

## Cabinet Paper material

### Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education  
Name of package Government Response to the Interim Report of the Regulations Review Committee on a Complaint about the Education (Early Childhood Services) Regulations 2008  
Date considered 1 November 2021  
Date of release

#### These documents have been proactively released:

**Cabinet paper: Government Response to the Interim Report of the Regulations Review Committee on a Complaint about the Education (Early Childhood Services) Regulations 2008**

Date considered: 1 November 2021

Author: Minister of Education

**Cabinet Minute: CAB-21-MIN-0446**

Date considered: 1 November 2021

Author: Cabinet Office

**Cabinet Minute: LEG-21-MIN-0171**

Date considered: 28 October 2021

Author: Cabinet Office

#### Associated papers released:

**1275053 Briefing Note: Talking points for Cabinet Legislation Committee – Government Response to the Interim Report of the Regulations Review Committee**

27 October 2021

Ministry of Education

**1273898 Education Report: Draft Government Response to the interim report of the Regulations Review Committee**

14 October 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

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

## **Government Response to the Interim Report of the Regulations Review Committee on a Complaint about the Education (Early Childhood Services) Regulations 2008**

### **Proposal**

- 1 This paper seeks approval of the Government's Response to the Regulations Review Committee's interim report following its investigation of a complaint about the Education (Early Childhood Services) Regulations 2008.

### **Background**

- 2 The interim report was presented to the House of Representatives on 13 September 2021. The report follows the Regulations Review Committee's (the Committee's) investigation into a complaint made by Angela Mitchell, Annaliese Berry and Susan Bates on 27 August 2020.
- 3 The complaint alleged that regulations 44 and 45 of the Education (Early Childhood Services) Regulations 2008 (the Regulations) breach Standing Orders:
  - 3.1 327(2)(a): that the regulation is not in accordance with the general objects and intentions of the enactment under which it is made; and
  - 3.2 327(2)(b): the regulation trespasses unduly on personal rights and liberties.
- 4 Regulation 44(1)(b) sets the standards for adult-to-child ratios, which all licensed service providers must adhere to. These are set out in Schedule 2.
- 5 Regulation 45(1)(b) stipulates activity space requirements, which all licensed service providers must adhere to. These are set out in Schedule 4, which specifies minimum requirements for indoor and outdoor space per child, depending on service type.
- 6 The complainants contended that these regulations allow for too many children per adult and activity spaces that were too small. They allege that these regulations impact negatively on the health and safety of teachers and children, and adversely affect children's care and education.
- 7 The complainants, additional interested parties and the Ministry of Education presented evidence to the Committee. Oral submissions were presented by the complainants and the Ministry of Education on 17 March 2021.

## **The Regulations Review Committee findings**

- 8 In its interim report, the Committee considers that regulations 44 and 45 should be drawn to the special attention of the House of Representatives under Standing Order 327(2)(a). The Committee is not 'confident that the regulations have been made appropriately or that they accord with the objects and intentions of section 14 of the [Education and Training Act 2020] – to support "quality provision and learning" and the "health, safety, and well-being of children"'.  
*Proactively Released*
- 9 The Committee recommends that the Government should review regulations 44 and 45 sooner than the third stage of the Early Learning Regulatory Review, currently being undertaken by the Ministry of Education.
- 10 Regarding Standing Order 327(2)(b), the Committee found that the evidence presented by the complainants did not reach the threshold required to conclude that the ground has been met. Therefore, the Government Response only pertains to Standing Order 327(2)(a).

## **Comment on the Regulations Review Committee findings and recommendations**

- 11 The Government Response notes that the Committee's recommendation refers to regulations 44 and 45 in their entirety, and that these regulations set standards for several aspects of early learning provision, in addition to those relating to adult-to-child ratios and activity spaces.
- 12 The Response notes that Government considers that there are a number of areas where improvements can be made to the regulatory system. This is acknowledged in *He taonga te tamaiti – Every child a taonga: Early Learning Action Plan 2019-2029* (the Action Plan). The Action Plan sets out the actions we intend to take to improve early childhood education over the next ten years.
- 13 Several of the actions in the Action Plan will be addressed through the Ministry of Education's Early Learning Regulatory Review (the Review). This includes improvements to adult-to-child ratios, which is currently in the third tranche of the Review. Improving adult-to-child ratios and activity space settings is important for creating environments that are supportive of child wellbeing and development.
- 14 The response notes that Government does not agree with the Committee's recommendation that it should review regulations 44 and 45 sooner than the third stage of the Review for three reasons:
  - 14.1 the scope of the recommendation is broader than the subject of the complaint
  - 14.2 changing review timeframes would cause sector disruption and be costly

- 14.3 early review of regulations 44 and 45 would impact the ability to progress other key initiatives.

***The scope of the recommendation is broader than the subject of the complaint***

- 15 The complaint relates to adult-to-child ratios and activity spaces. Standards for these are described in regulations 44(1)(b) and 45(1)(b) respectively. Regulations 44 and 45 also include standards for other aspects of early learning, such as qualification requirements, service size, person responsible requirements and the nature of early learning premises.
- 16 Parts of regulation 44 are already being reviewed as part of tranche two of the Review – for example, regulating for 80% qualified teachers for teacher-led centres and hospital-based services.
- 17 Reviewing regulations 44 and 45 in their entirety would be a significant task and would have a considerable impact on the wider work programme.

***Changing review timeframes would cause sector disruption and be costly***

- 18 The sector has indicated that teacher supply is already a concern based on current settings. Improving ratios on a faster timeline than that set out in the Action Plan could exacerbate pressure on teacher supply. Services could therefore struggle to employ enough teachers to meet minimum requirements for qualifications and adult-to-child ratios.
- 19 The Action Plan also indicates that the Ministry of Education will develop advice regarding group size, centre design and wider environmental factors (i.e. Action 1.3). It notes that such advice may lead to new standards, but that the Ministry will consult with the sector if regulatory changes are indicated.
- 20 Any changes to activity space standards will be complex, with implications for new and existing services. A phased approach will therefore be required.
- 21 The phased timeframes of the Action Plan are also intended to manage the associated fiscal costs. If these changes are brought in at the same time as planned changes to teacher qualification requirements (Action 3.1) and improvements to teachers' salaries (Action 3.4), the associated cost would increase significantly.

***Early review of regulations 44 and 45 would impact on the Government's ability to progress other key initiatives***

- 22 Bringing the review of regulations 44 and 45 forward may compromise the Government's ability to progress other key priorities, such as achieving pay parity for early childhood teachers.

## Timing of the Government Response

- 23 The Government Response must be presented to the House of Representatives by 11 November 2021.

## Consultation

- 24 The Treasury, Department of Prime Minister and Cabinet, Ministry of Social Development, Ministry of Business, Innovation and Employment, Ministry for Women, Ministry for Pacific Peoples, Education Review Office and Te Puni Kōkiri have been consulted on this paper.

## Financial implications

- 25 There are no fiscal implications associated with the recommendations of this paper.

## Publicity

- 26 The Government's Response will be presented in the House of Representatives by 11 November 2021.

## Proactive Release

- 27 I intend to proactively release this Cabinet paper once the Government Response has been tabled in the House, subject to redaction as appropriate under the Official Information Act 1982.

## Recommendations

The Minister of Education recommends that the Cabinet Legislation Committee:

- 1 **note** that on 13 September 2021 the Regulations Review Committee presented its interim report to the House entitled "Complaint about the Education (Early Childhood Services) Regulations 2008";
- 2 **note** that the Regulations Review Committee recommended that the government review regulations 44 and 45 sooner than the third stage of the Ministry of Education's early learning regulatory review, which is currently scheduled for late 2023;
- 3 **note** that the Government Response states that the Government does not intend to bring forward the review of regulations 44 and 45 as the scope of this work is larger than the concerns raised in the complaint, existing timeframes were set to minimise disruption to the sector and manage overall fiscal cost, and bringing forward this work may compromise the Government's ability to progress other key priorities in early learning, for example, pay parity;
- 4 **note** that the Government Response must be presented to the House by 11 November 2021;

- 5 **approve** the Government Response, attached to this submission, to the Report of the Regulations Review Committee entitled “Complaint about the Education (Early Childhood Services) Regulations 2008”;
- 6 **invite** the Minister of Education to present the Government Response to the House in accordance with Standing Order 252.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

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**Government Response to  
Report of the Regulations Review Committee  
on  
Complaint about the Education (Early Childhood Services)  
Regulations 2008  
Interim report of the Regulations Review  
Committee**

**Presented to the House of Representatives  
In accordance with Standing Order 252**



# **Government Response to the Interim Report of the Regulations Review Committee, on a Complaint about the Education (Early Childhood Services) Regulations 2008**

## **Introduction**

- 1 The Government has carefully considered the Regulations Review Committee's interim report on a complaint about the Education (Early Childhood Services) Regulations 2008.
- 2 The complaint was made by Angela Mitchell, Annaliese Berry and Susan Bates. The complainants are teachers and members of the Teacher Advocacy Group.
- 3 The complaint alleged that regulations 44 and 45 of the Education (Early Childhood Services) Regulations 2008 (the Regulations) breach Standing Orders:
  - 3.1 327(2)(a) – “that the regulation is not in accordance with the general objects and intentions of the enactment under which it is made”
  - 3.2 327(2)(b) - “the regulation trespasses unduly on personal rights and liberties”.
- 4 Regulation 44(1)(b) sets the standards for adult-to-child ratios, which all licensed service providers must adhere to. These are set out in Schedule 2.
- 5 Regulation 45(1)(b) stipulates activity space requirements, which all licensed service providers must adhere to. These are set out in Schedule 4, which specifies minimum requirements for indoor and outdoor spaces per child, depending on service type.
- 6 The complainants contended that these regulations allowed for too many children per adult in early learning services (services) and activity spaces that were too small. They allege that these regulations impact negatively on the health and safety of teachers and children, and adversely affect children's care and education.
- 7 In its interim report, the Regulations Review Committee (the Committee) considers that regulations 44 and 45 should be drawn to the special attention of the House of Representatives under Standing Order 327(2)(a). The Committee is not 'confident that the regulations have been made appropriately or accord with the objects and intentions of section 14 of the [Education and Training Act 2020] – to support “quality provision and learning” and the “health, safety, and well-being of children”’.
- 8 The Committee recommends that the Government should review regulations 44 and 45 sooner than the third stage of the Early Learning Regulatory Review (which it states is currently scheduled for late-2023).

- 9 Regarding Standing Order 327(2)(b), the Committee found that the evidence presented by the complainants did not reach the threshold required to conclude that the ground has been met. Therefore, this response only pertains only to Standing Order 327(2)(a).
- 10 The Government responds to the report in accordance with Standing Order 252.
- 11 The Government notes that the Committee's recommendation refers to regulations 44 and 45 in their entirety, and that these regulations set standards for several aspects of early learning provision, in addition to those relating to adult-to-child ratios and activity spaces, which are the subject of the complaint.
- 12 For example, regulation 44 also sets standards for teacher qualification requirements, service size, and person responsible requirements. Regulation 45 also sets a standard relating to the nature of the premises and facilities out of which a service operates (for example, food preparation facilities).
- 13 The Government has therefore considered its response to the Committee's recommendation on the basis of interpreting regulations 44 and 45 in their entirety.

### **Recommendations and Government Response**

- 14 Recommendation 1: the Regulations Review Committee recommends to the Government "that it review regulations 44 and 45 sooner than the third stage of the Ministry of Education's early learning regulatory review, which is currently scheduled for late 2023".
- 15 Response: The Government considers that there are a number of areas where improvements can be made to the early childhood education regulatory system. This is acknowledged in He taonga te tamaiti – Every child a taonga: Early Learning Action Plan 2019-2029 (the Action Plan). The Action Plan sets out the actions the Government intends to take to ensure that every child can experience high-quality early childhood education, and it provides a stepped approach to reaching this vision over the next 10 years and beyond.
- 16 Some of the actions in the Action Plan include:
- 16.1 improving the ratios of adults to children under the age of 3 years in teacher-led centre-based early childhood education services (Action 1.1)
  - 16.2 requiring teachers to be organised among groups of children in ways that support secure and consistent care, language learning pathways, and positive transitions for children and whānau (Action 1.2)
  - 16.3 developing advice about group size, centre design and wider environmental factors, and how to improve quality standards in these areas (Action 1.3).

- 17 Several of the actions in the Action Plan will be addressed through the Ministry of Education's Early Learning Regulatory Review (the Review). The purpose of the Review is to ensure the regulatory system is clear and fit for purpose to support high quality educational and wellbeing outcomes for our youngest tamariki, and to enhance the Ministry's role as regulator and steward of the system.
- 18 The Review is being progressed through three tranches. The Ministry of Education intends to work with the Committee during each phase and offer them a chance to review draft Regulations. The overarching goal is to ensure any new regulations are clear and accessible for the sector.
- 19 However, the Government does not agree with the Committee's recommendation that it should review regulations 44 and 45 sooner than the third stage of the Review for three reasons, outlined below.

***The scope of the recommendation is broader than the subject of the complaint***

- 20 First, the scope of work involved in implementing the Committee's recommendation is much larger than the specific issues raised in the complaint.
- 21 The complaint specifically pertains to adult-to-child ratios and activity spaces. Standards for these are described in regulations 44(1)(b) and 45(1)(b) respectively. Schedules 2 and 4 provide the specific details of these standards.
- 22 However, regulations 44 and 45 also include standards for other aspects of early learning, such as qualification requirements, service size, person responsible requirements and the nature of early learning premises.
- 23 Parts of regulation 44 are already being reviewed as part of tranche two of the Review. This includes proposals for regulating for 80% qualified teachers for teacher-led centres and hospital-based services. The Review is also strengthening the person responsible requirement for teacher-led centres and hospital-based services as part of this tranche.
- 24 If the Government were to review regulations 44 and 45 in their entirety, this would be a significant task and would have a considerable impact on the wider work programme.

***Changing review timeframes would cause sector disruption and be costly***

- 25 The implementation of the Action Plan represents a significant programme of change in the sector, and the original timeframes were purposefully designed to help the sector manage this change. For example, Action 1.1 of the Action Plan sets out a staged approach to improving adult-to-child ratios. The Action Plan indicates that in the medium term, teacher-led centre-based services with adult-to-child ratios of 1:4 for under 2-year-olds and/or 1:5 for 2-year-olds will attract a higher funding rate. These ratios will become requirements in the medium and longer term.

- 26 The sector has indicated that teacher supply is already a concern based on current settings. Improving ratios on a faster timeline than set out in the Action Plan could exacerbate pressure on teacher supply. Services could therefore struggle to employ enough teachers to meet minimum requirements for qualifications and adult-to-child ratios.
- 27 Fast-tracking these changes could cause further disruption to the sector, which is already set to undergo several changes as part of tranche two of the Review, in addition to those mentioned in paragraph 23 (for example implementing the new network management function). Given the volume of proposed changes already set to take place in the coming year, bringing forward changes to adult-to-child ratios and space requirements would impact heavily on the sector.
- 28 Introducing a large number of changes all at the same time could also affect the operations and/or viability of services. There are costs to the sector associated with the implementation of some of these initiatives that need to be carefully managed. In some cases, services would likely pass additional costs on to parents through increased fees. The Government wants to ensure that parents can continue to access services that meet their needs and aspirations for the education and care of their children.
- 29 The Action Plan also indicates that the Ministry of Education will develop advice regarding group size, centre design and wider environmental factors (Action 1.3). It notes that such advice may lead to new standards, but that the Ministry will consult with the sector if regulatory changes are indicated.
- 30 Any changes to activity space standards will be complex, with many implications for new and existing services. Therefore, a carefully managed, phased approach will be required.
- 31 The phased timeframes of the Action Plan are also intended to manage the associated fiscal costs to Government. For example, the fiscal impact of implementing Action 1.1 alone will be significant. If these changes are brought in at the same time as planned changes to teacher qualification requirements (Action 3.1) and improvements to teachers' salaries and conditions (Action 3.4), the associated cost would increase significantly.

***Early review of regulations 44 and 45 would have an impact on the Government's ability to progress other key initiatives***

- 32 Bringing forward the review of regulations 44 and 45 may compromise the Government's ability to progress other key workstreams that are important for improving the quality of early learning services. This includes regulating for 80% qualified teachers and achieving pay parity for early childhood teachers. Both of these initiatives are expected to make a significant contribution to the quality of education and care children receive.

## Conclusion

- 33 The Government recognises that aspects of the early learning regulatory system can be improved and has set out a plan for achieving this, through the Action Plan and the Early Learning Regulatory Review.
- 34 The Government does not intend to bring forward work to review regulations 44 and 45 as the scope of this work is much larger than the concerns that have been raised in the complaint. The existing timeframes have been intentionally set to minimise disruption to the sector and parents and manage overall fiscal costs to Government. Finally, bringing forward this work would redirect effort and resources currently directed towards making other significant improvements to early learning outcomes for children.

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# Cabinet

## Minute of Decision

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### Report of the Cabinet Legislation Committee: Period Ended 29 October 2021

On 1 November 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 29 October 2021:

LEG-21-MIN-0171    **Government Response to the Interim Report of the Regulations Review Committee on a Complaint about the Education (Early Childhood Services) Regulations 2008**    CONFIRMED  
Portfolio: Education

Out of scope

# Out of scope

Michael Webster  
Secretary of the Cabinet

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# Cabinet Legislation Committee

## Minute of Decision

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### Government Response to the Interim Report of the Regulations Review Committee on a Complaint about the Education (Early Childhood Services) Regulations 2008

**Portfolio**                      **Education**

On 28 October 2021, the Cabinet Legislation Committee:

- 1        **noted** that on 13 September 2021 the Regulations Review Committee presented its interim report to the House entitled “Complaint about the Education (Early Childhood Services) Regulations 2008”;
- 2        **noted** that the Regulations Review Committee recommended that the government review regulations 44 and 45 sooner than the third stage of the Ministry of Education’s early learning regulatory review, which is currently scheduled for late 2023;
- 3        **noted** that the government response states that the government does not intend to bring forward the review of regulations 44 and 45 as the scope of this work is larger than the concerns raised in the complaint, existing timeframes were set to minimise disruption to the sector and manage overall fiscal cost, and bringing forward this work may compromise the government’s ability to progress other key priorities in early learning, for example, pay parity;
- 4        **noted** that the government response must be presented to the House by 11 November 2021;
- 5        **approved** the government response, attached to the submission under LEG-21-SUB-0171, to the Report of the Regulations Review Committee entitled “Complaint about the Education (Early Childhood Services) Regulations 2008”;
- 6        **invited** the Minister of Education to present the government response to the House in accordance with Standing Order 252.

Rebecca Davies  
Committee Secretary

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**Present:**

Hon Chris Hipkins (Chair)  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon David Parker  
Hon Stuart Nash  
Hon Willie Jackson  
Hon Michael Wood  
Hon Dr David Clark  
Kieran McNulty, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG