

Cabinet Paper material

Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Final Policy Settings for Early Childhood Network Management: Policy Approvals
Date considered	22 November 2021
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These documents have been proactively released:

Cabinet paper: Final Policy Settings for Early Childhood Network Management: Policy Approvals

Date considered: 22 November 2021

Author: Minister of Education

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Related documents also released:

1276598 Briefing Note: Cabinet paper for lodging and talking points - policy approvals for early childhood network management

9 November 2021

Ministry of Education

1273665 Education Report: Cabinet paper: Policy approvals for final policy settings for early childhood network management

22 October 2021

Ministry of Education

Material redacted

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In Confidence

Office of the Minister of Education

Cabinet Social Wellbeing Committee

Policy approvals for final policy settings for early childhood network management

Proposal

- 1 I seek Cabinet agreement to changes required to the Education and Training Act 2020 for network management for licensed early childhood services following recent consultation with the early learning sector and other interested parties.
- 2 I seek approval to issue drafting instructions for a Supplementary Order Paper to include these proposals in the Education and Training Amendment Bill (No 2) while the Bill is before the Education and Workforce Select Committee.

Relation to government priorities

- 3 The proposals in this Cabinet paper will support the Government's focus on high quality educational outcomes for our youngest learners. These proposals align with the objectives set out in *He taonga te tamaiti: Every child a taonga – the Early Learning Action Plan 2019-2029*.

Executive Summary

- 4 New provisions to enable network management for licensed early childhood services were included in the Education and Training Act 2020 (the Act) when it was passed in 2020. These provisions have a delayed commencement and must be brought in no later than 1 August 2022. These new sections will mean potential new early childhood services must first apply for network management approval before they can apply for a licence. Network management approval will look at the need for an early childhood service as well as the suitability of the proposed new provider.
- 5 In September 2021, Cabinet agreed to consult on more detailed network management proposals, which included proposals that would require changes to the Act [CBC-21-MIN-0087 refers]. The majority of respondents supported or strongly supported the proposals put forward.
- 6 I now seek Cabinet's approval to strengthen network management provisions in the Act. The current Act provisions do not enable me to implement the network management function in the most effective and efficient way.
- 7 I am seeking approval to the following Act changes that will affect sections 17 and 18 of the Act. My changes will:
 - 7.1 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.

- 7.2 ensure the high-level decision making role of the Minister of Education is clear
 - 7.3 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
 - 7.4 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
 - 7.5 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
 - 7.6 provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008.
- 8 I seek approval to issue drafting instructions for a Supplementary Order Paper to include these proposals in the Education and Training Amendment Bill (No 2) while the Bill is before the Education and Workforce Select Committee.
- 9 I will come back to Cabinet next year when I seek policy approval for new regulations for network management and consult on the National and Regional Statements (if agreed).

Background

- 10 As Cabinet noted in July 2020, the Ministry of Education is undertaking a comprehensive review of the early learning regulatory system (the Review) [SWC-20-MIN-0116 refers]. This Review aims to ensure the regulatory system is clear and fit for purpose to support raising the quality of teaching, learning and care for our youngest learners. The Review is being undertaken in three tranches.
- 11 In September 2021, Cabinet agreed to consult on tranche two proposals [CBC-21-MIN-0087 refers]. Tranche two covered three substantive areas of change – implementing the network management function, regulating for 80% qualified teachers, and strengthening the person responsible requirement in teacher-led centres, hospital-based services and home-based services.
- 12 This paper only relates to implementing the network management function, specifically changes required to the Act. The current Act provisions do not enable me to implement the network management function in the most effective and efficient way.

The new network management function comes into effect on 1 August 2022

- 13 Sections 17 and 18 of the Education and Training Act 2020 (the Act) introduce a new network management process for prospective early childhood services seeking a licence. From 1 August 2022 any applicant seeking a licence will need to seek network management approval from the Minister of Education before being permitted to apply for a licence to operate an early childhood service.
- 14 The purpose of network management is to take a more active role in managing the early learning network. As previously discussed with Cabinet, I have concerns about

the oversupply of licensed early learning services and the corresponding negative impacts this has on supply in a tight labour market for teachers.

- 15 Network management contributes to Objective 5 of the Early Learning Action Plan, *He taonga te tamaiti*: Ensure early childhood services are part of a planned and coherent education ecosystem that is supported, accountable and sustainable.

Respondents supported our major Act proposals

- 16 From 8 September to 13 October 2021, I consulted on proposals for network management. A discussion document was published online, as well as summary documents in English and Te Reo Māori. Surveys were able to be completed in English or Te Reo Māori. The Ministry also held a series of eight information sessions to explain the proposals in more detail (see Appendix One for more detail).
- 17 We received 101 survey responses and 17 written submissions on network management proposals. Respondents were predominantly European/Pākehā/NZ European (74%) or Māori (15%), and early learning owners or managers (57%) or teachers (24%), and from education and care services (74%). Most respondents were based in Auckland (46%) or Canterbury (19%). I have carefully considered feedback in the design of the final proposals set out in this paper, aiming to strike a principled and pragmatic balance.
- 18 Overall, respondents supported our major proposals – as outlined in Table One below.

Table One: Major proposals and % that agreed or strongly agreed

Proposal	% agreed or strongly agreed
National and Regional Statements <ul style="list-style-type: none"> Introducing National and Regional Statements (see para 23) Consulting with the early learning sector and Iwi/Māori (see para 25) 	85% 90%
Two proposals to challenge decisions <ul style="list-style-type: none"> Judicial review of Minister of Education's decision (see para 30) and appeal in District Court of Secretary for Education's determination (see para 36) 	65% (an additional 23% were neutral)
Proposals to improve the fit and proper test (see para 39)	91%
A new assessment of the capability of the applicant to deliver the service (see para 40)	95%
Proposals to set conditions on approved applications (see para 43)	78%
Proposals to clarify when extensions will be considered (see para 49)	78%

- 19 A more detailed summary of consultation feedback on the proposals in this paper is attached as Appendix Two. I propose to release the full consultation results later this year.

- 20 I did not directly consult on some proposals outlined in this paper, but I advised the sector of my intentions in the discussion document, in particular:
- 20.1 the Secretary for Education assessing the matters in section 18 of the Act and providing advice to the Minister of Education
 - 20.2 clarifying that it is the proposed service provider intending to operate the proposed service that must apply for network management approval
 - 20.3 amending the expiry date of two years in section 17 to up to two years
 - 20.4 the transitional provisions.

Network management policy proposals

- 21 I now seek Cabinet's approval to proposals that require changes to sections 17 and 18 of the Act to strengthen the network management provisions. I will come back to Cabinet next year when I seek approval to consult on the National and Regional Statements (if agreed) and policy approval for new regulations for network management.
- 22 I am seeking approval to the following changes that will affect sections 17 and 18 of the Act. My changes will:
- 22.1 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 the need for licensed early childhood services
 - 22.2 ensure the high-level decision making role of the Minister of Education is clear
 - 22.3 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
 - 22.4 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
 - 22.5 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
 - 22.6 provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008.

Introducing the ability to issue National and Regional Statements

- 23 I propose the introduction of National and Regional Statements for network management. The purpose of the National and Regional Statements is to provide potential applicants with up to date, quality information about the network, including areas of potential oversupply or undersupply. Statements are often used across government to guide investment and new development. For example, the National Policy Statement on Urban Development and the Government Policy Statement on Land Transport.

- 24 The National and Regional Statements would outline Government's strategic priorities, provide data and information on supply and forecast growth, demand and need, and provide additional information about legislative requirements, such as what information is required as part of applications.
- 25 Before the Minister publishes a National or Regional Statement, I propose the Minister must consult with the early learning sector and Iwi/Māori on the strategic priorities for government.

Ensure the high-level decision making role of the Minister of Education is clear

- 26 I propose that the Act more clearly specify a framework under which the Minister will make a decision whether or not to grant network management approval. The aspects the Minister must consider require evaluation and judgement. It is important that the Minister is able to disagree with the Secretary's advice in some instances. Practically the Minister may need to consider a number of applications at once and want to ensure the decision making function is not unnecessarily halted by judicial proceedings. The inability to exercise network management would impact significantly on the establishment of early learning services and meeting community needs.
- 27 I seek approval to make it clear that the assessment by the Minister is a high-level assessment of relevant factors, and that the Minister:
- 27.1 may rely on the advice of the Secretary and is not required to duplicate any assessment process undertaken by the Secretary;
 - 27.2 may consider an application on its own or with others regardless of the order in which applications were received; and
 - 27.3 that the Minister is not required to defer a decision on an application only because another applicant has appealed a determination of the Secretary or has commenced judicial proceedings.
- 28 I also propose to introduce a right of the Minister of Education to revoke network management approval in specific situations. The ability to revoke an approval is not currently clearly specified in the Act. It may be necessary for the Minister to revoke approval:
- 28.1 in response to material changes in circumstance. For example, if the approved applicant or members of governance change or are no longer fit and proper; or
 - 28.2 if the information provided to obtain approval was materially incorrect or misleading, or if the approved applicant has not complied with any condition of approval.
- 29 To ensure that the Minister is properly informed of any such situations, I also propose to add a requirement for the approved applicant to keep the Secretary updated of any material changes.
- 30 Applicants that seek to challenge any decision of the Minister would do this by judicially reviewing the decision in the High Court. This does not require specific provision in the Act.

Administrative assessments to be made by the Secretary for Education

- 31 I propose that the Secretary for Education assess the matters in section 18 of the Act and provide advice to the Minister of Education. The fit and proper assessment in section 18 is an administrative assessment and is similar to the assessment undertaken by the Secretary for licensing.
- 32 I also propose moving the requirement to obtain Police vet results from section 17 into the fit and proper test in section 18. Consideration of whether Police vet results are satisfactory is an administrative matter. My view is this would fit better in section 18, to allow an assessment of relevant convictions and fit and proper status together.
- 33 I also propose introducing a requirement under both sections 17 and 18 that the Secretary provide the Minister with advice about whether the proposed early childhood service is financially viable. This assessment by the Secretary under section 18 would form part of the Minister's broader assessment of the financial position of the applicant under section 17. I propose that the Secretary's assessment of the financial viability of the service should consider whether the applicant has access to sufficient resources to establish the service or a credible plan to obtain access to sufficient resources to establish the service.
- 34 Prior to providing an adverse determination to the Minister, the Secretary for Education would first notify the applicant of that determination and give the applicant an opportunity to comment. This may allow the applicant the opportunity to rectify any issue (if possible).
- 35 My combined changes to the Minister's high-level assessment and changes to section 18 will locate decision rights with the most appropriate decision-maker based on the nature of the decision being made. My proposals will mean the Minister of Education continues to make the determination about whether to grant network approval. However, the Secretary for Education would first assess and advise the Minister about whether the applicant meets the fit and proper threshold and whether the proposed early childhood service is financially viable as outlined above.
- 36 I propose that any applicant that wishes to challenge a decision of the Secretary for Education should have a right of appeal against the decision to the District Court, to be exercised within 14 days of receiving notice of the determination. I considered a range of options but consider a right of appeal to the District Court the most appropriate. This aligns with the right of appeal against any decision of the Secretary in respect of licensing matters. I propose that every decision of the Secretary should continue in force pending the determination of the appeal.

Strengthen the test of applicant suitability

- 37 I propose some improvements to the fit and proper test (in section 18) and a new requirement to demonstrate capability to deliver the proposed service (in section 17).

Fit and proper

- 38 Applicants demonstrating that they are fit and proper is an important part of the process of establishing an early childhood service. I am proposing changes to better align the fit and proper test with other sectors and jurisdictions such as Australia. The current fit and proper test is too narrow to include the range of convictions that could be relevant to the operation of an early childhood service. For example, convictions

under the Education and Training Act 2020 or the Health and Safety at Work Act 2015.¹

39 I propose to:

- 39.1 clarify the application of the test to both the applicant and every person involved in the governance² of the proposed service in section 18;
- 39.2 include consideration of all personal convictions of the applicant and every person involved in the governance of the proposed service relevant to providing an early childhood service;
- 39.3 include consideration of any relevant convictions of an organisation that the applicant and every person involved in the governance of the proposed service has been associated with; and
- 39.4 clarify that the Secretary may consider, and give such weight as the Secretary thinks fit having regard to the degree and nature of the person's involvement in the proposed service, each component of the fit and proper test.

Capability

- 40 I propose that a new test to assess the capability of the applicant be introduced into the Minister's assessment in section 17. Capability to provide the proposed service is an important indicator of likely success at achieving licensing. It is important that those most capable to deliver the services can be prioritised ahead of those who are less capable.
- 41 Applicants would be required to demonstrate their capability to effectively provide the proposed early childhood service, including the nature of the service. For example, if the applicant wishes to establish a Māori immersion service, the applicant would need to demonstrate appropriate capability to provide this specific type of service.
- 42 The requirement to demonstrate capability relevant to the specific service type would not be required at the licensing stage.

Other provisions to provide transparency, such as conditions and specify when extensions would be considered

Conditions

- 43 I propose to introduce the ability for the Minister to impose conditions on any network management approval. Conditions are an important way of setting out the obligations on the applicant to move towards licensing. Conditions will also help ensure that the applicant proceeds with the application that the Minister of Education has relied on in giving network management approval.
- 44 If we do not have the ability to set conditions on progress and significant changes, up to two years may elapse before the network approval expires and no service has been established in a community where we have identified a need. Other applicants would be disadvantaged by this unnecessary delay and a community need would not be met.

¹ Note the fit and proper test would continue to apply at licensing.

² Governance in this instance refers to the group or organisation that controls the service.

- 45 I also propose that the Minister should have the ability to cancel network management approval if any conditions are not complied with. The conditions would specify matters such as:
- 45.1 matters that the application for network approval has relied on such as the nature or size of the service proposed and the site (if known);
 - 45.2 a requirement to provide regular updates to the Ministry on milestones and progress; and
 - 45.3 a requirement to notify any significant changes in circumstances.
- 46 Any conditions imposed would include a date for compliance (where appropriate) and the Minister of Education would have the ability to amend the date set for compliance with any condition within the allocated period of approval.

Minor technical changes

- 47 I seek approval to introduce some minor technical changes, in particular:
- 47.1 making it clear that no person or entity may apply for a licence to operate an early childhood service without the Minister's approval;
 - 47.2 clarifying that it is the proposed service provider intending to operate the proposed service that must apply for network management approval. This clarification will ensure that the fit and proper test is applied to the correct entity or person;
 - 47.3 clarifying that the Minister is able to consider all relevant information in addition to the specific matters set out in section 17;
 - 47.4 clarifying the ability for the Minister to seek additional information, and where necessary, enabling the Minister to require information from a third party. This is an important change to ensure the Minister is able to access all the relevant information;
 - 47.5 amending the expiry date for approvals of two years in section 17 to up to two years, and making it clear that the Minister can set an earlier expiry date if desired. Some applicants will not need two years so it is important there is some flexibility in this regard;
 - 47.6 making it clear that the Minister must specify a date of approval, the expiry date and any conditions. This is a technical change to give effect to the policy;
 - 47.7 allowing the Minister to amend the initial expiry date as long as it is within the two year period. This change recognises the practical realities of establishing a service.

Extensions

- 48 The Act currently provides that network approval expires after two years from the date it is granted, but the Minister of Education can extend the expiry date beyond that period if the Minister thinks fit to do so in the circumstances. It is important to provide clarity to the sector on the circumstances in which extensions will be considered. Granting extensions impacts on the ability of other applicants to set up in

an area, so clear criteria limiting extensions ensures services are established as quickly as they can be in the areas where they are needed.

49 I propose making it explicit in the Act that extensions beyond the two year period may only be considered in exceptional circumstances beyond the applicant's control such as:

49.1 The area was subject to a natural disaster;

49.2 For new builds, the building is nearly complete, but there is an unavoidable delay beyond the applicant's control (for example, delays in construction materials);

49.3 There are other exceptional circumstances beyond the applicant's control (for example significant vandalism to the building or site)

50 I also propose placing a limit on extension time periods. I propose that an extension may only be granted for any further period of up to two years. This proposal strikes a balance between the practical realities of building works and natural disasters that may justify an extension and putting limits on the period of extension.

Transitional provisions and consequential amendments to licensing regulations

Providing for transitional provisions

51 I propose providing transitional arrangements for applicants that have applied for a licence prior to 1 August 2022 and met all the information requirements (including those from other organisations such as Fire and Emergency). These applications would not be subject to network management from 1 August 2022.

52 This is a practical arrangement to ensure applicants are not disadvantaged by delay in the Ministry of Education's assessment. I have not provided for any other circumstances because by 1 August 2022, applicants would have had two years notice of network management coming into effect. The Ministry also has clearly communicated this proposal through all the public information sessions.

Introducing consequential changes to the licensing regulations

53 Some of my proposals also require consequential amendments to the Education (Early Childhood Services) Regulations 2008 to ensure alignment between network management and licensing.

