

Cabinet Paper material

Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Education and Training Amendment Bill (No 2): Supplementary Order Paper: Approval for Release
Date considered	13 December 2021
Date of release	28 January 2022

These documents have been proactively released:

**Cabinet paper: Education and Training Amendment Bill (No 2):
Supplementary Order Paper: Approval for Release**
Date considered: 13 December 2021
Author: Minister of Education

Cabinet Minute: CAB-21-MIN-0529
Date considered: 13 December 2021
Author: Cabinet office

Cabinet Minute: LEG-21-MIN-0216
Date considered: 9 December 2021
Author: Cabinet office

Related papers also released: **1278487 Talking points for the network management SOP, LEG
Committee on 9 December 2021**
6 December 2021
Ministry of Education

**1278487 Cabinet paper: Education and Training Amendment Bill (No 2) –
Supplementary Order Paper: Approval for Release**
1 December 2021
Ministry of Education

**1277570 Cabinet paper: Education and Training Amendment Bill (No 2) –
Supplementary Order Paper: Approval for Release**
24 November 2021
Ministry of Education

Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(a) to protect the privacy of natural persons

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister of Education

Chair, Cabinet Legislation Committee

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

Proposal

- 1 I propose that a Supplementary Order Paper (SOP) to amend the Education and Training Amendment Bill (No 2) (the Bill) be approved for release.
- 2 The SOP amends the Bill in relation to licensed early childhood services to:
 - 2.1 introduce National and Regional Statements for network management that outline the Government's priorities for network management and provide data and information on supply and forecast growth, demand and need for licensed early childhood services;
 - 2.2 clarify that some factors that the Minister of Education (the Minister) must take into account as part their decision-making role need only be assessed at a high level;
 - 2.3 shift the initial administrative assessments of suitability of the applicant to the Secretary for Education and provide for a right of appeal of this assessment;
 - 2.4 strengthen the test of applicant suitability, by strengthening the fit and proper assessment by the Secretary for Education, and introducing a new capability assessment by the Minister of Education;
 - 2.5 introduce other provisions to provide transparency about the process, such as imposing conditions of approval and specifying when extensions would be considered; and
 - 2.6 provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008.
- 3 I intend to refer the SOP to the Education and Workforce Committee for consideration.

Policy

- 4 The Bill was considered by Cabinet Legislation Committee on 25 November 2021. The Bill amends the Education and Training Act 2020 (the Act) to:
 - 4.1 align the Police vetting provisions in the Act closer to the safety checking requirements in the Children's Act 2014;
 - 4.2 strengthen Teaching Council disciplinary processes;

- 4.3 provide increased flexibility for the Government to monitor and regulate Compulsory Student Service Fees as conditions on funding mechanisms;
- 4.4 simply qualifications and other credentials;
- 4.5 amend the Education Review Office's mandate to enable it to review professional learning and development;
- 4.6 support tertiary and international student wellbeing by ensuring that safety mechanisms for students are fit for purpose; and
- 4.7 make a number of minor and technical amendments.

Amendments to the network management provisions in the Act

- 5 The Education and Training Act 2020 (the Act) included new provisions (sections 17 and 18) to enable network management of licensed early childhood services. Under these provisions, potential providers must apply for approval from the Minister in order to apply for a licence to operate an early childhood service. Network management approvals will examine the need for an early childhood service and the suitability of the applicant. These provisions have a delayed commencement date of no later than 1 August 2022.
- 6 On 22 November 2021 Cabinet agreed to strengthen the network management provisions and allow for more effective and efficient implementation [SWC-21-MIN-0179 refers]. The SOP amends the Bill to:
 - 6.1 introduce National and Regional Statements for network management that outline the Government's priorities for network management and provide data and information on supply and forecast growth, demand and need for licensed early childhood services;
 - 6.2 ensure the high-level decision-making role of the Minister of Education is clear;
 - 6.3 shift the initial administrative assessments of suitability of the applicant to the Secretary for Education and provide for a right of appeal of this assessment;
 - 6.4 strengthen the test of applicant suitability, by strengthening the fit and proper assessment by the Secretary for Education, and introducing a new capability assessment by the Minister of Education;
 - 6.5 introduce other provisions to provide transparency about the process, such as imposing conditions of approval and specifying when extensions to conditions or approval would be considered; and
 - 6.6 provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008.

