



**Education Report: Education and Training Bill: Proposals to give better effect to the Treaty of Waitangi/Te Tiriti o Waitangi**

<b>To:</b>	Hon Chris Hipkins, Minister of Education Hon Kelvin Davis, Associate Minister of Education; Minister of Māori-Crown Relations: Te Arawhiti		
<b>Date:</b>	30 August 2019	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1200361
<b>Drafter:</b>	Warren George	<b>DDI:</b>	s 9(2)(a)
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<b>Messaging seen by Communications team:</b>	No		

**Purpose of Report**

This report sets out our advice on how the Education and Training Bill (the Bill) can reflect Te Tiriti o Waitangi (Te Tiriti) and notes other areas where more work is required. We are seeking your agreement to seek Cabinet approval for new Treaty provisions.

**Summary**

- On 1 July 2019 you agreed to a work programme to assess, against the Māori Education Strategic Framework, the right to education and current curriculum settings. You also agreed that we investigate a new provision to enable Ministers to issue a statement setting out their expectations for education system compliance with Te Tiriti. You noted that we will undertake a first principles analysis of education legislation in partnership with Māori over the next two-three years (METIS No. 1184856).

*Rights to education under Te Tiriti*

- In our view, rights to education under Te Tiriti include the right of Māori to provide education opportunities for Māori based in tikanga, mātauranga and te ao Māori and to be taught in te reo Māori. In any education setting, Māori have the right to education which reflects and develops their identity, language and culture. Whānau have a right to an active decision-making role in the education of ākonga Māori, and they have the right to equitable outcomes and to be free from racism, discrimination and stigma. The Crown has a duty to actively promote and protect these rights and to develop system settings in partnership with Māori.
- At present, the education system is not delivering on these rights. Barriers include legislative gaps or opaque Tiriti requirements, resourcing, teacher capacity and capability, regulatory stewardship, attitudes, and boards often having competing interests. Legislation can fill the legislative gaps, clarify requirements and modify how boards prioritise competing responsibilities.
- s 9(2)(g)(i)

s 9(2)(g)(i)

5. We propose to strengthen school board responsibilities with respect to Te Tiriti by requiring schools to give effect to Te Tiriti. This would include amending the Education Act 1989 to require boards to work in partnership with mana whenua, to ensure that their plans, policies and practices reflect local tikanga, mātauranga and te ao Māori. We also propose to strengthen the right to education for mana whenua, by requiring boards to develop policies and practices to eliminate discrimination, stigma and racism within the school.
6. At present boards are required to take all reasonable steps to provide instruction in te reo Māori and tikanga Māori if requested by a student's parent. We propose to remove the requirement that this must occur only at a parent's request. The new provision would therefore require boards to take all reasonable steps to provide instruction on tikanga Māori and te reo Māori – that is, instruction about tikanga and te reo Māori. We are not proposing that boards be required to ensure instruction is provided across the New Zealand curriculum in te reo Māori.
7. We are recommending retention of the 'all reasonable steps' test to provide scope for boards to improve how they provide this instruction without being concerned about being non-compliant. This paper suggests ways that boards could be assisted to meet this amended requirement, including a delayed commencement of the provisions.

8. s 9(2)(f)(iv)

9.

#### *Enabling provision for Ministers to set Tiriti expectations*

10. We consider that there would be merit in including a provision in the Bill that enables the Ministers of Education and Māori-Crown Relations: Te Arawhiti to set out their expectations of education chief executives on how they will meet Te Tiriti responsibilities, as specified under the proposed Public Service Bill. We propose that any such statement be required to be developed in partnership with Māori.

#### *What form should Te Tiriti clause take?*

11. We propose that the Bill include a Tiriti signposting clause. Such a clause would reference, in one place, all of the provisions in the Bill which relate to Tiriti functions, duties and powers. There is also scope for reflecting the Māori-Crown partnership, either in the proposed Tiriti clause, or in a possible purpose clause within the Bill.

### Recommended Actions

The Ministry of Education recommends you:

- a. **note** that we have assessed the rights to education based on the Māori Education Strategic Framework and Waitangi Tribunal Tiriti principles (Annex 1)
- b. **note** that the Tomorrow's Schools Independent Task Force stated an ideal schooling system would embody biculturalism and genuine equity and partnership between Māori, Pākeha and Tauīwi under Te Tiriti

Noted

Noted

*Board responsibilities to comply with Te Tiriti*

- c. **agree** to seek Cabinet's agreement to the Bill including provisions to require school boards to give effect to Te Tiriti, including specifying that boards must:
- i. Work in partnership with mana whenua to ensure that their plans, policies and practices reflect local tikanga, mātauranga and te ao Māori;
  - ii. Take all reasonable steps to provide instruction on tikanga Māori and te reo Māori; and
  - iii. Develop policies and practices to eliminate racism, stigma and discrimination within the school
- Agree / Disagree**
- d. **note** that the Ministry has a range of actions underway to build a culturally competent workforce, including growing the numbers of te reo Māori competent teachers, but we have more to do to meet our objective of a system that truly reflects a partnership with Māori under Te tiriti
- Noted**
- e. **agree** that these provisions have a delayed commencement of 1 January 2021 to provide time for boards to plan for their new responsibilities and for the Ministry to undertake work to support school board compliance

**Agree / Disagree**

*National curriculum settings*

- f. **note** that, for the Bill to reflect Te Tiriti rights in respect of national curriculum stewardship, it would need to require:
- i. a Māori-Crown partnership with mana whenua responsible for approving Te Marautanga o Aotearoa (or its replacement) and an active decision-making role in the development of any English-medium curricula; and
  - ii. all curricula to reflect the importance of te reo, tikanga, mātauranga and te ao Māori as taonga
- co-design local curric?*

**Noted**

- g. s 9(2)(f)(iv)

**Noted**

*Schools teaching and learning programmes*

- h. **note** that, for the Bill to reflect Tiriti rights in respect of schools' teaching and learning programmes, it would need to:
- i. Require boards to develop their teaching and learning programmes in partnership with mana whenua;
  - ii. Enable mana whenua to develop curriculum material regarding their own history, tikanga, mātauranga and te ao Māori;
  - iii. Require schools to integrate material prepared by mana whenua into their teaching and learning programmes, subject to it meeting certain criteria, such as being in an appropriate form and aligned with national curricula

**Noted**

- i. s 9(2)(f)(iv)

**Noted**

- j. **agree** to seek Cabinet approval to include in the Bill:
- i. a provision to enable the Ministers of Education and Māori Crown Relations to specify their expectations of government education agency chief executives on how they will comply with Te Tiriti to align with the proposed Public Service Bill  
**Agree / Disagree**
  - ii. a signposting clause that references all of the key provisions that have functions, duties and powers in relation to Te Tiriti; and  
**Agree / Disagree**
  - iii. reference to the Māori-Crown partnership and the need for the system to achieve equitable education outcomes for all students, either in Te Tiriti clause or as part of a 'purpose clause' should such a provision be included in the Bill  
**Agree / Disagree**

### Proactive Release Recommendation

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- k. **agree** that this Education Report will 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**

30/08/2019

Hon Chris Hipkins  
**Minister of Education**

\_\_/\_\_/2019



Hon Kelvin Davis  
**Associate Minister of Education**  
**Minister of Māori-Crown Relations: Te Arawhiti**

4/9/2019

## Context

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1. On 1 July 2019 you agreed to the Ministry assessing against the Māori Education Strategic Framework design principles:
  - a. the statutory provisions that provide for the right to education;
  - b. curriculum setting provisions; and
  - c. proposals for the Bill that might arise from the Government's response to the review of Tomorrow's Schools and other education reviews. (Separate advice will be provided to you on the application of Te Tiriti to this work.)
2. You also agreed that the Ministry should investigate, in time for the Bill, a possible new legislative mechanism enabling the Minister to issue a statement setting out his or her expectations regarding education system compliance with Te Tiriti.
3. In our earlier advice we acknowledged that we could not undertake a first principles review of education legislation in time for the Bill. We therefore also proposed to undertake a first principles assessment of all education legislation against the Māori Education Strategic Framework over the next two to three years.

### Why should we focus on particular rights for Māori in education?

4. Student attendance and engagement are critical factors relating to student achievement. However, in virtually all measures of attendance, engagement, wellbeing and achievement, ākonga Māori suffer inequitable outcomes. New Zealand was recently ranked 33 out of 38 developed countries for its overall educational inequality.
5. The percentage of Māori (50.4 percent) attending school regularly is significantly lower than that of other ethnic groups. In 2017, Māori students were more than twice as likely as European/Pakeha students to be stood down from their school. Schools are standing down more Māori students than for any other group.
6. Ministry research indicates that feeling powerless can be a barrier for ākonga and whānau raising concerns with their school or kura. Participation by whānau in planning, development and delivery of education services helps ensure that those services are appropriate and effective for Māori students. However, in 2018, the number of Māori parent representatives was disproportionately low in around 60 percent of schools.
7. Strengthening the right to education is, therefore, particularly important for ākonga Māori and their whānau to improve accessibility for students and to foster a sense of belonging. Wānanga feedback indicated that the current lack of access limits ākonga Māori potential. The Tomorrow's Schools Taskforce noted the importance of Te Tiriti and that the school system should be Tiriti led and inclusive of iwi. Our recommendations are consistent with, and support, the Taskforce's findings.

### Right to education for ākonga Māori and whānau under Te Tiriti

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8. As you know, we have developed an initial draft Māori Education Strategic Framework [METIS 1150053 refers]. The framework was developed from, among other things, Māori Development and Māori Education theory, Waitangi Tribunal jurisprudence, feedback from whānau, hapū and iwi through Māori Education Wānanga, and Māori education experts.
9. In considering Tiriti rights in education, we have considered the June 2019 Waitangi Tribunal report on Health Services and Outcomes Inquiry (WAI 2575). In its report, the Tribunal notes that "in our report we explore whether the persistent inequitable health outcomes suffered by Māori are indicators of a Treaty breach". s 9(2)(g)(i)

s 9(2)(g)(i)

10. The rights to education, based on the Māori Education Strategic Framework and Waitangi Tribunal findings are set out in Annex 1. Consistent with these rights, a desired future state that provides for the right to education under Te Tiriti would entail:
  - a. the Crown facilitating and resourcing opportunities for iwi, hapū and whānau to provide educational opportunities for ākonga throughout early childhood, primary secondary and tertiary education. Ākonga Māori should have a choice in whether they attend English or Māori medium schools;
  - b. mana whenua, through whānau, having an active decision-making role in all aspects of ākonga Māori education including what is being taught, how it is taught and how success is measured;
  - c. all educational services promote and protect the use of te reo, tikanga, mātauranga and te ao Māori as taonga;
  - d. the system being free from institutional racism and discrimination (eg, resourcing is equitably disbursed) and participants within the system are aware of, and mitigate the risks of intentional or unintentional discrimination;
  - e. the wellbeing, engagement and achievement of ākonga Māori, as defined by whānau, is equitable with other population groups.
11. Some of these rights are absolute, such as the right to be free from discrimination, and some need to be considered in the context of the Crown's kāwanatanga role under Article 1 of Te Tiriti – the right to govern.
12. The current system cannot deliver on all of the rights identified at this time. For example, there are insufficient numbers of te reo teachers to ensure that every child can learn te reo Māori at school. Current funding is insufficient to support all Māori educational institutions to meet demand. However, there are some changes that we can make to clarify the rights and to strengthen the system's responsibilities to uphold them.

#### **Strengthening school board responsibilities to give effect to Te Tiriti**

13. The Education Act 1989 (the Act) and subordinate legislation contain a number of statements specifying the importance of Te Tiriti for school boards, as agents of the Crown, undertaking their functions. For example, clause 16 of Schedule 6 requires boards to take all reasonable steps to:
  - a. ensure that the policies and practices for its school reflect New Zealand's cultural diversity and the unique position of the Māori culture;
  - b. act in a manner that is consistent with the principles of the Treaty of Waitangi;
  - c. provide instruction in tikanga Māori (Māori culture) and te reo Māori (the Māori language) for full-time students whose parents ask for it.
14. Section 61 of the Act specifies that school charters must include a section with the aim of:
  - a. developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of the Maori culture; and
  - b. ensuring that all reasonable steps are taken to provide instruction in tikanga Maori (Maori culture) and te reo Maori (the Maori language) for full-time students whose parents ask for it.

#### *Proposal*

15. Based on the Māori Education Strategic Framework, we consider that board requirements in relation to the right to education should be clarified and strengthened. We propose that the Act should specify that the actions a board must take to comply with Te Tiriti include:

- a. working in partnership with mana whenua to ensure that its plans, policies and practices reflect local tikanga, mātauranga and te ao Māori;
  - b. taking all reasonable steps to ensure tikanga Māori and te reo Māori is taught at the school; and
  - c. developing policies and practices to eliminate racism and discrimination within the school.
16. The proposed new requirements are based on the current board responsibilities, however, they would be clearer, stronger and would better reflect the Māori Education Strategic Framework. For example, the proposal for boards to work in partnership with mana whenua acknowledges the role of boards, as the Crown's representative, in the Māori-Crown partnership. It would provide a formal role for 'mana whenua' rather than Māori generally. Māori who are not mana whenua would continue to be involved as part of the school's community. A requirement that plans, policies and practices reflect 'local tikanga' rather than 'the unique position of the Māori culture' would emphasise the importance of local Māori history and practices.
17. The objective of the proposed change around the teaching of tikanga and te reo Māori is to challenge boards to improve these aspects of education for their ākonga. The proposed wording would:
- a. remove the current requirement that tikanga and te reo Māori availability is for full-time students only – under the new provision it would be available to any student;
  - b. remove the requirement that parents must first request instruction on tikanga and te reo – under the new provision, boards would need to take reasonable steps to provide such instruction at any time; and
  - c. strengthen the expectation that students will learn tikanga Māori and te reo Māori at school.
18. The proposal would not require boards to ensure that all learning areas in the New Zealand curriculum are taught in te reo Māori. The requirement would be that students be taught about tikanga and te reo Māori at the school. Retaining the requirement for boards to take 'all reasonable steps' to ensure tikanga and te reo are taught at their school would provide the flexibility for schools to improve how they provide such instruction, without the concern that they must meet an absolute legal requirement.
19. There are currently insufficient numbers of te reo Māori teachers to ensure that every child can learn te reo Māori at school. Also, current funding is insufficient to support all Māori educational institutions to meet potential demand. The new provision would give boards the flexibility to network with other providers and schools to provide this service, such as virtual learning networks, their Kahui Ako or Te Aho o Te Kura Pounamu.
20. The Ministry also has existing programmes, and other supports under development, to grow the culturally capable workforce and the number of te reo Māori competent teachers. We also know that there is much more to be done, particularly through implementation of the Workforce Strategy and the Tomorrow's Schools Review, to achieve a system that is truly reflective of partnership with Māori under Te Tiriti. Existing and new programmes will need to be grown to meet this objective.
21. Given the status of te reo as a taonga and one of our national languages, it is incumbent on the Crown to ensure that education legislation recognises this and provides impetus for system transformation. Such a change would also contribute to meeting the Crown's duty to actively protect tino rangatiratanga rights.
22. The proposed requirement for boards to develop policies and practices to eliminate discrimination reflects the significant impact that institutional bias, deficit thinking and other forms of bias have on the engagement, wellbeing and achievement of ākonga

Māori. The impact of discriminatory practices within schools was a consistent theme of feedback through the Ministry's wānanga, and has been a point of concern to the Children's Commissioner. A proposed change would encourage boards to develop their own strategies to actively eliminate racist and other negative behaviours and will encourage uptake of Ministry supports such as Te Hurihanganui as they develop.

#### *Transitioning to affect future requirements*

23. While legislation does not by itself change practice, it provides an important signal about how the government expects schools to prioritise the resources they receive. The proposed changes to board Tiriti responsibilities would strengthen and clarify the existing legal requirements.
24. Schools should already have developed relationships with their local Māori communities as it is a current requirement that boards, "in consultation with their Māori community, develop policies, plans, and targets for improving the progress and achievement of their Māori students". However, for some boards, a strengthened obligation will require developing new relationships and practices.
25. Boards will want time to plan for, and implement, any changes necessary to meet the new requirements. Some boards will be concerned that they are insufficiently resourced to perform these functions. These concerns could be mitigated by:
  - a. Delaying commencement of the new provisions through to 1 January 2021. This would provide up to six months after the Bill is enacted for boards to consider how they will comply and/or for boards to seek Ministry support, where necessary. It would also provide the Ministry with an additional period to develop support material and programmes to help boards achieve compliance;
  - b. Delaying commencement of the new provisions through to 1 January 2023. This would provide an additional 30 months for boards to comply and for the Ministry to develop guidance and other support programmes. A delay to 2023 would align with the start of the new planning and reporting framework (at which point it is envisaged boards would have developed their first strategic plans).
26. With either delayed commencement approach, other aspects of the education work programme, such as implementation of the Education Workforce Strategy, the Tomorrow's Schools Review and the review of online learning will support boards to meet their obligations. We will consider further what programmes will need to be developed or enhanced to provide the relevant support for boards and ākonga (including, for example, Te Ahu o Te Reo Māori and Kauwhata Reo).
27. The Ministry's preferred approach would be the earlier commencement date, supported by a programme of work to enable schools to meet these strengthened obligations.

#### Mana whenua involvement in curriculum design

##### **National curriculum stewardship**

28. There are few provisions in the Education Act 1989 relating to national curriculum design, review and maintenance. The Act provides that the Minister may make and Gazette national curriculum statements (NCS). These are statements which cover the areas of knowledge and understanding to be covered by students, the skills to be developed and the levels of knowledge, understanding, and skill, to be achieved.
29. The National Curriculum sets the direction for student learning and provides guidance for schools as they design and review their curriculum. It includes Treaty of Waitangi as a foundation principle of the national curriculum, which should underpin all school decision making on their teaching and learning programmes. The curriculum acknowledges the principles of the Treaty of Waitangi, and the bicultural foundations of



Aotearoa New Zealand. All students have the opportunity to acquire knowledge of te reo Māori me ōna tikanga.

30. The Education Act does not specify who is responsible for keeping the national curriculum up-to-date, how often it should be reviewed, or who should be involved in the monitoring and review processes. There is currently no statutory role for mana whenua.
31. The exception is that schools designated as Kura Kaupapa Māori under section 155 of the Act are required to use Te Aho Matua which is a statement that sets out an approach to teaching and learning that applies to Kura Kaupapa Māori. Kura Kaupapa Māori also use Te Marautanga o Te Aho Matua as their curriculum. The Act specifies that Te Runanga Nui o Nga Kura Kaupapa Maori o Aotearoa (TRN), are the most suitable organisation to determine the content of Te Aho Matua, and for ensuring that it is not changed to the detriment of Māori. TRN have, for some time, wanted Te Aho Matua to be considered a curriculum and to be Gazetted to give it the same status as the national curriculum.
32. In our view, from a Tiriti perspective, the current provisions around national curriculum stewardship partially meet Māori Education Strategic Framework. The current TRN role as the kaitiaki of Te Aho Matua is an example of tino rangatiratanga rights – the exercise of authority and agency over an important aspect of how Kura Kaupapa Māori operate. However, there is currently no formal Māori-Crown partnership arrangement in the design and maintenance of Te Marautanga or the national curriculum.
33. Based on our assessment of the MESF, and the right to education, we consider curriculum provisions would ideally involve the following:
  - a. curriculum stewardship/kaitiakitanga should reflect a Māori - Crown partnership in the review, design, development and maintenance of the national curriculum (English and Māori medium). This would contribute to meeting the tino rangatiratanga right to agency and authority over education for ākonga Māori, and gives manifest effect to the Māori-Crown partnership;
  - b. Tangata whenua have a formal role in approving any curricula designed for Māori medium education kura (similar to the role that TRN play in relation to Te Aho Matua). This would recognise and give effect to the tino rangatiratanga right for mana whenua to determine what is being taught in Māori education settings. It represents the manifestation of education by Māori, for Māori;
  - c. the significance of te reo, tikanga, mātauranga and te ao Māori as taonga should be reflected in any curricula designed for use in New Zealand (in both English or Māori medium schools). This recognises that Māori language, culture, knowledge and world-view are taonga. It is therefore an expression of the tino rangatiratanga right, and mana tikanga – identity, language and culture matter to Māori learners. Embedding te reo Māori knowledge etc in curricula for all New Zealanders recognises mana tangata – Māori being free from racism and discrimination;
  - d. Tangata whenua are supported by the Crown in the performance of their role. This recognises the Māori-Crown partnership and the Crown's responsibility to actively protect taonga Māori and tangata whenua rights of tino rangatiratanga.
34. In the Education Report: *Final Report of the Curriculum, Progress and Achievement Ministerial Advisory Group and update to Cabinet* you agreed to the exploration of a potential regulatory framework for ongoing stewardship of curriculum for possible inclusion in the Bill [METIS 1193652 refers]. s 9(2)(f)(iv)

s 9(2)(f)(iv)

35. s 9(2)(f)(iv)

#### Local curriculum stewardship

36. The National Curriculum sets the direction for student learning and provides guidance for schools as they design and review their teaching and learning programmes. It includes Treaty of Waitangi as a foundation principle of curriculum, which should underpin all school decision making on their teaching and learning programmes.

37. The requirement for school boards to develop their own teaching and learning programmes is set out in a 2008 Foundation Curriculum Policy Statement and National Administration Guideline (NAG 1). NAG 1 recognises a role for the school's Māori community in the development of the school policies and plans to improve progress and achievement of Māori students.

38. However, neither the Education Act 1989 nor secondary instruments specify:

- a. a role for mana whenua in the review of teaching and learning programmes;
- b. the importance of Te Tiriti in local review and design; or
- c. how local tikanga, te reo, mātauranga, or te ao Māori is reflected in teaching and learning programmes.

39. In an ideal state, local curriculum stewardship would:

- a. Require boards to develop their teaching and learning programmes in partnership with mana whenua;
- b. Enable mana whenua to develop curriculum material regarding their own history, language, tikanga, mātauranga and te ao Māori;
- c. Require schools to integrate material prepared by mana whenua into their teaching and learning programmes, subject to it meeting certain criteria, such as being in an appropriate form and aligned with national curricula.

40. While we have identified an ideal state based on Tiriti rights, the Ministry does not recommend these changes now. In our view, the strengthened provisions for giving effect to Tiriti rights in national curriculum stewardship will provide more direction for schools to reflect Te Tiriti. Given that national stewardship decisions will affect the process for schools developing their teaching and learning programmes, we consider it important to have a clear direction around national curriculum stewardship before we recommend detailed changes relating to local teaching and learning programmes.

41. s 9(2)(f)(iv)

42. We are concerned that the proposal has not been fully costed and is likely to result in costs for mana whenua, school boards and/or the Crown. We consider current Ministry programmes such as Kauwhata Reo<sup>1</sup>, planned to be launched in October 2019, Te Aho Ngārahu<sup>2</sup> and other programmes will encourage schools to embed te reo, mātauranga and te ao Māori in schools curricula. If you consider that the Bill should reflect Te Tiriti in local curriculum design, we will undertake a further assessment of how programmes such as these could be expanded to support mana whenua and schools.

<sup>1</sup> Kauwhata Reo is an integrated online hub to support the growth of teaching and learning in and through te reo Māori. Kauwhata Reo will, among other things: migrate and update te reo Māori content from TKI and categorise current and new resources within te ao Māori.

<sup>2</sup> Te Aho Ngārahu is an annual fund that supports te reo Māori in education by developing te reo Māori localised curriculum resources for ākonga, kaiako and Kāhui Ako across all educational settings.

## Enabling Ministers to issue a statement of Tiriti-related expectations

43. In our earlier advice, we proposed investigating a new legislative provision for the Bill (similar to the NELP) enabling Ministers to issue a statement setting out their expectations regarding education system compliance with Te Tiriti. We suggested that any NELP-like statement could be co-constructed with iwi and issued jointly by the Ministers of Education and Māori Crown Relations: Te Arawhiti.
44. We have evaluated the use of such a provision in two ways:
  - a. as a way of prioritising the teaching of particular matters in the current New Zealand Curriculum, for example, specifying the teaching of Te Tiriti and the New Zealand Land Wars as part of history in the social science learning area; and
  - b. specifying expectations of government education agency chief executives to give effect to Te Tiriti in the conduct of their work.

### **Prioritising teaching of certain elements of the curriculum**

45. We do not consider that a Ministerial statement that prioritises the teaching of certain elements of the New Zealand Curriculum would be an effective way to promote a change in what schools teach. In our view, the approach set out in this paper to affect long-term change in what is being taught and how it is taught would be more enduring and will have greater impact. Through the development and implementation of Digital Technologies | Hangarau Matihiko we have learnt that changes to the curriculum take time and need to be supported by leadership that drives behaviour change.
46. We note that you have asked for further advice on how to ensure New Zealand history is taught in our schools.

### **Specifying expectations of government education agency chief executives**

47. There is merit in including in the Bill a provision that enables Ministers to specify actions education agency chief executives must take to give effect to Te Tiriti. At present there are no legislative requirements on government education agencies in respect of Te Tiriti. This is likely to change with the enactment of the Public Service Bill currently being prepared by the State Services Commission.
48. Cabinet has agreed (CAB-19-MIN-0250) that the Public Service Bill should include a prominent stand-alone clause that sets out expectations of the public service in relation to the Māori-Crown relationship, as follows:
  - a. promote engagement, participation and partnership with Māori including proactively informed and collaborative approaches that are mutually beneficial and strengthen the relationship;
  - b. deliver services and results that are responsive and accessible to, and work for Māori and whānau to improve results;
  - c. have a workforce that reflects and understands the communities it serves, is valued for its cultural competence, and empowers Māori to succeed as Māori in the public service; and
  - d. promote leadership and culture that encourages cultural competence to deliver with and for Māori and develops and supports Māori in senior leadership and decision-making roles (CAB-19-MIN-0250).
49. Including in the Bill a provision that enables Ministers to specify what education agencies must do to give effect to the Public Service Bill expectations, would ensure that education agencies' approach to Te Tiriti are aligned with the rest of the public sector and are aligned together. It would also provide a clear statement to mana whenua, and the rest of New Zealand, how education agencies will give effect to the responsibilities

under the Public Service Bill. This will have the effect of being a public accountability document which, provided it is complied with, will help to build trust between Māori and the Crown.

50. Should you wish to proceed with such a provision, we propose that the Bill specify that any statement of expectations would be:
  - a. developed in partnership with Māori; and
  - b. published jointly by the Ministers of Education and Māori-Crown Relations Te Arawhiti.

#### What form should a Tiriti clause take?

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51. A key issue yet to be resolved is what form any Tiriti clause should take. The Ministry proposes a signposting clause. This would provide the most clarity on the functions, duties and powers of organisations and officers in relation to the Tiriti. It is Parliamentary Counsel's preferred approach to drafting Treaty clauses and it complies with Legislative Design Advisory Committee guidelines.
52. There is scope to include in either a Tiriti clause or a purpose clause in the Bill that the Crown will work in partnership with Māori with the objective of providing equitable education outcomes for ākonga Māori within whānau. Such a provision would help provide the context for other duties set out in the Bill.

#### Next steps

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53. Based on your decisions on this paper, we will prepare advice for you to take to Cabinet as part of Tranche Three of the preparations of the Bill in mid-September 2019.
54. s 9(2)(f)(iv)
55. You will receive further advice in relation to Tomorrow's schools which may contribute developing provisions to better reflect Te Tiriti.

#### Annexes

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- Annex 1: Right to education for Ākonga Māori and Whānau

## Annex 1: Right to education for Ākonga Māori and Whānau

1. Mana whenua have a tino rangatiratanga (Article 2) Tiriti right to exercise authority and control over their tāonga: including te reo, tikanga and mātauranga Māori and Te Ao Māori.
2. In education, this means the right for mana whenua to exercise agency and authority over the education of Māori learners as whānau and as education providers.
3. The Crown has a duty<sup>3</sup> to work in partnership with Māori as the mana whenua to actively protect tino rangatiratanga rights.
4. Whānau have a right to an active decision-making role, in partnership with the Crown, in:
  - what is taught to ākonga Māori
  - how it is taught
  - how success is determined and measured.
5. Whether in Māori education settings (kōhanga reo, kōhungahunga, puna reo, kura kaupapa Māori, wharekura and wānanga) or English medium settings, ākonga Māori within whanau have a right to education that reflects and develops their identity, language and culture. That includes the right of whānau to have an active decision-making role.
6. Māori have a right to education services that result in equitable outcomes with non-Māori<sup>4</sup> and for resources to be applied to ensure equitable results for all learners.
7. The principle of active protection also requires the Crown to make available to Māori, as citizens, education services that reasonably and adequately attempt to close inequitable gaps in education outcomes with non-Māori.
8. Ākonga Māori (as with all other learners) have a right to education that is free from racism, stigma and discrimination. Māori have a right to expect that the Crown will undertake the actions necessary to minimise or eliminate institutional and individual racism/discrimination.

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<sup>3</sup> The principle of active protection also arises from the Treaty partnership, through the exchange of kāwanatanga and tino rangatiratanga. This includes the Crown's obligation to *protect* actively tino rangatiratanga, including the Māori right to autonomy. Thus, in the modern context, the Tribunal has considered that the Treaty guarantee of tino rangatiratanga affords Māori, through their iwi, hapū or other organisations of their choice, the right to decision-making power over their affairs. 19 Waitangi Tribunal WAI 2575 p29

<sup>4</sup> The principle of active protection also requires the Crown to make available to Māori, as citizens, health services that reasonably and adequately attempt to close inequitable gaps in health outcomes with non-Māori. *ibid.*

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