

Draft high-level structure for Education and Training Bill

Notes

- The table below sets out a high-level structure showing possible Part headings, subpart headings, suggested content and comments. Content can be divided up within subparts by the use of cross-headings (centred, italicised headings).
- Key to whether review required:



This subject area is affected by reviews.



This subject area is not affected by reviews but policy work is required.



Content can be moved over from current legislation largely unchanged ('cut and pasted').

Education and Training Bill 2019/2020		
Part 1, Preliminary provisions		
1.6 Treaty of Waitangi		
A possible provision indicating where specific duties are included to recognise the Treaty of Waitangi (see, for example, s 7 Public Records Act 2005)		<p>The Cabinet Manual requires Ministers to confirm in the LEG paper that the bill complies with the principles of the Treaty of Waitangi. Consequently some analysis of impacts on Māori interests will be required. The 1989 Act includes a few references to the Treaty of Waitangi. For example, a Board of Trustees must take all reasonable steps to act in a manner that is consistent with the principles of the Treaty (Sch 6, cl 16).</p> <p>The minimum for a bill to be developed next year would be to include a provision which lists or indexes the sections of the Act that recognise the Treaty of Waitangi. An example of this is s7 of the Public Records Act 2005. A more comprehensive review of Treaty implications, including, for example, a consideration of whether education is a taonga, is not on the current work programme, so would need to occur later (see section 4 of the Te Ture mō Te Reo Māori Act 2016, which recognises Māori language as a taonga of iwi and Māori who are the kaitiaki of the Māori language).</p>

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To:	Legislation Governance Board
From:	Rachel Voller
Date:	13 February 2019
Subject:	Education and Training Bill - first round of Cabinet policy approvals

Treaty of Waitangi

- 14 We have been considering how to approach the Treaty of Waitangi in the new Bill. We would like to show that we have considered the appropriate way to reflect the Treaty in the new legislation. We recognise that a comprehensive review of how to make the Treaty meaningful in our legislation should happen especially if we were undertaking a rewrite of the education legislation. However this would require extensive engagement with iwi on issues such as how to recognise education as a taonga, and whether education for Māori should be treated as a taonga. We don't think it's feasible to do justice to this work in this Bill without substantial engagement.
- 15 With this in mind, we are proposing to take a minimal approach to setting out how the Bill will address Treaty of Waitangi obligations. This will be a clause that lists the specific provisions in the Bill relating to the Treaty. This signposting approach has been used in legislation including the Public Records Act 2005 (section 7), the Children's Amendment Act 2018 (section 4A) and the Local Government Act 2002 (section 4).
- 16 If you are comfortable with this approach, we will include this proposal in the advice to the Minister. We will also work with iwi, the education sector and government agencies (including Te Arawhiti – the Office for Māori Crown Relations) to develop options for future legislation.

The minutes from the 15 February meeting state: Treaty of Waitangi

- Ben summarised the proposal for a Treaty of Waitangi clause signposting key Treaty provisions in the Act.
s 9(2)(g)(i)
- Leg Board agreed that it didn't seem sufficient to just roll over the current sections into the new Bill. We need to develop options to more sufficiently reflect the Treaty in the Act.

Action: give this issue more thought and provide options to go further than merely signposting Treaty clauses in the Act – System & Schooling policy will do more work on this.



To:	Legislation Governance Board
From:	Rachel Voller
Date:	1 April 2019
Subject:	Reflecting the Treaty of Waitangi in the Education and Training Bill

Purpose

1. This paper outlines the approach we intend to take to reflect te Tiriti o Waitangi (the Treaty) in the Education and Training Bill (the Bill). We are seeking the Board's views on this approach.

Summary

2. Since we last reported to the Board on a Treaty clause for the Education and Training Bill, we have further developed the options, **s 9(2)(h)**
[REDACTED]
3. Further policy work is required to determine what provisions could be reflected in the new Bill. We propose a programme of policy work to:
 - a) assess aspects of the regulatory framework against the Māori Education Strategic Framework (MESF) design principles. This will include:
 - the current provisions in the Education Act 1989 that provide for duties and responsibility in relation to Māori, and
 - any new proposals that might arise from the Government's response to the Review of Tomorrow's Schools and other education reviews; and
 - b) investigate the possibility of a new legislative provision enabling the Minister to issue a statement (possibly similar to the MESF design principles) setting out his/her expectations regarding education agencies' compliance with the Treaty principles. This could be accompanied by a provision specifying that statutory officers, education agencies and authorities would have to assess all policy proposals against the principles.
4. We also see merit in a 'first principles' evaluation of all aspects of the education system legislation against the MESF and the Treaty. We therefore propose to commit to further work being undertaken over the next two years. This would include assessing the remaining education legislation provisions against the MESF.

s 9(2)(h)



Background

5. On 13 February we provided the Board with the paper *Education and Training Bill - first round of Cabinet policy approvals*. In that paper we proposed a longer term work programme to robustly analyse how to appropriately reflect the Treaty in our legislation. For the immediate purposes of the Education and Training Bill, we proposed a minimal 'signposting' approach to developing a Treaty clause in the Bill. This was intended as a 'drag and drop' approach that would simply bring together in one place the current provisions in the Act that relate specifically to rights and duties relating to Māori in our education system.
6. This approach would not have included an assessment of the efficacy of those provisions. It was also intended that any legislative change resulting from the Government's response to the Tomorrow's Schools review would be reflected in a signposting provision.
7. The Board agreed that the 'signposting' approach of itself would not reflect the Ministry's current thinking about how the Treaty and its principles should be reflected in legislation. The Board requested that we develop options that go further in giving effect to the Treaty in the new Bill. We subsequently also met with Dr Ngata who indicated the Ministry should take the opportunity to assess all the provisions in education legislation (not solely Treaty related provisions) to better reflect the design principles in the Ministry's MESF.
8. s 9(2)(h)

Proposed Policy Approach to reflect the Treaty of Waitangi in the Bill

9. We propose to assess against the MESF:
 - a. all of the current provisions in the Education Act 1989 that provide duties and responsibilities in relation to Māori, and
 - b. any new proposals that might arise from the Government's response to the Review of Tomorrow's Schools and other education reviews.

Assessing current Treaty provisions in our legislation

10. There are approximately 30 provisions in the Education Act 1989 that could be considered Treaty related provisions. A list of the current provisions is included in Annex A. It includes, for example:
 - provisions requiring specific consultation with Māori;
 - provisions relating to Kura Kaupapa Māori; and



- general provisions relating to the availability of teaching in te reo and with tikanga Māori.

11. Some of these provisions appear, prima facie, to be inconsistent with the MESF design principles. For example, the current requirement for a school board to only need to take *all reasonable steps* to provide instruction in tikanga Māori and te reo Māori when a parent asks is arguably inconsistent with the principle of tino rangatiratanga (the mandate for Māori exercising their authority and agency in education). We will need to work through how to strengthen requirements such as these in our legislation, and how to manage practical considerations such as funding implications, the availability of teachers with relevant experience and the ability for school boards to deliver a higher level of service.

Assessing Tomorrow's schools proposals against the MESF

12. In respect of any new proposals developed through the Government's responses to Tomorrow's Schools, we will work with the Tomorrow's Schools response team to assess the policy proposals against the design principles.
13. For example, should new education entities or hubs be proposed, we will need to consider how Māori will be enabled to exercise authority and agency in each of these entities. Another example will be for us to consider, as part of any new disputes resolution process, how to ensure Mana Tikanga and Mana Whakapapa principles are enabled across an end-to-end process (i.e. how can we ensure cultural responsiveness to Māori and facilities in te reo in new mediation or independent tribunal processes).

Giving legislative effect to a Ministerial direction to education agencies on Treaty principles

14. We are investigating the possibility of a new legislative provision enabling the Minister to issue a statement or direction to set out his/her expectations for education agencies' compliance with a set of MESF principles. Such a Ministerial statement could include reference to the Ministry's MESF design principles, for example. This could be accompanied by a provision specifying that statutory officers, education agencies and authorities must assess all policy proposals against the principles.
15. Such a statement could be similar to the NELP, and be Gazetted by the Minister.

Further work beyond this year's Bill

16. Even with the work described above, we recommend committing to a more comprehensive review of how the MESF design principles are reflected in education legislation. We anticipate that this would include the establishment of a cross-Ministry and cross-agency working group that would undertake work for up to two years to determine how to best give effect to the Treaty in education legislation.



Next Steps

17. We propose, subject to the Board's feedback:

- over the next week to prepare an Education Report informing the Minister of our approach described above to reflect the Treaty in the Bill;
- to undertake an analysis of the current treaty related education legislation provisions as set out in Annex A;
- to report back to the Board on the analysis of existing legislation prior to the development of policy proposals;
- to work with the Tomorrow School's response team to ensure that the development of advice is consistent with the MESF design principles; and
- further investigate the possibility of enabling the Minister to issue a statement with which education agencies would have to comply when making recommendations regarding policy options.

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Annex A: References to Treaty of Waitangi and relevant concepts in the Education Act 1989

The following is a full list of provisions in the Education Act 1989 which have Treaty of Waitangi implications. For some of these provisions, the Ministry of Education is not the lead policy agency, for example, sections 210-214 relate to land law and Treaty settlement law. We are not considering reassessing those provisions.

Provision		What it does?	Application of design principles
Education Act 1989			
Section	Title		
1A	Early childhood and compulsory education: statement of National Education and Learning Priorities	<p>The objectives of the system for education and learning that is provided for in the specified Parts (that is, early childhood and compulsory education) include to instil in each child and young person an appreciation (i) of the importance of the inclusion within society of different groups and persons with different personal characteristics: (ii) the diversity of society: (iii) cultural knowledge, identity, and the different official languages: (iv) the Treaty of Waitangi and te reo Māori.</p> <p>4A The Minister must make reasonable efforts to consult children and a range of national bodies including (i) national bodies representing the interests of Māori education organisations</p>	s 9(2)(g)(i)

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Provision		What it does?	Application of design principles
Section	Title		
11H	Process for developing and adopting enrolment scheme	<p>(1) If the Secretary gives a written notice to a State school that there is, or is likely to be, overcrowding at the school, the board of the school must develop an enrolment scheme for the school.</p> <p>(2) A board may not begin developing an enrolment scheme unless it has received a written notice of the type referred to in subsection (1).</p> <p>[(3) Requirement for board to consult school communities]</p> <p>(4) In addition to the consultation required by subsection (3),— (a) the board of a Kura Kaupapa Māori must consult with the persons and organisations that the board believes have an interest in fostering the school's adherence to Te Aho Matua and any special characteristics set out in the school's charter:</p>	s 9(2)(g)(i)
11PB	Enrolment schemes of certain State schools	<p>(1) Sections 11A to 11PA apply to Kura Kaupapa Māori, designated character schools, State integrated schools, State schools that are accredited as enrolling communities of online learning, and special schools, and to their enrolment schemes, subject to the following modifications... (d) in the case of a Kura Kaupapa Māori, the application of the sections must not result in inconsistency with section 156; and... (te reo is the principal language of instruction; school will operate in accordance with Te Aho Matua (s 155A)</p>	
61(3)	School charter	<p>A school charter must contain the following sections: (a) a section that includes— (i) the aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of the Māori culture; and (ii) the aim of ensuring that all reasonable steps are taken to provide instruction in tikanga Māori (Māori culture) and te reo Māori (the Māori language) for full-time students whose parents ask for it:</p>	

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Provision		What it does?	Application of design principles
Section	Title		
78T	Application of interventions to Kura Kaupapa Māori	<p>(1) Before applying any of the interventions in this Part to a Kura Kaupapa Māori, the Secretary must consult with te kaitiaki o Te Aho Matua (as defined in section 155B).</p> <p>(2) Subsection (1) applies only to Kura Kaupapa Māori that are required by their charters to operate in accordance with Te Aho Matua.</p> <p>Part 7A (78H – 78T) deals with interventions in schools to address risks to the operation of schools or risks to student welfare or educational performance.</p>	s 9(2)(g)(i)
154A	Minister may redesignate, or remove designation from, schools	<p>(1) The Minister may, ... after consultation with the board of the affected school, do any of the following: (a) designate a State school that is not a Kura Kaupapa Māori or a designated character school as a Kura Kaupapa Māori or a designated character school: (b) remove the designation of a Kura Kaupapa Māori and redesignate it as a designated character school: (c) remove the designation of a designated character school and redesignate it as a Kura Kaupapa Māori: (d) remove the designation of a Kura Kaupapa Māori or a designated character school while keeping the school established as a State school.</p> <p>(4) Section 156 applies in respect of a school that is, or is to be, redesignated as a Kura Kaupapa Māori in the same way as it would apply if the school were being established as a Kura Kaupapa Māori.</p> <p>(5) No school may have its designation as a Kura Kaupapa Māori removed unless the Minister has first consulted with te kaitiaki o Te Aho Matua (as identified under section 155B).</p> <p>(6) No State school may be designated as a Kura Kaupapa Māori unless the Minister has first consulted with te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua (as defined in section 155A).</p> <p>(7) Section 156 applies in respect of a school that is, or is to be, redesignated as a designated character school in the same way as it would apply if the school were being established as a designated character school.</p>	

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Provision		What it does?	Application of design principles
Section	Title		
155	Kura Kaupapa Māori	When establishing a State school as a designated character school under sections 156 and 156AA, the Minister may also designate that designated character school as a Kura Kaupapa Māori.	s 9(2)(g)(i)
155A	Te Aho Matua	(1) Te Aho Matua is a statement that sets out an approach to teaching and learning that applies to schools designated under section 155. (2) The official version of Te Aho Matua is the statement (including any gazetted amendments) in te reo Māori that is— (a) prepared by te kaitiaki o Te Aho Matua (as defined in section 155B); and (b) published in the Gazette under the authority of the Minister.	
155B	Te kaitiaki o Te Aho Matua	Te kaitiaki o Te Aho Matua is the body commonly known as Te Runanga Nui o Nga Kura Kaupapa Māori o Aotearoa, being the most suitable to be responsible for determining the content of Te Aho Matua, and for ensuring that it is not changed to the detriment of Māori.	
155C	155C Application of section 155	After the commencement of the Education (Te Aho Matua) Amendment Act 1999, the Minister may establish a school as a Kura Kaupapa Māori only in accordance with section 155 as substituted by that Act.	

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Provision		What it does?	Application of design principles
Section	Title		
155D	Provisions applying to Kura Kaupapa Māori established before commencement of Education (Te Aho Matua) Amendment Act 1999	<p>(1) In this section and section 155E,— existing Kura means a Kura Kaupapa Māori established under section 155 before the commencement of the Education (Te Aho Matua) Amendment Act 1999; new section 155 means section 155 as substituted by the Education (Te Aho Matua) Amendment Act 1999.</p> <p>(2) After the commencement of this section, existing Kura remain established as Kura Kaupapa Māori even if they would not be entitled to be established under new section 155.</p> <p>(3) Section 156(6)(a)(i), (8), and (10) applies to all existing Kura.</p> <p>4) In relation to an existing Kura other than one acknowledged under section 155E, the Minister may from time to time, after consultation with the board of the Kura, by notice in the <i>Gazette</i>, amend— (a) the aims, purposes, and objectives of the Kura; or (b) the constitution of the board.</p> <p>(5) In relation to an existing Kura other than one acknowledged under section 155E, the board of the Kura may refuse to enrol any person whose parents do not accept that the school operates in accordance with the school's aims, purposes, and objectives.</p>	s 9(2)(g)(i)
155E	Acknowledgment of adoption of Te Aho Matua	<p>The Minister may from time to time, after consultation with the board of an existing Kura, by notice in the <i>Gazette</i>, acknowledge that the Kura operates in accordance with Te Aho Matua, and must, in the notice,—(a) replace the aims, purposes, and objectives of the Kura by a statement that the school will operate in accordance with Te Aho Matua (as referred to in section 156AA(3)(a)(ii)); and (b) summarise any special characteristics of the school (as referred to in section 156AA(3)(a)(iii)).</p> <p>(2) On publication of a notice under subsection (1), the Kura becomes subject to all the relevant provisions of section 156</p>	

Education Act 1982



Provision		What it does?	Application of design principles
Section	Title		
155F	Protection of term Kura Kaupapa Māori	<p>(1) No registered school may use the term Kura Kaupapa Māori in its name unless the school is established under section 156.</p> <p>(2) Subsection (1) does not apply to a registered school that, immediately before the commencement of this section, is not established under section 155 but uses the term Kura Kaupapa Māori in its name.</p>	s 9(2)(g)(i)
156	Designated character schools	<p>(4) The Minister may not establish a school as a designated character school unless satisfied that, if the school is established,— (a) for a school that will also be designated a Kura Kaupapa Māori under section 155,— (i) te reo Māori will be the principal language of instruction at the school; and (ii) the school will operate in accordance with Te Aho Matua (as defined in section 155A):</p> <p>(5) The Minister may not also designate a designated character school as a Kura Kaupapa Māori unless he or she has first consulted te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua.</p> <p>(6) The board of a designated character school must ensure,— (a) for a Kura Kaupapa Māori, that— (i) te reo Māori is the principal language of instruction at the school; and (ii) the school operates in accordance with Te Aho Matua:</p> <p>(7) A designated character school that is a Kura Kaupapa Māori may have other special characteristics that give it a particular character (its special characteristics)</p> <p>(9) A board of a designated character school may refuse to enrol students whose parents do not accept,— (a) for a Kura Kaupapa Māori, that the school operates in accordance with Te Aho Matua: (b) for any other type of designated character school, that the school operates consistently with its different character.</p>	

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Provision		What it does?	Application of design principles
Section	Title		
156AA	Process for establishing designated character schools	<p>(1) The Minister may, by notice in the <i>Gazette</i> when establishing a State school, designate the school as a designated character school (see section 156) and (if applicable) also designate a school as a Kura Kaupapa Māori (see section 155).</p> <p>(2) Before doing so, the Minister must be satisfied of the matters in section 156(4) and have undertaken consultation under section 156(5) (as relevant in each case).</p> <p>(3) The notice establishing a designated character school must,— (a) for a Kura Kaupapa Māori,— (i) specify the name of the school, which must at all times begin with the words “Te Kura Kaupapa Māori o”; and (ii) state that the school will operate in accordance with Te Aho Matua; and (iii) summarise any other special characteristics of the school:</p>	s 9(2)(g)(i)
156B	Restrictions on mergers in certain cases	<p>(1) A Kura Kaupapa Māori established after the commencement of the Education (Te Aho Matua) Amendment Act 1999 may not merge or be merged with another Kura Kaupapa Māori or other school unless the schools involved in the merger— (a) operate in accordance with Te Aho Matua; and (b) use te reo Māori as the principal language of instruction.</p> <p>(2) Any other Kura Kaupapa Māori may merge with another school only if both schools use te reo Māori as the principal language of instruction and have the same aims, purposes, and objectives.</p>	
171B	Matters to be considered when appointing members [to TEIs]	<p>(1) It is desirable that the council of an institution should, so far as is reasonably practicable, reflect— (a) the ethnic and socio-economic diversity of the communities served by the institution;</p> <p>(2) When appointing members of a council, the Minister or council must have regard to subsection (1), but— (a) must ensure that at least 1 member of the council is Māori; and</p>	