Amending the previous Cabinet decision in relation to the high-level decision making role of the Minister of Education

- 7 On 22 November, Cabinet agreed to a change to the Act to clarify the high-level decision-making role of the Minister of Education in network management for early learning [SWC-21-MIN-0179 refers]. The previous decision had the effect of applying the high-level assessment to the Minister's approval decisions themselves.
- 8 In drafting the SOP, it has become clear that the high-level assessment described 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 assessment of the needs of the community and children 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. I propose that the Committee agree that the Cabinet decision be amended in this way.

Other minor drafting changes to the SOP

- 9 On 22 November 2021 Cabinet authorised me 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. I have used this authority to make several changes to the proposals, as set out in the SOP:
 - 9.1 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.
 - 9.2 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.
 - 9.3 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.
 - 9.4 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.

Impact analysis

Regulatory Impact Statement

- 10 A Regulatory Impact Statement was submitted at the time that Cabinet approval of the policy relating to the SOP was sought and can be found here: <https://www.education.govt.nz/early-childhood/licensing-and-regulations/the-regulatory-framework-for-ece/early-learning-regulatory-review/#two>

Climate Implications of Policy Assessment

- 11 The Climate Implications of Policy Assessment team has been consulted and confirms that the CIPA requirements do not apply to these proposals as there is no direct emissions impact.

Compliance

- 12 The SOP complies with the following:
- 12.1 the principles of the Treaty of Waitangi;
 - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 12.3 the principles and guidelines set out in the Privacy Act 2020;
 - 12.4 relevant international standards and obligations; and
 - 12.5 the Legislation Guidelines.
- 13 A disclosure statement has been prepared for the SOP.

Consultation

- 14 The following agencies were consulted: The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Puni Kokiri, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Social Development, Office for Disability Issues, Ministry of Health, Ministry of Justice, Te Arawhiti, Oranga Tamariki, Education Review Office, Teaching Council, Tertiary Education Commission and the New Zealand Qualifications Authority.

Binding on the Crown

- 15 The Bill binds the Crown. On 11 August 2021 the Cabinet Social Wellbeing Committee considered the Cabinet paper seeking policy approvals for the Bill, which included a statement confirming that the Bill will be binding on the Crown [SWC-21-MIN-0118 and CAB-21-MIN-0314 refers].

Creating new agencies or amending law relating to existing agencies.

16 Not applicable

Allocation of decision-making powers

17 Not applicable.

Associated regulations

18 There are no regulations associated with this SOP.

Other instruments

19 Not applicable.

Definition of Minister/department

20 Not applicable.

Commencement of legislation

21 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

22 The Bill should be introduced into Parliament by early December 2021 and be enacted as soon as possible after it is reported back to the House.

23 Cabinet has previously agreed that the Bill should be referred to the Education and Workforce Committee for consideration [SWC-21-MIN-0118 refers]. I propose that the Education and Workforce Committee should also consider the SOP.

24 I intend to write to the House Business Committee at the appropriate time, seeking agreement to broaden the scope of the Bill.

