

Cabinet Paper material Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Regulations for When State Schools Must Be Open
Date considered	4 July 2022
Date of release	25 August 2022

These documents have been proactively released:

Cabinet Minute: CAB-22-MIN-0251

Date considered: 4 July 2022

Author: Cabinet Office

Cabinet Minute: SWC-22-MIN-0119

Date considered: 29 June 2022

Author: Cabinet Office

Cabinet Paper: Regulations for When State Schools Must Be Open

Date considered: 4 July 2022

Author: Minister 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)(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>



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 Social Wellbeing Committee: Period Ended 1 July 2022

On 4 July 2022, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 1 July 2022:

Out of scope




SWC-22-MIN-0119

**Regulations for When State Schools Must Be
Open**
Portfolio: Education

CONFIRMED

Out of scope



Rachel Hayward
Acting Secretary of the Cabinet



Cabinet Social Wellbeing Committee

Minute of Decision

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Regulations for When State Schools Must Be Open

Portfolio **Education**

On 29 June 2022, the Cabinet Social Wellbeing Committee:

- 1 **noted** that Schedule 21 of the Education and Training Act 2020 (*When State schools must be open*) will be automatically repealed on 1 January 2023 but can be replaced by regulations;
- 2 **noted** that the rights and corresponding obligations to attend school that are provided for in other sections of the Education and Training Act 2020 rest on the Schedule 21 requirements for schools to be open;
- 3 **agreed** to transfer the existing requirements in Schedule 21 into new regulations for when State schools must be open;
- 4 **invited** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decision;
- 5 **authorised** the Minister of Education to make minor and technical decisions during the drafting of the Regulations that are consistent with the intent of the above decision.

Rachel Clarke
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Peeni Henare
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Aupito William Sio
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

In Confidence

Office of the Minister of Education

Chair, Social Wellbeing Committee

Regulations for when State schools must be open

Proposal

- 1 This paper seeks Cabinet agreement to 'lift and shift' Schedule 21 (*When State schools must be open*) of the Education and Training Act 2020 (the Act) into new regulations.

Relation to government priorities

- 2 This paper does not relate to any government priorities. It covers a technical matter of moving existing requirements from primary into secondary legislation, which requires Cabinet approval.

Background

- 3 During the streamlining of education legislation that was undertaken in 2019 - 2020, it was agreed that some requirements prescribing how schools operate would better sit in regulations to allow more legislative flexibility. These included provisions for when State schools must open, which were moved into Schedule 21, with the intention they would be converted into regulations [CAB-19 MIN-0631 refers].
- 4 Schedule 21 of the Act is an essential component of ensuring students' rights to a minimum standard of education. The schedule sets out the framework for State school opening hours, including when schools must be open, school year length, term dates and holidays.
- 5 Schedule 21 will be automatically repealed on 1 January 2023. These provisions need to be replaced by regulations before that date, otherwise the legislative requirements for when schools must be open will cease to exist.

Current requirements are fit-for-purpose and immediate substantive changes are not required

- 6 For the most part, the existing provisions for school opening hours have been fit for purpose, provide a reasonable amount of flexibility to respond to emergencies (as shown with COVID-19 lockdowns) and unique circumstances, and enable future trends in education, including distance learning.
- 7 Opening hours regulations are necessary to support students' rights to a minimum standard of education. The rights, and corresponding obligations to attend school in other sections of the Act, also rest on the requirement for schools to be open so those rights can be meaningfully exercised.

I propose transferring requirements in Schedule 21 into Regulations

- 8 To maintain the minimum standards and expectations around school opening hours after 1 January 2023, I propose a 'lift and shift' of existing Schedule 21 provisions into new regulations, as enabled by the Act.

The Ministry will review the opening hours framework in more detail in the future

- 9 9(2)(f)(iv)

- 10 The Ministry will also monitor how school boards interpret existing rules to meet their minimum opening days, which may inform whether future regulatory changes are needed.

Implementation

- 11 Following Cabinet's approval, the timeline for developing new regulations is as follows:

Milestone/Activity	Timeframe
Regulations drafted and reviewed	By September 2022
LEG and Cabinet Confirmation	By October 2022
Governor-General makes regulations	November 2022
Regulations come into force	December 2022

Financial Implications

- 12 There are no financial implications associated with this proposal.

Legislative Implications

- 13 This proposal requires the development of new regulations for when State schools must be open. Section 638 of the Act provides for the making of Regulations covering the same subject matter as is currently in Schedule 21.

Impact Analysis**Regulatory Impact Statement**

- 14 The Treasury's Regulatory Impact Analysis team has determined that the proposal in this paper is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 15 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 16 Requirements for State school opening hours have wide-ranging impacts on all population groups with school-aged children, those employed in the schooling sector, working parents and the wider community including businesses and organisations that have a relationship with schooling (e.g., care services, sports). As the proposal in this paper does not alter existing requirements, there is no change to how population groups are currently affected.

Human Rights

- 17 The proposal in this paper appears to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination as to the consistency of this proposal with the New Zealand Bill of Rights Act will be made when the regulations for when State schools must be open have been drafted.

Consultation

- 18 The following organisations were consulted on this paper: The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Social Development, the Office for Disability Issues, Ministry of Justice, Oranga Tamariki, Ministry of Internal Affairs, Ministry of Youth Development, Ministry for Ethnic Communities, Police, Office of the Privacy Commissioner, Education Review Office, New Zealand Qualifications Authority and Education New Zealand. Te Puni Kōkiri was informed of this paper.

Communications

- 19 Following Cabinet's approval, the Ministry of Education will communicate the promulgation of new Regulations to the schooling sector through its regular bulletin.

Proactive Release

- 20 I propose to proactively release this paper, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

- 24 The Minister of Education recommends that the Committee:
- 1 **note** that Schedule 21 of the Education and Training Act 2020 (*When State schools must be open*) will be automatically repealed on 1 January 2023 but can be replaced by regulations;
 - 2 **note** that the rights and corresponding obligations to attend school, that are provided for in other sections of the Education and Training Act 2020, rest on the Schedule 21 requirements for schools to be open;

- 3 **agree** to transfer the existing requirements in Schedule 21 into new regulations for when State schools must be open;
- 4 **invite** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to create new regulations for when State schools must be open to give effect to the above proposal;
- 5 **authorise** the Minister of Education to make minor and technical decisions during the drafting of the Regulations that are consistent with the intent of the above proposal.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education