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Provision		What it does?	Application of design principles
Section	Title		
181	Duties of councils	It is the duty of the council of an [tertiary] institution, in the performance of its functions and the exercise of its powers,— (b) to acknowledge the principles of the Treaty of Waitangi:	s 9(2)(g)(i)
210	Māori land claims	The submission in respect of any land or interest in land of a claim under section 6 of the Treaty of Waitangi Act 1975 does not prevent the transfer of that land or of any interest in that land or of that interest in land— (a) by the Crown to an institution; or (b) by an institution to any other person.	
212	Resumption of land on recommendations of Waitangi Tribunal	Where the Waitangi Tribunal has, under section 8A(2)(a) of the Treaty of Waitangi Act 1975, recommended the return to Māori ownership of any land or interest in land transferred to an institution under section 206 or vested in an institution by an Order in Council made under section 215 , that land or interest in land shall, if the recommendation has been confirmed with or without modifications under section 8B of that Act, be resumed by the Crown in accordance with section 213 of this Act and returned to Māori ownership.	
213	Resumption of land to be effected under Public Works Act 1981	The power conferred by this section does not include the power to acquire or take and to hold under section 28 of the Public Works Act 1981 any interest in land described in section 8A(6) of the Treaty of Waitangi Act 1975.	
214	Resumption of wahi tapu	Upon its resumption pursuant to subsection (1), the land or interest in land shall be dealt with in accordance with an agreement made between the Crown and the relevant tribe or, if they fail to agree, in accordance with any recommendation of the Waitangi Tribunal pursuant to an application made under section 6 of the Treaty of Waitangi Act 1975.	

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Provision		What it does?	Application of design principles
Section	Title		
222AD	Matters to be considered when appointments made [to polytechnic councils]	It is desirable in principle— (a) that the council of a designated polytechnic should include Māori; and (b) that, so far as is possible, the council of a designated polytechnic should reflect the ethnic and socio-economic diversity of the community it serves.	s 9(2)(g)(i)
253C	Minister may consent to use of certain terms in name or description of registered establishment or wananga	(2A) A wananga may apply to the Minister for consent to describe itself using the term university, college of education, polytechnic, or institute of technology. (3) Before deciding whether to grant consent under subsection (2) or (2A), the Minister must— (e) in the case of a wananga, consult with such persons or bodies who are knowledgeable in āhuetanga Māori (Māori tradition) and tikanga Māori (Māori custom) within a kaupapa Māori pedagogy as the Minister considers appropriate.	
Schedule 6 (clause 1)	Interpretation	In this schedule, unless the context otherwise requires,— (a) the parents, families, and whānau of the school's students; and (b) the Māori community associated with the school; and (c) any other person, or group of persons, who the board considers is part of the school community for the purposes of the relevant provision	

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Provision		What it does?	Application of design principles
Section	Title		
Schedule 6 (clause 16)	Cultural diversity, Treaty of Waitangi, tikanga Māori, and te reo Māori	A board must take all reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity and the unique position of the Māori culture. (2) In performing its functions and exercising its powers, a board must take all reasonable steps to act in a manner that is consistent with the principles of the Treaty of Waitangi. (3) Without limiting subclauses (1) and (2), a board must take all reasonable steps to provide instruction in tikanga Māori (Māori culture) and te reo Māori (the Māori language) for full-time students whose parents ask for it.	s 9(2)(g)(i)
Schedule 21	Governance provisions of Teaching Council (clause 1)	When considering whether to appoint a member of the Teaching Council, the Minister must— ... (4)(b) have regard to the collective skills, experience, and knowledge making up the overall composition of the Teaching Council, including (but not limited to) the candidate's knowledge and experience in any of the following areas: ... (v) understanding of the partnership principles of the Treaty of Waitangi.	

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The minutes of the 1 April Board meeting in relation to Te Tiriti item were as follows:

Treaty of Waitangi	<p>The Board discussed the approach to the Treaty of Waitangi in the Education and Training Bill at its January meeting. After further discussion with Wayne and others, we have prepared a revised approach for the Board's consideration.</p> <ul style="list-style-type: none">• The Board noted that this approach is more substantive than last time and lots of these things will have resourcing implications.• The Board was happy with this as a more substantive approach.• However there was concern expressed that the list of current Treaty-related provisions in the Education Act 1989 was too narrow.• The Board noted the longer two year programme of work will include reviewing all legislative provisions against the Māori Strategic Framework Design Principles.• The Board discussed the need to look at provisions in the Act that enable powers that affect Māori – such as school establishment, curriculum setting, etc. <p>Action: make it clearer in the paper what will be considered in the immediate future for the E&T Bill and what will be included in the two year programme of work (including key examples).</p> <p>Action: GLA team to amend paper and re-circulate to the Board. GLA to also circulate the paper that goes to the Minister.</p>
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