

Report: Feedback from public consultation on the school strike notifications proposal

To:	Hon Erica Stanford, Minister of Education		
Date:	16 September 2024	Deadline:	23 September 2024
Security Level:	In-Confidence	Priority:	Medium
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Why are we sending this to you?

- Public consultation on the school strike notification proposal finished on 6 September 2024. We now require your agreement on whether to extend the notification period through an amendment to the Education and Training Act 2020 (the Act) via the proposed Education and Training Amendment Bill (No 2) (the Bill).

What action do we need, by when?

- We seek your agreement on an option to amend the school strike notification period under Section 589 of the Act.
- Please return the signed paper no later than 23 September 2024 to ensure we can finalise the draft Cabinet paper *'Changes to the Education and Training Act 2020 to progress priorities and support the health of the education system'* for departmental and Ministerial consultation by 25 September 2024 (METIS 1336037).

Key facts, issues, and questions

- The majority of submitters (53% or 66 of 123) supported *Option 3: retaining the status quo*. This was followed by (30% 36 of 123) who supported *Option 2: to make the notice no less than 7 calendar days*, and (17% 21 of 123) who supported *Option 1: to make the notice period no less than three working days*.
- The majority of school leaders, parents, caregivers, and whānau supported an extension of the notification period. Conversely, most teachers, school staff and contractors preferred *Option 3: retaining the status quo*.
- Officials recommend *Option 1: no less than three-working days*. This option better protects students' rights to uninterrupted education, provides school leaders, parents, caregivers, and

whānau more time to organise alternative care, and preserves employees' right to strike while keeping strike actions effective.

- Your agreement to this option would be progressed in the second tranche of amendments being progressed for the Bill, which we will provide you with advice on by 23 September through METIS 1336037.

Alignment with Government priorities

- The school strike notification proposal broadly relates to the Government's proposal to lift school attendance. Extending the notification period for strikes may have the effect of reducing the impact on students by giving parents more time to make alternative arrangements and allowing schools to secure relief teachers, potentially minimising missed school days during strikes.

Background

Short strike notification periods make it difficult for schools, parents, caregivers, and whānau to arrange alternative supervision

1. The Ministry of Education has received complaints from parents, caregivers, whānau, and some school boards that the three days' notice period does not provide sufficient time to arrange alternative care for students. This is particularly problematic if the notice is given on a Friday or Saturday and the strike starts early in the following week.¹
2. The Ministry considers that extending the notice period can protect employees' right to strike, while also providing schools more time to assess staffing and potentially remain open. It also allows parents, caregivers, and whānau more time to make alternative arrangements if needed.

Three options to extend the school strike notification period were included for public consultation

3. In July 2024, Cabinet agreed to publicly consult on three options to extend the notification period [CAB-24-MIN-0248], including:
 - Option 1: to make the notice period no less than three working days;
 - Option 2: to make the notice no less than seven calendar days; and
 - Option 3: to retain the status quo (3-calendar day notification).
4. The Ministry did not consider other options such as changing the notice period to 14 days or proposing that schooling services become essential. This is because it would conflict with International Labour Organisation (ILO) jurisprudence, which excludes teaching services from the list of essential services.^{2 3}
5. Non-regulatory options, including informal agreements or protocols with unions, were also not considered as these were unlikely to provide enough certainty for schools, parents, caregivers, and whānau to make alternative arrangements.

¹ Although there is often informal notice of a proposed strike, schools and parents cannot confirm arrangements until a formal notice is provided.

² Essential services are listed in Schedule 1 of the Employment Relations Act 2000. Under section 90 of the Employment Relations Act employees working in the areas of public health and safety, the supply of water, the disposal of sewage, air and railway services, fire services, ambulance services, the interisland ferries, and the operation of prisons and welfare institutions must give no less than 14 days' notice of strike action. Employees whose work involves the holding and preparation of mammals or birds for commercial slaughter and consumption, must give no less than three days' notice.

³ The scope of essential services: Laws, Regulations and Practices (ilo.org).

What we heard during public consultation

6. From 1 August – 6 September 2024, the Ministry publicly consulted on options to amend the school strike notification period. Participants were asked to share their views on how the 3-calendar day notice period had affected them including whether the current notice period was too long, short, or sufficient, and which of the three options submitters preferred.
7. An invitation to participate was extended to representative union groups and peak bodies including NZEI | Te Riu Roa, the New Zealand Post Primary Teachers Association | Te Wehengarua, the Secondary Principals' Association New Zealand, the Primary Principals' Collective Bargaining Union, and Te Rūnanga Nui o ngā Kura Kaupapa Māori o Aotearoa, Ngā Kura ā Iwi o Aotearoa, and the Matāuranga Māori Iwi Leaders Group.
8. In total, 124 respondents participated in the survey comprised of:

Respondent type	Number of respondents ⁴	Change the notice period		Status quo
		Preferred option 1	Preferred option 2	Preferred option 3
Board member and/or principal	25	5	12	8
Teacher, school staff or contractor	41	8	8	24
Parent or caregiver	36	7	12	17
Student	2		1	1
Other	12	1	2	9
Union groups*	4	*Union groups preferred new Option 4		

Most teacher, school staff or contractor respondents felt that the current 3-calendar day notice period for school strikes was sufficient

9. Submitters were invited to share their views on whether the 3-calendar day strike notification period in the Act was too short, sufficient, or too long:
 - **73 respondents (61%)** indicated that the current 3-calendar day notification period prescribed in the Act was sufficient. Most submitters expressed that strikes are intended to maximise disruption to leverage and pressure government to agree to better solutions. Some submitters also raised that strikes enable teachers to express their frustrations and publicly advocate for better working conditions. Many submitters felt that extending the notification period would weaken this impact.
 - **41 respondents (35%)** indicated that the 3-calendar day notification period was too short. Most parents, caregivers and whānau who chose this option expressed that the notification period did not allow enough time to arrange alternative childcare causing stress and disruption to their families and children. Other submitters, including board members, raised that the existing notification period limited schools' abilities to organise for the supervision of students through relief teachers, to formally close the school for instruction, and to communicate closure with the school's community.
 - **6 respondents (5%)** indicated that the 3-calendar day notification period was too long. These respondents felt that the current notification period diminished the effectiveness of strike action and supported a shorter notification period to enable more disruption. Some

⁴ Submitters did not respond to all questions.
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submitters proposed that a shorter notification period of up to 24 hours would place greater pressure on government leading to faster resolutions.

Most teachers, school staff and contractors supported option 3 – retaining the status quo of 3-calendar days notification

10. The discussion document sought submitters responses to their preferred option. A total of 123 submitters responded to this question including:

- **66 respondents (53%)** supported *Option 3 – to retain the status quo*. Respondents who preferred this option emphasised that the current notice period retains the effectiveness of strikes as the shorter notice period incentivises government to act with urgency. Most felt that extending the notification period could weaken this impact and reduce the strike's intended effect. Some submitters also raised that the current provisions work well in most cases, and that changing the notification period would be disproportionate to the few instances where it is insufficient.
- **36 respondents (30%)** supported *Option 2 - to make the notice no less than seven calendar days*. Some parents, caregivers and whānau noted that organising alternative care can be complex, often requiring coordination with others. Most felt that a 7-calendar day notice would allow for better planning. Some board members and/or principals raised that the extended period would enable schools to organise relief teachers and alternative care, which was particularly important for children who were unable to stay home.
- **21 respondents (17%)** supported *Option 1- to make the notice period no less than three working days*. Respondents who supported this option raised that it struck a fair and reasonable balance between the interests of schools, students, parents, caregivers, whānau and striking parties.

Most school leaders, parents, caregivers and whānau supported extending the notification period for school strikes

11. School leaders, parents, caregivers, and whānau made up a smaller portion of responses. However, most of these respondents supported some form of extension to the school strike notification period.

- **17 of 25 (68%)** of school leaders supported extending the notification period with the majority supporting Option 2: no less than 7 calendar days. Most of these respondents raised that the short notification period had practical implications on school operations, with some members noting:

9(2)(a)

- **19 of 36 (52%)** of parents, caregivers, and whānau also supported extending the notification period, but there was not a clear consensus on the best way to extend. This group of respondents also raised that the short notification period limits their ability to arrange alternative care, which has corresponding implications on children's learning, for example:

9(2)(a)

Submissions received from union groups

Union stakeholders proposed a new option to amend the Act to require 'no less than 3-calendar days' notification

12. During public consultation, the Ministry received submissions from union members including:
 - The New Zealand Educational Institute | Te Riu Roa.
 - The New Zealand Post Primary Teachers Association | Te Wehengarua
 - The New Zealand Council of Trade Unions | Te Kauae Kaimahi
 - Public Service Association | Te Pūkenga Here Tikanga Mahi

The wording in section 589 of the Act precludes earlier formal notification of school strikes

13. Under Section 589 of the Act, school board employees are required to provide "3-calendar days' notice before the commencement of a proposed strike".
14. Unions have advised that section 589 appears to limit the maximum amount of notice that can be given leading up to a strike and does not clarify whether formal notification can be made *before* the prescribed 3 days. This differs from practices in the Employment Relations Act 2000, where a notice must be given before the prescribed minimum period.⁵ Unions contend that this limits their ability to provide earlier notification.
15. In response, officials included new Option 4 to amend the Act to require that employees of school boards provide 'no less than 3-calendar days' notice' as an option for your consideration in this report and in the Regulatory Impact Statement that will support Cabinet's decision-making.

Unions have adopted practices of providing informal notification of proposed school strikes

16. Unions have informed the Ministry that they have recently adopted practices of providing earlier informal notice to help mitigate potential impacts of strike actions. They raise that complaints received following earlier notification illustrates that extending the notice period does not reduce this impact.⁶ Unions consider that it is therefore likely that there are other issues contributing to the problem (i.e., communication issues at the school level) and that an extended notification period would not address concerns of parents, caregivers, and whānau.
17. Unions note that new option 4 would enable notification of proposed strikes to be made earlier than the 3-calendar days and help mitigate the potential impacts of strike actions on students, parents, caregivers, and whānau. However, officials note that the potential benefits of this would be dependent on unions voluntarily providing formal notice earlier than the minimum specified period. While the unions have generally provided informal notice to the Ministry about strike, this has been at their discretion.

⁵ Section 90(3) of the Employment Relations Act 2000 specifies that essential services that hold and prepare animals for commercial slaughter for human or animal consumption must provide no less than 3 days' notice before a strike.

⁶ Examples of this include during the 2022/2023 Collective Agreement for Secondary and Area School Teachers' where the PPTA provided principals with preliminary notice of intent to take industrial actions. Similarly, in 2023 the NZEI wrote to all affected school boards advising of potential strike actions two weeks ahead of the proposed strike date.

Recommended Option

Officials recommend Option 1 – changing the notification period to no less than 3-working days

18. While public consultation indicates that most teachers, school staff, and contractors favoured *Option 3: retaining the status quo*, officials emphasise the need to consider these preferences within the broader scope of submissions from other groups. Submissions received from school leaders and parents highlight that most favoured some form of extending the notification period, with the majority preferring *Option 2: extending the period to no less than 7 calendar days*.
19. Taking this into consideration, officials consider that Option 1: make the notice period no less than three working days offers the greatest overall benefit and preserves the best balance between the interests of students, parents, caregivers, whānau, and striking parties.

Option 1 protects students' learning and provides schools, parents, and whānau with more time to prepare alternative supervision

20. Public consultation feedback illustrates that the current 3-calendar day notification has diverse impacts on schools, parents, and whānau. For schools, this includes inadequate time to organise staffing to supervise children and to communicate closures with the school's community. Similar difficulties are raised by parents, caregivers, and whānau who contend that the notification period does not provide enough time to organise alternative care, leading to disruptions in their day-to-day lives, as well as to their child's learning.
21. Option 1 ensures that at least 3 *working days'* notice is required before a strike, giving schools, students, parents, caregivers, whānau, and businesses adequate time to prepare while still upholding employees' right to strike. This option responds to concerns where a strike notification could be issued on a Friday, for a strike to begin for the following Monday, effectively giving only one working day to make arrangements.

Option 1 balances the interests of schools, parents, caregivers and whānau against union's justified reasons to strike

22. Option 2 offers the greatest protection for students by giving schools, parents, caregivers, and whānau a 7-day notice period to prepare. However, it may reduce the effectiveness of strikes by lessening their urgency and disruptive impact. Strikes are designed to create immediate pressure on employers to address workers' concerns. Extending the notice period could reduce this pressure. Public consultation shows that most supporters of *Option 3 - status quo* understand the disruptive intent of strikes and were willing to accept these disruptions.
23. Option 2 would provide more time for the Ministry to potentially mediate a solution for striking parties. However, unions have expressed concern that extending the mediation period could be counterproductive, as it might entrench and deepen divisions between parties at a time when relations are likely already strained. Additionally, a longer mediation period could delay the resolution of disputes, prolonging uncertainty for both employees and employers. This extended period of tension could diminish trust in the negotiation process, and ultimately hinder the ability to achieve a fair and timely outcome.

Option 4 does not provide enough certainty to schools, students, parents, and whānau

24. During consultation, the Ministry received submissions from unions who proposed a new option to amend the Act to require employees of school boards to give "no less than 3-calendar days' notice" before the commencement of a proposed strike. This option differs from Option 1, which requires 'no less than 3 *working days*' notice' to prevent notices from being issued on a Friday or Saturday for a strike starting early the following week. The wording for Option 1 addresses their point that the law should not limit the notice period provided.
25. Officials acknowledge that Option 4 could also offer benefits. For example, Option 4 could allow unions to issue formal notice earlier than the required 3 working days or 7 calendar days, providing added flexibility. This could better protect students and provide schools, parents, caregivers, whānau, and businesses with more time to prepare. However, officials note that the benefits of Option 4 depend on unions voluntarily providing formal notice earlier than the minimum specified period. While unions have generally provided informal notice to the Ministry about strikes, this has been at their discretion. Moreover, the preferred option does not restrict unions from giving earlier notice if they choose, as it requires a minimum of 3 working days' notice but allows for earlier notification.
26. Taking these factors into account, officials consider that this option fails to offer sufficient assurance to schools, students, parents, caregivers, whānau, and other affected parties. We recommend Option 1 as it better protects students' rights to uninterrupted education, provides schools, parents, caregivers, and whānau more time to organise alternative care, and preserves employees' right to strike while keeping strike actions effective.

Risks

9(2)(g)(i)

27. Public consultation indicates that most respondents support Option 3 - retaining the status quo. Further, union groups advocate for new Option 4 - amending the Act to require at least 3-calendar days' notice. Considering this, there is likely to be opposition to Option 1 - no less than 3 working days from the public and stakeholder groups who may consider that this limits the disruptive effect of a strike.
28. The New Zealand Council of Trade Unions have raised that the proposal to extend the school strike notification period breaches section 17 of The New Zealand Bill of Rights Act 1990, and Articles 1, 3 and 4 of the International Labour Organisation Convention 98 (ILO) (Right to Organise and Collective Bargaining Convention, 1949).

9(2)(h)

29. 9(2)(h)

30. 9(2)(h)

31. 9(2)(h)

32. 9(2)(h)

Financial Implications

33. There are no financial implications of the proposal to amend section 589 to require unions to provide no less than 3 working days' notice of a school strike. However, an increased notice period is likely to have monetised benefits for parents, caregivers, whānau, and businesses who will be able to prepare for necessary alternative care arrangements.

Treaty impact analysis

34. The recommended option supports and or recognises the Articles of Te Tiriti o Waitangi / The Treaty of Waitangi by:
- **Kāwanatanga** – Option 1 introduces new requirements for Māori teachers and kura staff but maintains their right to strike, preserving their authority in education. However, it reflects the Crown's continued authority over the system in which Māori operate, emphasising partnership in governance, design, and delivery of education. Māori peak bodies were invited to engage in consultation, but no submissions were received. Option 1, compared to the status quo, offers more time for kura, parents, caregivers, and whānau to arrange alternative care, helping mitigate the impact of strike actions on ākonga and protecting Māori interests as outlined in Te Tiriti o Waitangi.
 - **Tino rangatiratanga** – Option 1 retains the right for kura staff to strike but requires at least 3 working days' notice, reducing unions' flexibility to choose earlier dates. This limits Māori union members' ability to exercise tino rangatiratanga over education in kura settings. However, Option 1 offers greater agency to ākonga, kura, and whānau Māori by providing more time to arrange alternative care and potentially keeping kura open. While the increase in autonomy is limited, it improves on the status quo by offering more time for Māori whānau to prepare for strike disruptions.
 - **Ōritetanga** – Option 1 will apply to union members, including Māori union members equally. Further, the option aims to protect students' health, safety, and learning by giving kura more time to arrange alternative care and minimise disruptions. This is intended to support all ākonga including Māori students' wellbeing and to achieve equitable educational outcomes.

Next Steps

35. Officials are scheduled to provide a draft Cabinet paper, 'Changes to the Education and Training Act 2020 to progress priorities and support the health of the education system' on

20 September, and seek your permission to commence Ministerial and departmental consultation on 25 September (METIS 1336037). This draft Cabinet paper includes recommended Option 1 as a placeholder, which can be amended to reflect your decision on recommendation (f) below.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that, following Cabinet agreement [CAB-24-MIN-0248], public consultation to extend the school strike notification period under section 589 of the Education and Training Act 2020 (the Act) was undertaken from 1 August – 6 September 2024 on three options:
- i. Option 1: no less than three working days;
 - ii. Option 2: no less than 7 calendar days; or
 - iii. Option 3: retain the status quo of three calendar days.
- b. **note** that most respondents (66 of 123 submitters) supported Option 3: retain the status quo of three calendar days. 9(2)(g)(i)
- c. **note** that most school leaders (17 of 25 submitters), parents, caregivers, and whānau (19 of 36 submitters) supported extending the notice period through either Options 1 or 2.
- d. **note** that the Ministry also received submissions from union groups advocating for the inclusion of new Option 4 to amend the Act to require employees of school boards to give "no less than 3-calendar days' notice" before the commencement of a proposed strike.
- e. **note** that officials recommend *Option 1 - no less than three-working days* as it best balances the interests of school leaders, parents, caregivers and whānau who have indicated their preference for extending the notification period, while continuing to preserve employees' right to strike and maintaining the effectiveness of strike actions.
- f. **agree** to one of the following options to extend or maintain the notification period that employees of school boards must provide before commencement of a proposed school strike in the Act:
- i. Option 1 (*recommended*): *no less than three working days*
OR
 - ii. Option 2: *no less than 7 calendar days*
OR
 - iii. Option 3: *retain the status quo of three calendar days*
OR

Noted

Noted

Noted

Noted

Noted

Agree / Disagree

Agree / Disagree

Agree / Disagree

- iv. Option 4: *amend the Act to require that notification must be given no less than 3-calendar days' notice before commencement of a school strike.*

Agree / Disagree

- g. **note** that we require your decision on one of the above options (recommendation f) by 23 September to include in the draft Cabinet paper, "Second tranche of policy changes for the Education and Training Act 2020" (METIS 1336037).

Noted

Proactive Release:

36. **agree** that the Ministry of Education release this paper once it has been considered by you with any information needing to be withheld, including content subject to legal professional privilege, and in line with the provisions of the Official Information Act 1982.

Agree / Disagree



Casey Pickett
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Te Pou Kaupapahere

18/09/2024



Hon Erica Stanford
Minister of Education

19/8/24