



**Briefing Note: Cabinet paper: Education and Training
Amendment Bill (No 2) – Supplementary Order
Paper: Approval for Release**

To:	Hon Chris Hipkins, Minister of Education		
Date:	1 December 2021	Priority:	High
Security Level:	In Confidence	METIS No:	1278487
Drafter:	Siobhan Murray	DDI:	9(2)(a)
Key Contact:	John Brooker	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

The attached Cabinet paper is due to be lodged on 2 December for Cabinet Legislation Committee on 9 December 2021. Also attached is a letter seeking agreement of the Education and Workforce Committee to consider the Supplementary Order Paper at the same time as the Education and Training Amendment Bill (No 2) (ETAB2).

Recommended Actions

The Ministry of Education recommends you:

- lodge** the attached Cabinet paper on 2 December for Cabinet Legislation Committee on 9 December
- note** on 22 November 2021 Cabinet authorised you to make decisions on any matters that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions

Agree / Disagree

c. **agree** this authority is used as follows:

- a. to clarify that the Minister should consider applications for approval to apply for a licence in light of any published national and regional statements
- b. to enable the Minister to impose new conditions subsequent to the approval, and to amend or revoke existing conditions
- c. "Terms of the licence" under the fit and proper assessment has been amended to "regulations made under section 636" to include both licensing regulations and any future regulations created for network management
- d. an applicant will have 21 days to respond to an adverse assessment of the Secretary for Education or otherwise the assessment will be finalised

Agree / Disagree

d. 9(2)(f)(iv)

e. **sign** the attached letter to the Chair of the Education and Workforce Committee seeking the agreement of the Committee to consider the SOP alongside the Education and Training Amendment Bill (No 2)

Agree / Disagree

f. **agree** this Education Report is proactively released in December, once changes to the network management provisions in the Act are included in the Education and Training Amendment Bill (No 2), with any information that may need to be withheld done so in line with the provisions of the Official information Act 1982.

Release / Not release

John Brooker
Group Manager
Te Puna Kaupapahere

1/12/2021

Hon Chris Hipkins
Minister of Education

__/__/__

Background

1. On Monday 22 November 2021 Cabinet agreed to final changes to the Education and Training Act 2020 to implement early childhood network management following recent public consultation [SWC-21-MIN-0179 refers].

Supplementary Order Paper (SOP) to amend the Education and Training Amendment Bill (No 2)

2. The attached Cabinet paper seeks approval to release the attached Supplementary Order Paper (SOP) to amend the Education and Training Act 2020 to give effect to the policy decisions.
3. On 22 November 2021 Cabinet authorised you to make decisions on any matters that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions. We seek your authority to make several changes to the proposals, as set out in the SOP and below:
 - a. The Minister may issue statements at the national and regional level about the network in relation to supply, forecast growth, demand and need for services. The SOP clarifies that the Minister should consider applications for approval to apply for a licence in light of these statements.
 - b. When granting approval to apply for a licence, the Minister may specify conditions that attach to the approval. This power has been refined to enable the Minister to impose new conditions subsequent to the approval, and to amend or revoke existing conditions, so that the Minister has flexibility in different scenarios – for example, new conditions may be necessary at a later point if the expiry date of an approval is extended.
 - c. When assessing whether a person is fit and proper to be granted approval to apply for a licence, the Secretary must consider any health conditions that may affect the person's ability to comply with the Act and the terms of the licence. "Terms of the licence" has been amended to "regulations made under section 636" to include both licensing regulations and any future regulations created for network management.
 - d. The Secretary is to provide a fit and proposer assessment of the applicant and other governing members of the proposed service to the Minister to consider when deciding whether to grant approval to apply for a licence. The Secretary may only finalise an adverse fit and proper assessment after considering the applicant's response to the assessment. I have decided that the applicant will have 21 days to respond to the assessment or otherwise the assessment will be finalised.

Policy amendment (previously advised)

4. Our original policy advice sought approval to make it clear that the assessment by the Minister is a high-level assessment of relevant factors. In drafting the SOP, it has become clear that the high-level assessment we sought is more appropriately applied to some factors that the Minister of Education must take into account when making an approval decision (i.e. the relevant attributes of the area to be served), rather than the decision itself. For example, the high level assessment should apply to the needs of the community and children assessment as these are evaluative in nature. Conversely the

high level assessment is not applicable to the assessment about whether an applicant is fit and proper. We have proposed that the Cabinet paper amend the original policy decision to give effect to this.

9(2)(f)(iv)

Next Steps

7. The timeline for this Cabinet paper does not have room for slippage as it is driven by finalising Act changes before the implementation date of network management on 1 August 2022.
8. We recommend you lodge the attached Cabinet paper on 2 December for Cabinet Legislation Committee on 9 December.
9. We have attached a letter seeking agreement of the Education and Workforce Committee to consider the SOP at the same time as the Bill.

Date	Activity
1 December	Cabinet paper to Minister to approve for lodging
2 December	Paper lodged
9 December	LEG
13 December	Cabinet
Week of 13 December	SOP referred to Select committee to be considered with ETAB 2

Annexes

Annex 1: Cabinet Paper: Education and Training Amendment Bill (No 2) – Supplementary Order Paper: Approval for Release

Annex 2: Letter to the Chair of the Education and Workforce Committee

Proactively Released