

**Cabinet Business Committee**

**Release of discussion document for the *Review of Special Education***

**Proposal**

1. That the discussion document for the Review of Special Education be released by the Associate Minister of Education as soon as possible after it is approved by Cabinet.

**Executive summary**

2. The discussion document for the Review of Special Education is proposed to be released as soon as possible after 26 January 2010. This coincides with the beginning of the school year and is good timing for schools. The document reflects the terms of reference approved by Cabinet in August 2009 and seeks feedback on the following issues in special education:
  - Strengthening schools to support students with special education needs;
  - Designing a network of provision across schools, special schools and the Ministry of Education;
  - Improving interagency cooperation and transitions for students;
  - Allocating special education resources, decision rights and making better use of the resources in the system;
  - Improving the quality of services; and
  - Improving accountability.
3. This is a complex area of social policy and views about the best way to support students are often strongly-held and opposing. The document is pitched at a high level to enable the full range of views to be expressed. To manage the risks of the high-level approach, the document is also clear that some of the basic underpinnings of the system work well and that there can be no expectation of increased funding. For example, the right of students to attend their local school and the ability of Government to manage costs are well-functioning aspects of the current system.
4. Feedback is sought by 19 March 2010 and the consultation process will include written submissions and limited consultation meetings.

## Background

5. To give effect to a pre-election commitment, in August 2009 Cabinet approved the terms of reference for the Review of Special Education [Cab Min (09) 28/4) refers]. At that time, Cabinet also invited us to provide a draft discussion document on the Review to the Social Policy Committee for its approval in November 2009.
6. Following Cabinet's decisions the Associate Minister of Education had feedback from schools that receiving a discussion document for comment late in the calendar year would have clashed with end-of-year activities and the summer break. To enable the sector to give the document careful consideration, the Associate Minister decided to release the document at the start of the 2010 school year. This delay will not impact on the Review being reported back to the Social Policy Committee in July 2010.
7. The Review is being done within the scope of the UN Convention on the Rights of People with Disabilities and the New Zealand Disability Strategy. Its Terms of Reference anticipate a principles-based review, focussed largely on students with high and very high special education needs. It was anticipated that the Review would be done in two phases. With the change in timing for the release of the discussion document the two phases have been partially combined. The full terms of reference are contained in Appendix one.
8. This paper provides an overview of the discussion document, identifies some of the key issues that are likely to be raised during consultation, and outlines the proposed consultation process. The document is currently being prepared for release. There may need to be final minor formatting and language changes as a result of this work.

## Comment

### ***Approach and coverage of discussion document***

9. The discussion document is pitched at a high-level and, within the overall context of improving value for money, seeks feedback on the following issues:
  - a. *Strengthening schools to support students with special education needs:* many schools successfully support all of their students. Others struggle and are reluctant to enrol students with special education needs. The schools that do well are those that are confident in their own ability to support all their students. The discussion document seeks input on ways to build the capability of schools and their creation of a barrier-free environment.
  - b. *Changing the way that schools, special schools and the Ministry of Education work together:* all students are legally entitled to go to their local school and the majority do so. Some students go to special schools and parents value having this choice where a

special school is available. The document seeks views on developing a network of provision across schools, special schools and the Ministry of Education that makes the most of the specialist expertise in the system and ensures that wherever possible there is choice for students and their parents.

- c. *Improving interagency cooperation and transitions for students:* students with special education needs often also interact with other government services and non-government organisations. The discussion document seeks feedback on how to improve the interface between agencies and organisations. It also discusses improving the support for students transitioning from early childhood education settings into school, between different levels of schooling, and from school to further education or training and into the community.
- d. *Allocating special education resources, decision rights and making better use of the resources in the system:* the discussion document seeks feedback on the mixed models currently in place for funding and decision-making. The system uses both individual and population-based funding allocation methods; and decisions are made both centrally and locally. Feedback is also sought on improving productivity by using ORRS<sup>1</sup> resources more efficiently.
- e. *Improving the quality of services:* service quality is a key driver of outcomes for students and the document seeks feedback on ways to improve quality, for example, through teacher training and registration requirements.
- f. *Improving accountability:* there is the potential to strengthen the ex-ante expectations on schools, the monitoring and reporting of outcomes and the use of funding, and interventions. This includes examining the Government's processes for receiving and acting on complaints. Strengthening accountability arrangements has the potential to improve clarity about outcomes and in doing so better measure the efficiency and effectiveness of the system.

### **Consultation process**

10. We propose that the discussion document be released electronically as soon as possible after it is approved by Cabinet. It will be available on key websites and be easy to download and accessible to people with disabilities. Hard copies of the document will also be available from the Ministry of Education on request. We propose that submissions be received for six weeks (until 19 March 2010).
11. While submissions are open, the Ministry of Education will:
  - hold up to five national focus groups to ensure that the views of Maori, Pasifika, students, parents, and those with disabilities are heard

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<sup>1</sup> Ongoing and Reviewable Resourcing Schemes.

- hold local meetings with special education employees and interested parties (to be done by special education district offices)
  - be available to attend meetings of sector groups if requested.
12. After submissions close the Associate Minister intends to chair a select committee-type consultation panel where, on request, submitters can attend to present and discuss the key points of their submission. The panel would meet in Auckland, Wellington and Christchurch.

***Likely reaction to the discussion document***

13. The discussion document covers a wide range of issues in a complex area of social policy. It is pitched at a high level to enable the full range of views about the issues to be expressed. While this approach will be welcomed by many, it risks raising expectations of what can be achieved and resulting in polarised views being expressed. To manage these risks as far as possible, the discussion document is clear that there are aspects of the current system that work well, it is also clear that the Government is not intending to provide more financial resources for special education.
14. Aspects of the current system that work well include the Government being able to predict and manage the cost of supports. Other aspects are: that students are supported to learn according to their needs; that all students are legally entitled to go to their local school; and that supports for students are organised around them.
15. We are aware however that there will be comment and feedback on the following challenging issues in special education:
- a. *Inclusion in mainstream settings v special schools:* this issue sits at the heart of much of the debate about how to support students with special education needs. There are strongly-held views about whether students should be supported in mainstream school settings or in special school settings. Through its ratification of the UN Convention on the Rights of People with Disabilities and its endorsement of the New Zealand Disability Strategy, the Government supports an inclusive education system that enables all students (able and disabled) to be contributing citizens. That said; the Education Act 1989 also provides for students to be enrolled in special schools with the approval of the Secretary for Education. The discussion document explores ways to make inclusive education a real option for students with special education needs and seeks views about how to make the best use of the specialist knowledge that sits in special schools.
  - b. *The role of the Ministry of Education:* the Ministry of Education is a planner, funder and provider of services. In particular it employs the majority of the specialist workforce (e.g. physiotherapists, psychologists). We expect that there will be feedback that the role of the Ministry should be examined with a preference from some



## **Consultation**

16. The following departments have been consulted on this paper and the attached discussion document; and their comments have been reflected: Treasury, the Ministry of Health, the Ministry for Social Development, and the Office for Disability Issues.
17. The Department of the Prime Minister and Cabinet has been informed of this paper and the attached discussion document.
18. In developing the discussion document the Associate Minister has had input from her Advisory Panel for the Review of Special Education. The Advisory Panel was convened to provide the Associate Minister with sector-based advice on special education issues.

## **Financial Implications**

19. This paper and the discussion document do not have financial implications. The discussion document reflects the terms of reference which state that *options for special education must assume no new money in special education*. This is given effect through comments that seek improved efficiency in current services.

## **Human Rights**

20. This paper and the attached discussion document are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. They aim to further the aspirations of people with disabilities and give effect to the Government's commitments under the UN Convention on the Rights of People with Disabilities and under the New Zealand Disability Strategy. The analysis that follows the consultation process will be cognisant of the issues that the IHC raises in its complaint to the Human Rights Commission against the Crown. The IHC complains that Government discriminates against people with disabilities in respect of their access to education. The Crown Law Office is preparing a response to the Human Rights Commission on this complaint.

## **Legislative Implications, Gender Implications and Regulatory Impact Analysis**

21. This paper and the attached discussion document do not have legislative or gender implications at this stage. Neither is a Regulatory Impact Analysis required. Any legislative implications, gender implications or proposals that require a regulatory impact analysis will be brought to Cabinet's attention when the Review reports in July 2010 [CAB Min (09) 28/4 refers].

## **Disability Perspective**

22. Supporting students with special education needs is a central part of the Government's network of disability supports. The disability

community will have a keen interest in the Review and will be invited to participate in the consultation process. We expect that the disability community will be seeking a clear signal from Government that the Review progresses the New Zealand Disability Strategy and the UN Convention on the Rights of People with Disabilities.

### **Publicity**

23. The consultation approach is detailed in paragraph 10. The Associate Minister intends to launch the discussion document shortly after it is approved by Cabinet. Alongside the launch there will be a media release about the discussion document. The media release will include a specific invitation to the parents and schools affected by the Government's decision to grandparent additional therapy to participate in the consultation process as requested by Cabinet [CAB Min (09) 28/4 refers].

### **Recommendations**

24. It is recommended that the Cabinet Business Committee:
  1. **Note** that in August 2009 Cabinet approved the terms of reference for the Review of Special Education and invited the Minister of Education and the Associate Minister of Education to provide the Social Policy Committee with a draft discussion document in November 2009 [CAB Min (09) 28/4]
  2. **Note** that since August 2009 the Associate Minister of Education has delayed the release of a discussion document for the Review to early 2010 in response to feedback from the education sector that this would be more convenient and that this will not impact on the ability of the Review to report in July 2010
  3. **Note** that the draft discussion document attached to this paper is written at a high-level in order to elicit a wide range of views on the issues in special education
  4. **Agree** that the discussion document *Review of Special Education* be released by the Associate Minister of Education as soon as possible after it is approved by Cabinet
  5. **Agree** that the Associate Minister may make final editing amendments to the document where these are necessary and do not materially affect the meaning of the document.

Hon Heather Roy  
Associate Minister of Education

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## **Appendix: Terms of Reference for the Review of Special Education**

1. Special education is about ensuring that children and young people who require additional supports are able to participate in education and achieve to their potential. This review is about doing better with what we have, rather than establishing a case for more funding.
2. Over \$450 million is invested each year in special education (excluding tertiary education). This represents a major investment for the Government and special education is a matter of considerable interest to schools and the community. The government is aware of concerns that are held by some schools, parents and sector groups regarding the supports available and the outcomes being achieved for the Government's investment.
3. For these reasons, the Government has decided to undertake a review of special education, led by Heather Roy, the Associate Minister of Education.
4. The review of special education will consider key issues such as access to schools, quality of workforce, accountability, price and volume of services and how to address these within existing funding. It will also provide advice on how to put into operation the additional funding for the Ongoing and Reviewable Resourcing Schemes (\$51 million over four years) that was provided in Budget 2009.

### **Principles**

5. The terms of reference for the review reflect the Government's expectations and also its aspirations for special education. A set of principles have been adopted to guide the review. The principles will be used by Government as a gauge with which to test options for improvement. The principles bring forward themes which Government consider should be essential characteristics of special education. For example, choice, access, quality, value and outcomes are all included in the principles.
6. The principles Government has adopted for this review are:
  - a. Our goal is that every child and young person reaches their potential.
  - b. Education must be accessible and available to every child and young person. Access to additional resources and services for those with special education needs should be fair and consistent.
  - c. Education must provide value for money and deliver the best outcomes for every child and young person.
  - d. Every child and young person has the right to expect high quality education and professional services.
  - e. Families and whanau should have choices and be actively involved in decisions that take into account the child or young person's best interests and cultural context.
  - f. All involved have a shared responsibility to work effectively and collaboratively to achieve the best outcomes for children and young people with special education needs.
  - g. Options for special education must assume no new money in special education.
7. In addition to the principles, the review must reflect the needs, interests and aspirations of Maori as well as those of other cultures. The review must also result in services and supports which are consistent with the United Nations Convention on the Rights of Persons with Disabilities and the New Zealand Disability Strategy. The Convention was adopted by Parliament in 2008 and more information on it can be found at: <http://www.un.org/disabilities/>
8. The 2001 New Zealand Disability Strategy includes a commitment to ensure that no child is denied access to their local, regular school because of their impairment. Further information on the Strategy can be found at: <http://www.nzds.govt.nz/nzds/>

## Two Phases

9. The review will be carried out in two phases. Phase One will commence immediately and focus on the most pressing priorities, including how to put into operation the additional funding for the Ongoing and Reviewable Resourcing Schemes (ORRS) that was announced in Budget 2009. Phase Two will commence in late 2009 and consider matters that require additional time to explore. The review will report to Government in July 2010. Within each phase are specific work areas, as outlined below:

### Phase 1

- Access to and allocation of, special education funding and services for children with high and very high needs – this is about fairness, reducing barriers and expanding the ORRS programme;
- Access to schooling for children with high and very high needs- this is about ensuring parents have choices for their children including to attend their regular local school; and
- Outcomes and accountability- this is about performance, what is being achieved and whether providers are sufficiently accountable (to parents for example) for their performance .

### Phase 2

- Workforce- this is about having a confident and capable workforce;
  - Transitions- this is about ensuring that major transitions like from school to life after school are well managed;
  - Service development- this is about improving how we do things and whether we can reduce administration and be more responsive; and
  - Integration and collaboration (reducing fragmentation) – this is about ensuring agencies work well together, that services are coordinated and children and families get what they need when they need it.
10. Although consideration of integration and collaboration within and between agencies is occurring in Phase Two, Phase One will need to consider cross agency integration and collaboration issues and opportunities as they relate to proposals in Phase One.
11. The review will include services provided by the Ministry as well as those delivered by schools and other providers. The review will consider special education services provided to children and young people to 21 years of age and how to allocate the additional \$51 million over four years being made available to expand ORRS. With the exception of how to simplify the transition from early childhood to school for children already receiving special education services, the review will not consider services specifically delivered to pre-school children.
12. In addition to early childhood services, the other services that will not be fully included relate to behaviour and school property. Behaviour is an education-wide issue rather than specifically a special education issue. A separate work programme on addressing behavioural issues that builds on the findings from the recent Behaviour Summit, and Drivers of Crime work is under consideration in different contexts. School property and other capital expenditure is an important element of special education and though Budget 2009 included some additional capital for special schools, there are well established approaches to prioritising capital investment.

## When the review will be completed

13. The review will conclude in July 2010. Until the review has concluded, it is not possible to say what will change and when, however the intention is to take interim decisions on the ORRS scheme in September 2009 in time to expand the programme in 2010. Other

changes that may come from the review will be considered for implementation over 2010 and 2011 if needed.

14. While the review is underway the Ministry of Education will work to ensure there is no disruption to existing services. Any change that may arise as a result of the review will be implemented in such a way that any disruption is minimised.

### **The approach to consultation**

15. Government wants to seek the views of parents, teachers, principals, the disability community, sector groups and other interested parties. A consultation document will be made publicly available that covers the core issues in Phase One that relate to:
  - Access to and allocation of, special education funding and services for children with high and very high needs;
  - Access to schooling for children with high and very high needs; and
  - Outcomes and accountability.
16. Anyone who wants to make a submission will be able to do so. Public consultation will commence in late 2009 and extend into early 2010. In addition to the consultation document, the Ministry of Education will be convening meetings with its sector reference groups.
17. The remaining issues (Workforce; Transitions; Service Development; and Integration and Collaboration) will not be covered by the consultation document. They will be considered in Phase Two and because of the nature of the issues, Government prefers that engagement occur directly between the Ministry of Education and key sector groups.
18. Accordingly, the Ministry of Education will be directly contacting sector groups in early 2010 and start the Phase Two engagement process. Consultation via the consultation document for Phase One and later by direct engagement in Phase Two will be important inputs into Government's thinking regarding how to improve special education. Other important considerations will be ensuring proposals are workable within existing funding, existing strategic policy settings, such as the New Zealand Disability Strategy and what research and other experiences may show are preferred directions for change. As a result, while Government expects that consultation will be influential of final decisions it will not necessarily determine what those decisions will be.
19. It should also be noted that if Government decides to make changes, these may be in-principle decisions and be subject to further discussions with those involved. For example, if proposed changes impact on schools there may be further discussions with schools on how those changes would be implemented prior to final decisions being made.

### **Further Information**

20. Information on the review will be posted on the Ministry of Education's website: <http://www.minedu.govt.nz/>
21. The Ministry will also be communicating with sector groups and schools directly as required via email. This will include periodic updates on the progress of the review.