



**Briefing Note:** Summary of feedback on options to clarify the physical restraint framework

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	22 August 2019	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1175955
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<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	No

**Purpose of Paper**

This paper responds to your request for further information on the feedback we received from representatives of the teaching profession, disability sector, and Office of the Children's Commissioner on options to clarify the physical restraint legislative framework.

**Proactive release**

**Agree** that this Briefing will be proactively released once any legislative changes have been introduced to Parliament.

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Education System Policy

22/08/2019

*Chris Hipkins*  
Hon Chris Hipkins  
Minister of Education

*3/9/19*

## Background

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1. In March 2019 (Metis 1175955 refers), we provided you with options to clarify the physical restraint legislative framework.
2. Since then, the Ministry and Teaching Council have worked together on revised options to provide greater clarity around the use of physical restraint and other physical contact in schools.
3. The Teaching Council, in consultation with the Ministry, identified a range of options to test with representatives of the teaching profession and disability groups (EC-1674 refers). The Teaching Council provided a briefing on 3 July to update you on the feedback given by representatives from the teaching profession (EC-1686 refers).
4. A detailed summary of the feedback given by disability sector groups, including IHC, the Disabled People's Organisation Coalition, the Human Rights Commission, and the Education For All cross-sector education group, is set out in Annex 1. Key points on the range of views expressed during engagement are outlined below.
5. Given the diverse range of views on the need for changes to the legislative framework, we decided to also test key options with representatives from the Office of the Children's Commissioner (OCC) to ensure we obtained a children's rights perspective.

## Feedback from sector representatives

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6. From our engagement, we know that representatives from all groups want:
  - a. to ensure the school environment is emotionally and physically safe for students and staff;
  - b. to ensure physical restraint is used as a last resort;
  - c. to know what to do when things escalate – for it to be clear what types of physical contact are acceptable and when;
  - d. there to be accessible and effective mechanisms to resolve disputes about restraint;
  - e. there to be transparency for students, parents, schools and the system around the use of physical restraint;
  - f. school staff to receive more training in best practice behaviour management and de-escalation techniques to minimise the use of restraint, both in initial teacher education and through ongoing professional learning and development; and
  - g. to test any proposed changes with a broader group of people given the range of perspectives on the topic and the technical nature of some of the options.
7. However, there were a range of views expressed about the need for changes to the legislative framework. These are outlined below.

**Some people considered that significant changes to the regulatory framework are necessary to provide clarity to both staff and their families and whānau.**

8. Teaching profession representatives in particular considered the framework is too complex and that its focus on physical harm is too narrow and does not reflect the reality or complexity of classroom situations, which can also involve emotional harm below the current threshold.
9. Suggestions for changes included removing physical restraint from the Education Act entirely, placing relevant provisions in other primary legislation, replacing the term

“restraint” with “physical force”, and utilising secondary legislation rather than primary legislation (as occurs in other social sectors with child protection requirements).

**... while others considered that the existing regulatory framework should remain unchanged**

10. Most disability sector representatives considered that the restraint provisions were clear enough and that having the legislative framework in the Education Act gave an important signal that physical restraint should only be used as a last resort. They considered that nuances should be addressed through the physical restraint guidelines rather than in legislation. Feedback focused on the need for culture change and ongoing staff training and education to support such change.
11. The Office of the Children’s Commissioner considered that the current legislation and guidelines uphold the rights of children and already authorise teachers to use reasonable force in situations of imminent risk. They considered that regulating physical restraint in legislation is an important protection for students given the power imbalance between students and teachers.
12. However, they also recognised that teachers need clarity on what actions they can take and were open to regulatory change to achieve this. They emphasised the importance of providing guidelines and training alongside any regulatory change.

**The Code of Professional Responsibility was seen as a useful tool for promoting good practice and providing guidance in this area ...**

13. Most people considered that, alongside the legislative framework, the Code is a useful vehicle for promoting good practice, and they saw opportunities to incorporate further practice examples into guidance relating to physical restraint. They also acknowledged the Code’s focus on holistic wellbeing, which they considered to be important.

**... but people recognised that the code can’t be the only tool, because it only applies to registered teachers and restraint is done by a wider range of staff**

14. People also recognised the need for a workforce-neutral approach given the Code only applies to registered teachers. This is an issue because Ministry data indicates that a large proportion (about 40 percent) of restraint is done by staff in non-teaching roles.

**Some people saw the reporting requirements as a compliance burden with no added value...**

15. Most teaching profession representatives considered the reporting requirements unnecessary because, in their experience, family and whānau are already involved in physical restraint incidents, and reporting to the Council already occurs if there is a compliance or conduct issue, as required by law.

**... while others emphasised the need for robust reporting and monitoring processes, and said they found current dispute resolution processes too difficult to navigate**

16. Most disability sector representatives considered reporting requirements essential to ensure that families are informed and other ways to manage behaviour can be found, and generally saw a need for stronger reporting and monitoring processes. Some people said it would be useful to collect data on whether students are receiving a learning support service as part of reporting processes.
17. They also considered that existing complaints mechanisms, both through the Ministry and Teaching Council, are too slow and difficult for family and whānau to navigate,

particularly as these mechanisms rely on restraint incidents being reported, which doesn't always happen.

### Next steps

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18. We are drafting a report to provide you with advice on proposed options for change, taking into account this feedback.

### Annexes

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Annex 1: Summary of disability sector feedback on the physical restraint framework

Proactively Released



## Annex 1: Summary of disability sector feedback on the physical restraint framework

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Overall, feedback fits into three categories:

1. Views on the current physical restraint settings
2. Views on the proposed options; and
3. Suggestions for change.

### Current physical restraint settings

- Physical restraint was framed as a symptom of an education system that is not currently inclusive.
- People said that it would be helpful to view the issue through a child's rights perspective.
- People told us that they are aware of schools where restraint is not used as a last resort (to the point where parents are asked to sign consent forms to restrain), and is not always reported.
- People said that the use of restraint can in itself be harmful and have a negative effect in modifying behaviour, particularly for neurodiverse children
- People also made the point that, as far as they knew, no teachers had been censured for the use of restraint, and so questioned where the "chilling effect" regarding physical contact stemmed from.
- Having a framework regulating restraint in the Education Act was seen to be an important signal that it should only be used as a last resort. It was also considered an important protection for students.

### Proposed options

- People were of the view that, overall, the issue is not a legislative one, but a resourcing and school culture one.
- People emphasised that the wellbeing and rights of students must remain central to the legislation, guidelines, and Code.
- People considered that regulating restraint only through the Code of Professional Responsibility would not be preferable as a large proportion of restraint is done by people in non-teaching roles (e.g. teacher aides). The Teaching Council and the Code only have jurisdiction over teachers. It would also rely on restraint being reported which doesn't always happen.

### Suggestions for change

- Rather than making changes to the primary legislation or putting restraint provisions into secondary legislation, people considered that the focus should be on training staff in preventative and de-escalation techniques and on how to use the physical restraint guidelines – both in initial teacher education and in professional learning and development.
- People considered that the physical restraint guidelines should address confusion and include nuanced information, rather than legislation.
- People considered that there is a need for more robust reporting, monitoring and dispute resolution processes in regards to restraint.