54 My consequential amendments to the regulations are to ensure that there is only one fit and proper test for applicants (across network management and licensing), and to ensure that information the Minister has relied on as part of the network management decision is carried through to licensing. I do not want network management approval to become a commodity that is on sold to other providers. I also want to ensure that all relevant matters I have relied on to make the decision are carried through to licensing.

55 I propose:

55.1 that all matters in the fit and proper test set out in section 18 be mirrored in the licensing regulations (specifically regulations 7 and 8 of the Education

(Early Childhood Services) Regulations 2008), with the exception of the financial viability test, which would no longer be a key consideration;

- 55.2 to allow the transfer of relevant conditions from network management to a licence under regulation 22 of the Education (Early Childhood Services) Regulations 2008, such as the nature and type of service; and
- 55.3 any necessary clarifications to ensure that applicant as described in the licensing regulations matches the applicant approved for network management and that the applicant demonstrates network approval has been obtained and complied with.

Monitoring

- 56 As with any new function, it will be important to monitor the impacts on the early learning network. I propose that the Ministry of Education monitor the effects of the new function on availability of early learning services and cost of early learning for parents. I am not in a position yet to outline the monitoring approach because there are a number of decisions yet to be taken on the overall design and implementation of the function.

Implementation

- 57 Network management must be implemented from 1 August 2022. Below I set out my plan for seeking decisions on each level of the regulatory framework:

Milestone/Activity	Timeframe
Cabinet approval of final policy settings for network management that require changes to the Act	22 November 2021
Cabinet approval of Supplementary Order Paper (SOP) to achieve legislative changes	13 December 2021
Introduction of SOP for changes to Education and Training Bill (No 2) 2021	14 December 2021
Cabinet approval of final policy settings for new regulations for network management	April 2022
Start of network management	1 August 2022

Financial Implications

- 58 There are no financial implications for the Crown from this paper, although there may be some financial implications for the sector if the proposals are implemented. For example, network management will have compliance costs for services and an application fee of \$500 (note I will seek policy approval for this fee next year as part of the new regulations). 73% of respondents agreed or strongly agreed with the proposed fee, and 17% were neutral.

Legislative Implications

- 59 The proposals in this paper require changes to the Education and Training Act 2020. I seek approval to issue drafting instructions for a Supplementary Order Paper to include these proposals in the Education and Training Amendment Bill (No 2) while the Bill is before the Education and Workforce Select Committee.

Population Implications

- 60 We have assessed the following implications:

Population group	How the proposal may affect this group
Children	<p>More active management of the network is intended to help ensure all children have access to quality early learning settings and prevent unintended consequences of over-supply. The proposed settings are intended to mean new services are well positioned to provide quality early learning settings, by checking the provider is capable, fit and proper, and has sufficient finances in place to establish a new service. This would benefit children over time by only allowing new services that are likely to be high quality.</p> <p>The additional requirements may result in a lag in new services being set up in areas where there is population growth, which could mean lower availability of early learning services in some areas in the short-term. Currently, new builds take longer than two years to set up, factoring in resource and building consent processes. The two year time period of network management approvals may mean that in the future, new services are property conversions rather than new builds, which may over time affect the level of parent choice for the type of physical spaces where their children attend early learning.</p>
Women	<p>Some communities are still underserved, while some areas have experienced service growth beyond demand, which impacts on service viability and parent choice. The proposed network management settings, particularly the National Statement, would identify where there is demand for new services. This should stimulate setting up of new services, thus enabling women to access early learning for their children. Network management should also provide opportunities for women to enter the early learning workforce (as teachers and managers) and the wider workforce.</p> <p>As noted above, in the short-term, the new process may result in a lag in new services in areas with population growth. This may restrict the availability of early learning services for some parents, making it more difficult for the primary caregiver to return to work. Network management restricts the amount of competition, which is intended to make services more sustainable and enhance quality for children. However, restricting competition may also result in higher parental fees, which may reduce access for some parents to early learning services, particularly low income parents. As women are more often the primary caregiver, this may reduce opportunities to return to the labour force for some women, particularly low income women (including low income disabled women).</p>

	<p>I note that the Ministry of Social Development is conducting a review of Childcare Assistance. Childcare Assistance is targeted funding that reduces the cost of early learning for low income families. MSD's review will consider options to improve the adequacy of support, administrative improvements and approaches to improve settings from a wellbeing perspective.</p>
Māori	<p>Māori children will benefit from access to new services that are likely to be of high quality.</p> <p>The proposed settings, particularly the National Statement, would set Government's priorities for network management. It is expected that one of these outcomes would include a focus on Māori services. Māori will benefit from my proposal to consult with Iwi/Māori on the National and Regional Statements. I consulted on how the Government could give effect to its Te Tiriti obligations under the Act but do not need to seek Cabinet agreement to those proposals as they do not require changes to the Act. For example, I am going to set aside dedicated resource for analysis of the Māori medium network.</p> <p>9(2)(f)(iv)</p>
Pacific	<p>The proposed settings, particularly the National Statement, would set Government's priorities for network management. It is expected that one of these outcomes would include a focus on services that meet the needs and aspirations of Pacific learners, families and communities, including growing the number of culture-based services and language-based services, and bilingual and immersion services. I expect the settings would align with the vision and key shifts of the Action Plan for Pacific Education 2020-2030 and the vision and actions of Lalanga Fou, to provide meaningful early learning provision that reflects the identities, languages and cultures of Pacific learners and families.</p> <p>The requirement that I must consult with the early learning sector on the strategic priorities for government will include Pacific early learning services.</p> <p>The proposed settings which focus on the needs of Pacific families and communities would mean new services are well positioned to provide quality, meaningful early learning settings that meet the specific needs and aspirations of Pacific communities.</p>
Disabled people	<p>Overall, these proposals are intended to help lift the quality of early learning settings and this may benefit disabled children who use licensed early childhood services. However, the Ministry does not have data on how many disabled children attend these services, so</p>

	<p>has limited means of assessing the effects of the proposed changes on this group of children.</p> <p>He Whakaaro Education Insights (2020) indicated that early learning participation rates prior to starting school were identical between disabled and non-disabled children. This suggests that the impact on children may be similar between disabled and non-disabled children.</p>
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Human Rights

- 61 All of the proposals appear 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 these proposals with the New Zealand Bill of Rights will only be possible when the Supplementary Order Paper has been drafted.

Impact Analysis

Regulatory Impact Statement

- 62 The Regulatory Impact Analysis panel at the Ministry of Education has reviewed the final regulatory impact statement and confirmed that it meets the Quality Assurance criteria (attached as Annex Three).

Climate Implications of Policy Assessment

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

Consultation

- 64 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 and the New Zealand Qualifications Authority have been consulted.

Communications

- 65 I do not propose to make any further announcements until Cabinet has considered the Supplementary Order Paper to include these proposals in the Education and Training Amendment Bill (No 2).

Proactive Release

- 66 I intend to proactively release this Cabinet paper subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Education recommends that the Committee:

- 1 **note** on 6 September 2021, Cabinet agreed to consult with the early learning sector and other interested parties on network management proposals for licensed early childhood services [SBC-21-MIN-0087 refers]
- 2 **note** that following consultation, I now seek Cabinet's approval to network management proposals that require changes to sections 17 and 18 of the Education and Training Act 2020 (the Act)

Introducing the ability to issue National and Regional Statements

- 3 **agree** to introduce the ability of the Minister of Education (the Minister) to issue National and Regional Statements (outlining strategic priorities for government, provide data and information on supply and forecast growth, demand and need and provide additional information about legislative requirements)
- 4 **agree** that the Minister must consult with the early learning sector and Iwi/Māori on the strategic priorities for government prior to issuing those statements

Ensure the high-level decision making role of the Minister of Education is clear

- 5 **agree** to a new subsection to make it clear that the Minister, in making a decision whether to grant approval, is only required to undertake a high-level assessment of the relevant factors for network management, and
 - 5.1 may rely on advice of the Secretary for Education (the Secretary) and is not required to duplicate any assessment process that the Secretary has undertaken;
 - 5.2 may consider an application on its own or together with any other application or applications, regardless of the order in which the applications were received; and
 - 5.3 is not required to defer a decision on an application only because another applicant has appealed a determination of the Secretary under section 18 or has commenced judicial review proceedings

Ability to revoke network management approval

- 6 **agree** to introduce a power enabling the Minister to revoke network management approval in specific situations. For example, if the applicant is no longer fit and proper or information provided was materially incorrect or misleading, or any condition of approval has not been complied with
- 7 **agree** to add a requirement for the approved applicant to keep the Secretary updated of any material changes

Administrative assessments to be made by the Secretary for Education

- 8 **agree** to make the fit and proper assessment in section 18 of the Act an assessment to be carried out by the Secretary instead of the Minister, and that the Secretary must advise the Minister of the Secretary's determination as to whether the applicant and

every person involved in the governance of the proposed service is a fit and proper person

- 9 **agree** to move the requirement to obtain a satisfactory Police vet from section 17 to the fit and proper test in section 18 to be assessed by the Secretary
- 10 **agree** that the Secretary must advise the Minister of the Secretary's determination as to whether the applicant's proposed early childhood service is financially viable, which the Minister must consider as part of his or her assessment of the applicant's financial position
- 11 **agree** that in considering the applicant's financial viability, the Secretary may consider whether the applicant has access to sufficient resources to establish the service or a credible plan to obtain access to sufficient resources to establish the service
- 12 **agree** that prior to providing the Minister with an adverse determination as to whether the applicant and every person involved in the governance of the proposed service is a fit and proper person and/or an adverse determination as to whether the applicant's proposed early childhood service is financially viable, the Secretary would first notify the applicant of that determination and give the applicant an opportunity to comment (notice of determination)
- 13 **agree** to introduce a new right of appeal to the District Court in respect of a decision by the Secretary that the applicant is not fit and proper and/or financially viable and the right of appeal must be exercised within 14 days of receiving notice of the determination
- 14 **agree** that every decision of the Secretary continues in force pending the determination of any appeal

Strengthen the test of applicant suitability

Fit and proper

- 15 **agree** to improvements to the **fit and proper** test in section 18 of the Act, specifically to:
 - 15.1 clarify the application of the fit and proper test to both the applicant and every person involved in the governance of the proposed service in section 18
 - 15.2 include consideration of all personal convictions of the applicant and every person involved in the governance of the proposed service relevant to providing an early childhood service
 - 15.3 include consideration of any relevant convictions of an organisation that the applicant and every person involved in the governance of the proposed service has been associated with
 - 15.4 clarify that the Secretary may consider, and give such weight as the Secretary thinks fit having regard to the degree and nature of the person's involvement in the proposed service, each component of the fit and proper test

Capability

- 16 **agree** to introduce a new requirement in section 17 for an applicant to demonstrate capability to establish the proposed early childhood service

Introducing the ability to set conditions

- 17 **agree** to introduce the ability for the Minister to set **conditions** of any network management approval granted and the power to cancel network management approval on the basis of not meeting those conditions
- 18 **agree** that the conditions may specify matters such as:
- 18.1 matters that the application for network approval has relied on such as the nature or size of the service proposed and the site (if known)
 - 18.2 a requirement to provide regular updates to the Ministry on milestones and progress
 - 18.3 a requirement to notify any significant changes in circumstances
- 19 **agree** that any conditions imposed would set a date for compliance with the condition (if appropriate), and the Minister would have the ability to amend the date set for compliance with any condition within the specified period of approval

Introducing some minor technical changes

- 20 **agree** to introduce some minor technical changes:
- 20.1 making it clear that no person or entity may apply for a licence to operate an early childhood service without the Minister's approval
 - 20.2 clarifying that it is the proposed service provider intending to operate the proposed service that must apply for network management approval
 - 20.3 clarifying that the Minister is able to consider all relevant information in addition to the specific matters set out in section 17
 - 20.4 clarifying the ability for the Minister to seek additional information, and where necessary, enabling the Minister to require information from a third party
 - 20.5 amending the expiry date for approvals of two years in section 17 to up to two years, and making it clear that the Minister can set an earlier expiry date if desired
 - 20.6 making it clear that when granting an approval the Minister must specify the date on which the approval expires and any conditions of approval imposed
 - 20.7 allowing the Minister to amend the initial expiry date set for the approval as the Minister considers appropriate, as long as it is within the maximum period of up to two years

Specifying when extensions beyond the two year maximum may be granted and for how long

- 21 **agree** that extensions beyond the maximum period of two years may only be considered in exceptional circumstances beyond the applicant's control such as:
- 21.1 The area was subject to a natural disaster
 - 21.2 For new builds, the building is nearly complete, but there is unavoidable delay beyond the applicant's control (for example, delays in construction materials)
 - 21.3 There are other exceptional circumstances beyond the applicants control (for example significant vandalism to the building or site)
- 22 **agree** to specify that an extension beyond the two year maximum may only be granted for a further period of up to two years

Providing for transitional provisions

- 23 **agree** to providing the following transitional provisions:
- 23.1 That applicants that have applied for a licence prior to 1 August 2022 and met all the information requirements (including those from other organisations such as Fire and Emergency) will not be subject to the network management approval process despite not having been issued with a licence by 1 August 2022

Introducing consequential changes to the licensing regulations

- 24 **agree** to introduce **consequential changes** to the Education (Early Childhood Services) Regulations 2008 to ensure consistency across the network management and licensing processes, specifically:
- 24.1 to mirror all matters in the fit and proper test set out in section 18 in the licensing regulations (specifically regulations 7 and 8 of the Education (Early Childhood Services) Regulations 2008), with the exception of the financial viability test, which would no longer be a key consideration.
 - 24.2 to allow the transfer of relevant conditions from network management to a licence under regulation 22 of the Education (Early Childhood Services) Regulations 2008
 - 24.3 any necessary clarifications to ensure that the applicant as described in the licensing regulations, matches the applicant approved for network management, and that the applicant demonstrates network approval has been obtained and complied with
- 25 **agree** to issue drafting instructions for a Supplementary Order Paper to include these proposals in the Education and Training Amendment Bill (No 2) while the Bill is before the Education and Workforce Select Committee
- 26 **authorise** the Minister of Education 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 above decisions;

- 27 **agree** that the Ministry of Education will monitor the effect of the new function on availability of early learning services and the cost of early learning to parents
- 28 **note** I will come back to Cabinet on the remaining proposals next year when I seek policy approval for new regulations for network management.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Proactively Released

APPENDIX ONE: The Ministry of Education provided a series of information sessions to explain the proposals

Over the period from 8 September to 13 October 2021, I consulted on proposals for network management. A discussion document was published online, as well as summary documents in English and Te Reo Māori. Surveys were able to be completed in English or Te Reo Māori. The Ministry also held a series of information sessions to explain the proposals in more detail, as set out in the table below:

Consultation activity	Attendees
Briefing to Early Childhood Advisory Group – 2 September 2021	24 attendees
Launch of consultation documents and associated communications – 8 September 2022	Various
Online public hui – 22 September 2021	125 attendees
Online hui with puna reo (Maori early learning services) – 28 September 2021	10 attendees
Online hui with Sector Advisory Group (of peak bodies) – 29 September 2021	Six attendees
Face to face hui with Te Kōhanga Reo National Trust – 30 September 2021	Two attendees
Online fono with Pacific early learning services – 30 September 2021	23 attendees
Online public hui – 5 October 2021	52 attendees

APPENDIX TWO: Consultation on Network Planning proposals: Survey responses

Total responses to this survey: **101**

What is your ethnicity or ethnicities?

There were 98 responses to this part of the question.

Option	Total	Percent
European/Pākehā/NZ European	75	74.26%
Māori	15	14.85%
Pacific peoples	3	2.97%
Asian	4	3.96%
Prefer not to say	8	7.92%
Not Answered	3	2.97%

What best describes you?

There were 95 responses to this part of the question.

Option	Total	Percent
Early learning service owner or manager	58	57.43%
Early learning teacher or educator	24	23.76%
Other worker at an early learning service	2	1.98%
Parent or whānau of a learner/ākonga	3	2.97%
Member of the general public	4	3.96%
Representative of a non-governmental organisation	2	1.98%
Prefer not to say	2	1.98%
Not Answered	6	5.94%

What type of early learning service(s) are you associated with?

There were 96 responses to this part of the question.

Option	Total	Percent
Playcentre	5	4.95%
Kōhanga reo	5	4.95%
Kindergarten	20	19.80%
Home-based	8	7.92%
Education and care	75	74.26%
Playgroup	1	0.99%
Hospital-based	2	1.98%
None	1	0.99%
Prefer not to say	3	2.97%
Not Answered	5	4.95%

Where do you live?

There were 101 responses to this part of the question.

Option	Total	Percent
Northland Region	2	1.98%
Auckland Region	46	45.54%
Waikato Region	11	10.89%
Bay of Plenty Region	4	3.96%
Gisborne Region	1	0.99%
Hawke's Bay Region	1	0.99%
Tasman Region	1	0.99%
Manawatū-Whanganui Region	4	3.96%
Wellington Region	2	1.98%
Otago Region	3	2.97%
Canterbury Region	19	18.81%
Tasman-Nelson Region	3	2.97%
Marlborough Region	0	0.00%
West Coast Region	0	0.00%
Southland Region	1	0.99%
Multi-person response	3	2.97%
Prefer not to say	0	0.00%
Not Answered	0	0.00%

Do you agree with the proposal to introduce National and Regional Statements?

There were 101 responses to this part of the question.

Option	Total	Percent
Strongly agree	42	41.58%
Agree	44	43.56%
Neutral	11	10.89%
Disagree	1	0.99%
Strongly disagree	3	2.97%
Not Answered	0	0.00%

Do you agree with our proposal to consult the early learning sector and Māori before issuing National and Regional Statements?

There were 101 responses to this part of the question.

Option	Total	Percent
Strongly agree	57	56.44%
Agree	34	33.66%
Neutral	8	7.92%
Disagree	1	0.99%
Strongly disagree	1	0.99%

Not Answered	0	0.00%
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Do you agree with our two proposed pathways relating to challenging decisions?

There were 100 responses to this part of the question.

Option	Total	Percent
Strongly agree	24	23.76%
Agree	42	41.58%
Neutral	23	22.77%
Disagree	3	2.97%
Strongly disagree	8	7.92%
Not Answered	1	0.99%

Do you agree with our three proposals to improve the fit and proper test?

There were 101 responses to this part of the question.

Option	Total	Percent
Strongly agree	55	54.46%
Agree	37	36.63%
Neutral	7	6.93%
Disagree	1	0.99%
Strongly disagree	1	0.99%
Not Answered	0	0.00%

Do you agree with our proposal to include an assessment of the capability of the applicant to deliver the service?

There were 100 responses to this part of the question.

Option	Total	Percent
Strongly agree	61	60.40%
Agree	35	34.65%
Neutral	3	2.97%
Disagree	0	0.00%
Strongly disagree	1	0.99%
Not Answered	1	0.99%

Do you agree with our proposal to set conditions on approved applications?

There were 100 responses to this part of the question.

Option	Total	Percent
Strongly agree	50	49.50%
Agree	29	28.71%
Neutral	13	12.87%

Disagree	5	4.95%
Strongly disagree	3	2.97%
Not Answered	1	0.99%

Do you agree with our three proposals to clarify when extensions will be considered?

There were 100 responses to this part of the question.

Option	Total	Percent
Strongly agree	22	21.78%
Agree	57	56.44%
Neutral	15	14.85%
Disagree	3	2.97%
Strongly disagree	3	2.97%
Not Answered	1	0.99%

Consultation on Network Planning proposals: written submissions

Total written submissions: 17

	Submitter
1	9(2)(a)
2	
3	
4	
5	
6	
7	
8	
9	
10	Te Kōhanga Reo National Trust
11	9(2)(a)
12	
13	
14	
15	
16	
17	



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 19 November 2021

On 22 November 2021, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 19 November 2021:

SWC-21-MIN-0179 **Final Policy Settings for Early Childhood
Network Management: Policy Approvals** CONFIRMED
Portfolio: Education

Out of scope

Out of scope

Martin Bell
for Secretary of the Cabinet

Proactively Released



Cabinet Social Wellbeing Committee

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.

Final Policy Settings for Early Childhood Network Management: Policy Approvals

Portfolio Education

On 17 November 2021, the Cabinet Social Wellbeing Committee (SWC):

Background

- 1 **noted** that in September 2021, the Cabinet Business Committee approved the release of a discussion document for consultation with the early learning sector and other interested parties on network management proposals for licensed early childhood services [CBC-21-MIN-0087];
- 2 **noted** that following consultation with the early learning sector and other interested parties, the Minister of Education (the Minister) seeks approval to the below network management proposals that require changes to sections 17 and 18 of the Education and Training Act 2020 (the Act);

Introducing the ability to issue National and Regional Statements

- 3 **agreed** to introduce the ability of the Minister to issue National and Regional Statements (outlining strategic priorities for government, provide data and information on supply and forecast growth, demand and need and provide additional information about legislative requirements);
- 4 **agreed** that the Minister must consult with the early learning sector and Iwi/Māori on the strategic priorities for government prior to issuing those statements;

Ensure the high-level decision-making role of the Minister of Education is clear

- 5 **agreed** to a new subsection in the Act to make it clear that the Minister, in making a decision whether to grant approval, is only required to undertake a high-level assessment of the relevant factors for network management; and
 - 5.1 may rely on advice of the Secretary for Education (the Secretary) and is not required to duplicate any assessment process that the Secretary has undertaken;
 - 5.2 may consider an application on its own or together with any other application or applications, regardless of the order in which the applications were received;

- 5.3 is not required to defer a decision on an application only because another applicant has appealed a determination of the Secretary under section 18 of the Act or has commenced judicial review proceedings;

Ability to revoke network management approval

- 6 **agreed** to introduce a power enabling the Minister to revoke network management approval in specific situations, for example if the applicant is no longer fit and proper, or information provided was materially incorrect or misleading, or any condition of approval has not been complied with;
- 7 **agreed** to add a requirement for the approved applicant to keep the Secretary updated of any material changes;

Administrative assessments to be made by the Secretary for Education

- 8 **agreed** to make the fit and proper assessment in section 18 of the Act an assessment to be carried out by the Secretary instead of the Minister, and that the Secretary must advise the Minister of their determination as to whether the applicant and every person involved in the governance of the proposed service is a fit and proper person;
- 9 **agreed** to move the requirement to obtain a satisfactory Police vet from section 17 of the Act to the fit and proper test in section 18 of the Act to be assessed by the Secretary;
- 10 **agreed** that the Secretary must advise the Minister of their determination as to whether the applicant's proposed early childhood service is financially viable, which the Minister must consider as part of his or her assessment of the applicant's financial position;
- 11 **agreed** that in considering the applicant's financial viability, the Secretary may consider whether the applicant has access to sufficient resources to establish the service or a credible plan to obtain access to sufficient resources to establish the service;
- 12 **agreed** that prior to providing the Minister with an adverse determination as to whether the applicant and every person involved in the governance of the proposed service is a fit and proper person and/or an adverse determination as to whether the applicant's proposed early childhood service is financially viable, the Secretary would first notify the applicant of that determination and give the applicant an opportunity to comment (notice of determination);
- 13 **agreed** to introduce a new right of appeal to the District Court in respect of a decision by the Secretary that the applicant is not fit and proper and/or financially viable and the right of appeal must be exercised within 14 days of receiving notice of the determination;
- 14 **agreed** that every decision of the Secretary continues in force pending the determination of any appeal;

Strengthening the test of applicant suitability

Fit and proper

- 15 **agreed** to improvements to the fit and proper test in section 18 of the Act, specifically to:
- 15.1 clarify the application of the fit and proper test to both the applicant and every person involved in the governance of the proposed service in section 18 of the Act;
- 15.2 include consideration of all personal convictions of the applicant and every person involved in the governance of the proposed service relevant to providing an early childhood service;

- 15.3 include consideration of any relevant convictions of an organisation that the applicant and every person involved in the governance of the proposed service has been associated with;
- 15.4 clarify that the Secretary may consider, and give such weight as the Secretary thinks fit, having regard to the degree and nature of the person's involvement in the proposed service, each component of the fit and proper test;

Capability

- 16 **agreed** to introduce a new requirement in section 17 of the Act for an applicant to demonstrate capability to establish the proposed early childhood service;

Introducing the ability to set conditions

- 17 **agreed** to introduce the ability for the Minister to set conditions of any network management approval granted and the power to cancel network management approval on the basis of not meeting those conditions;
- 18 **agreed** that the conditions may specify matters such as:
 - 18.1 matters that the application for network approval has relied on such as the nature or size of the service proposed and the site (if known);
 - 18.2 a requirement to provide regular updates to the Ministry on milestones and progress;
 - 18.3 a requirement to notify any significant changes in circumstances;
- 19 **agreed** that any conditions imposed would set a date for compliance with the condition (if appropriate), and the Minister would have the ability to amend the date set for compliance with any condition within the specified period of approval;

Minor technical changes

- 20 **agreed** to the following minor technical changes:
 - 20.1 making it clear that no person or entity may apply for a licence to operate an early childhood service without the Minister's approval;
 - 20.2 clarifying that it is the proposed service provider intending to operate the proposed service that must apply for network management approval;
 - 20.3 clarifying that the Minister is able to consider all relevant information in addition to the specific matters set out in section 17 of the Act;
 - 20.4 clarifying the ability for the Minister to seek additional information, and where necessary, enabling the Minister to require information from a third party;
 - 20.5 amending the expiry date for approvals of two years in section 17 of the Act to up to two years, and making it clear that the Minister can set an earlier expiry date if desired;
 - 20.6 making it clear that when granting an approval, the Minister must specify the date on which the approval expires and any conditions of approval imposed;

- 20.7 allowing the Minister to amend the initial expiry date set for the approval as the Minister considers appropriate, as long as it is within the maximum period of up to two years;

Specifying when extensions beyond the two-year maximum may be granted and for how long

- 21 **agreed** that extensions beyond the maximum period of two years may only be considered in exceptional circumstances beyond the applicant's control such as:
- 21.1 the area was subject to a natural disaster;
 - 21.2 for new builds, the building is nearly complete, but there is unavoidable delay beyond the applicant's control (for example, delays in construction materials);
 - 21.3 there are other exceptional circumstances beyond the applicant's control (for example significant vandalism to the building or site);
- 22 **agreed** to specify that an extension beyond the two-year maximum may only be granted for a further period of up to two years;

Providing for transitional provisions

- 23 **agreed** to providing the following transitional provisions:
- 23.1 that applicants that have applied for a licence prior to 1 August 2022 and met all the information requirements (including those from other organisations such as Fire and Emergency) will not be subject to the network management approval process despite not having been issued with a licence by 1 August 2022;

Introducing consequential changes to the licensing regulations

- 24 **agreed** that consequential changes be made to the Education (Early Childhood Services) Regulations 2008 to ensure consistency across the network management and licensing processes, specifically:
- 24.1 to mirror all matters in the fit and proper test set out in section 18 of the Act in the licensing regulations (specifically regulations 7 and 8 of the Education (Early Childhood Services) Regulations 2008), with the exception of the financial viability test, which would no longer be a key consideration;
 - 24.2 to allow the transfer of relevant conditions from network management to a licence under regulation 22 of the Education (Early Childhood Services) Regulations 2008;
 - 24.3 any necessary clarifications to ensure that the applicant as described in the licensing regulations, matches the applicant approved for network management, and that the applicant demonstrates network approval has been obtained and complied with;
- 25 **invited** the Minister to issue drafting instructions to Parliamentary Counsel Office for a Supplementary Order Paper to include the above proposals in the Education and Training Amendment Bill (No 2) while the Bill is before the Education and Workforce Select Committee;
- 26 **authorised** the Minister of Education 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 above decisions;

- 27 **agreed** that the Ministry of Education monitor the effect of the new function on availability of early learning services and the cost of early learning to parents;
- 28 **noted** that the Minister intends to submit a further paper to SWC in 2022 on the remaining proposals and to seek policy approval for new regulations for network management.

Rachel Clarke
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Kris Faafoi
Hon Willie Jackson
Hon Jan Tinetti
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Priyanca Radhakrishnan

Officials present from:

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