Proactive Release

25 This paper will be proactively released following referral of the SOP to select committee.

Recommendations

26 The Minister of Education recommends that the Committee:

1 **note** that the Education and Training Act Amendment Bill (No 2) has been included 9(2)(f)(iv)

2 **note** that the Education and Training Act 2020 introduces a new network management process for early childhood services, which will come into effect no later than 1 August 2022;

- 3 **note** that on 22 November 2021, Cabinet agreed to broaden the scope of the Education and Training Amendment Bill (No 2) to strengthen the network management provisions in the Act to:
- 3.1 introduce National and Regional Statements for network management that outline Government's priorities for network management and provide data and information on supply and forecast growth, demand, and need for licensed early childhood services;
 - 3.2 ensure the high-level decision-making role of the Minister of Education is clear;
 - 3.3 shift the initial administrative assessments of suitability of the applicant to the Secretary for Education and provide for a right of appeal of this assessment;
 - 3.4 strengthen the test of applicant suitability, by strengthening the fit and proper assessment by the Secretary for Education, and introducing a new capability assessment by the Minister of Education;
 - 3.5 introduce other provisions to provide transparency about the process, such as imposing conditions of approval and specifying when extensions to conditions or approval would be considered; and
 - 3.6 provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008.
- 4 **note** that the SOP reflects the proposals in recommendation 3, except in relation to 3.2;
- 5 **agree** to amend Cabinet's decision on 22 November 2021 at recommendation 5 [SWC-21-MIN-0179 refers] so that the high-level assessment aspect is applied to the relevant attributes of the area to be served, rather than the approval decision itself;
- 6 **approve** the SOP for release;
- 7 **authorise** Parliamentary Counsel to make minor or technical drafting changes or corrections to the SOP that are considered necessary before the SOP is released;
- 8 **agree** that the SOP is referred to the Education and Workforce Committee for consideration.

Authorised for lodgement
Hon Chris Hipkins
Minister of Education



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 10 December 2021

On 13 December 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 10 December 2021:

Out of scope


LEG-21-MIN-0216

**Education and Training Amendment Bill (No 2):
Supplementary Order Paper: Approval for Release**
Portfolio: Education

CONFIRMED

Out of scope

Out of scope



Michael Webster
Secretary of the Cabinet



Cabinet Legislation Committee

Minute of Decision

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

Portfolio **Education**

On 9 December 2021, the Cabinet Legislation Committee:

- 1 **noted** that the Education and Training Act Amendment Bill (No 2) ^{9(2)(f)(iv)} [REDACTED]
- 2 **noted** that the Education and Training Act 2020 introduces a new network management process for early childhood services, which will come into effect no later than 1 August 2022;
- 3 **noted** that in November 2021, the Cabinet Social Wellbeing Committee (SWC) agreed to broaden the scope of the Education and Training Amendment Bill (No 2) to strengthen the network management provisions in the Act to:
 - 3.1 introduce National and Regional Statements for network management that outline Government's priorities for network management and provide data and information on supply and forecast growth, demand, and need for licensed early childhood services;
 - 3.2 ensure the high-level decision-making role of the Minister of Education is clear;
 - 3.3 shift the initial administrative assessments of suitability of the applicant to the Secretary for Education and provide for a right of appeal of this assessment;
 - 3.4 strengthen the test of applicant suitability, by strengthening the fit and proper assessment by the Secretary for Education, and introducing a new capability assessment by the Minister of Education;
 - 3.5 introduce other provisions to provide transparency about the process, such as imposing conditions of approval and specifying when extensions to conditions or approval would be considered;
 - 3.6 provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008;

[SWC-21-MIN-0179]

- 4 **noted** that the Supplementary Order Paper (SOP) attached to the submission under LEG-21-SUB-0216 reflects the decisions in paragraph 3, except in relation to 3.2;
- 5 **noted** that the SOP amends SWC's decision [SWC-21-MIN-0179, paragraph 5] so that the high-level assessment aspect is applied to the relevant attributes of the area to be served, rather than the approval decision itself;
- 6 **approved** for release the Supplementary Order Paper to the Education and Training Amendment Bill (No 2) 2021 [PCO 23519-1/2.0];
- 7 **authorised** the Minister of Education to make minor or technical drafting changes or corrections to the SOP that are considered necessary before the SOP is released;
- 8 **agreed** that the SOP be referred to the Education and Workforce Committee for consideration.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Jan Tinetti
Hon Meka Whaitiri
Kieran McAnulty, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG