māori in a manner consistent with Te Arawhiti's *Guidelines for Engagement with Māori*. This would involve Māori and the Ministry determining the issue/problems, designing the process and developing solutions.
23. The Guidelines note that the process of genuine engagement with Māori by the Government includes:
 - a. an acknowledgement of their rangatiratanga and status as Treaty partners;
 - b. an acknowledgement that mātauranga Māori makes an important contribution to solving policy and practical problems;
 - c. an acknowledgement that Māori have the resources and capability to contribute; and
 - d. an acknowledgement that some issues affect Māori disproportionately and Māori are therefore better placed to develop the solutions.
24. The Ministry will work with Te Arawhiti to develop an engagement strategy to ensure that it is consistent with the Guidelines.