



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

To:	Hon Chris Hipkins, Minister of Education		
Date:	14 October 2021	Priority:	Medium
Security Level:	In Confidence	METIS No:	1273898
Drafter:	Julia Marshall	DDI:	463 8089
Key Contact:	John Brooker	DDI:	9(2)(a)
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper provides you with a draft Government Response to the Regulations Review Committee's Interim Report. The Government Response must be presented to the House of Representatives (the House) by 11 November 2021.

Summary

1. The Regulations Review Committee presented an interim report (Annex 1) to the House on 13 September 2021, following its investigation of a complaint regarding the Education (Early Childhood Services) Regulations 2008.
2. The Government Response to the Committee's recommendation must be presented to the House by 11 November 2021. The Government Response must go through the Cabinet Legislative Committee and Cabinet before being presented in the House.
3. We have prepared a draft Government Response for your consideration and feedback (Annex 2), that notes that the Government does not agree with the Committee's recommendations to bring forward the review of regulations 44 and 45 for the following reasons:
 - a. the scope of this work is much larger than the concerns that have been raised in the complaint
 - b. the existing timeframes have been intentionally set to minimise disruption to the sector and manage overall fiscal cost
 - c. bringing forward this work would redirect effort and resources currently directed towards making other significant improvements to early learning outcomes for children, e.g. regulating for 80% qualified teachers and achieving pay parity.

4. We have also drafted a paper seeking Cabinet approval of the draft Government Response for your consideration and feedback, attached in Annex 3. Cabinet approval of the draft response is required for the response to be presented to the House.

Recommended Actions

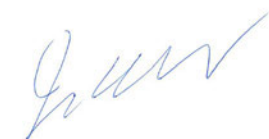
The Ministry of Education recommends you:

- a. **agree**, subject to any feedback, to lodge the attached draft Cabinet paper and the draft Government Response with the Cabinet Office by 21 October 2021, for consideration by the Cabinet Legislation Committee on 28 October 2021

Agree / Disagree

- b. **agree** that the Ministry of Education proactively release this briefing once Cabinet has made decisions and the Government Response has been tabled in the House.

Agree / Disagree



John Brooker
Te Puna Kaupapahere

14/10/2021

Chris Hipkins
Minister of Education

___/___/___

Background

The complaint to the Regulations Review Committee

- 1 The Regulations Review Committee (the Committee) has investigated a complaint made by Angela Mitchell, Annaliese Berry and Susan Bates. The Committee received the complaint on 27 August 2020. The complainants are teachers and members of the Teacher Advocacy Group.
- 2 The complaint alleged that regulations 44 and 45 of the Education (Early Childhood Services) Regulations 2008 (the Regulations) breach Standing Orders:
 - a. 327(2)(a) - *“that the regulation is not in accordance with the general objects and intentions of the enactment under which it is made”*
 - b. 327(2)(b) - *“the regulation trespasses unduly on personal rights and liberties”*.
- 3 The complainants contended that these regulations allow for too many children per adult in early learning services (services) and activity spaces that are 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.
- 4 The complainants, additional interested parties, and the Ministry of Education presented evidence to the Committee. Oral evidence from the complainants and the Ministry was heard on 17 March 2021.

The Committee’s interim report

- 5 The interim report was presented to the House on 13 September 2021 (copy attached at Annex 1). In the report, the Committee considers that regulations 44 and 45 should be drawn to the special attention of the House under Standing Order 327(2)(a). The Committee notes that it 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”*.
- 6 The Committee recommends that the Government 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).
- 7 The Committee comments that the Ministry of Education was unable to provide any evidence as to why adult-to-child ratios and space requirements in the regulations were set at their current levels. Without such evidence, the Committee states that it cannot have confidence that the regulations have been made appropriately.
- 8 The Committee recommends that the Ministry of Education use evidence to determine the appropriate adult-to-child ratios. However, it also notes that it has heard evidence *“[suggesting] that there is no single number that is the optimal adult-to-child ratio”*.
- 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 grounds have been met. Therefore, the Government is not required to respond to this part of the complaint.

The Government Response

- 10 The Government Response must be presented to the House by 11 November 2021. We have prepared a draft response for your consideration (attached at Annex 2).
- 11 The draft Government Response clarifies that the Government has considered the Committee's recommendation based on regulations 44 and 45 in their entirety. These regulations set standards for several aspects of early learning provision (including teacher qualifications, service-size and premises requirements), in addition to matters relating to adult-to-child ratios and activity spaces, which are the subject of the complaint.
- 12 The draft Government Response notes that the Government considers there are a number of areas where the early childhood education system can be improved, and that this is acknowledged in the Government's Early Learning Action Plan 2019-2029 – *He taonga te tamaiti* (the Action Plan). It also notes that several of the actions in the Action Plan will be addressed through the Ministry's Early Learning Regulatory Review (the Review), and that the Ministry has been engaging with the Committee as part of this work.
- 13 However, the draft Government Response states that the Government disagrees with the Committee's recommendation to review regulations 44 and 45 in their entirety sooner than the third stage of the Review for three reasons:
- a. that the scope of the review recommended by the Committee is much broader than the subject of the complaint which is about adult to child ratios and space requirements. 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 premise. Therefore, reviewing the entirety of regulations 44 and 45 would be a significant task (while noting that some work is already underway on discrete aspects of regulation 44 as part of tranche 2 of the Review)
 - b. that the implementation of the Action Plan and Review have been staged to manage the impact on the sector (and parents) and fiscal costs to Government, and moving forward work on regulations 44 and 45 would disrupt this. The fiscal costs associated with regulating for 80% qualified teachers and pay parity already have significant Budget implications and changes to adult-to-child ratios would extend these costs; and
 - c. bringing forward this work would redirect effort and resources currently directed towards making other significant improvements to early learning outcomes for children, e.g., regulating for 80% qualified teachers, network management, and achieving pay parity.

Next steps

- 14 Subject to your feedback, we will finalise the Government Response and Cabinet paper so that they can be lodged with the Cabinet Office on 21 October 2021, for consideration by the Cabinet Legislation Committee on 28 October 2021.
- 15 A summary of the steps required to meet the 11 November deadline is in Table One.

Table One: Summary of steps required for presentation of the Government Response by 11 November 2021

Date	Action
15 – 19 October 2021	Ministerial and agency consultation on Cabinet paper
20 October 2021	Any revisions to Government Response and Cabinet Paper completed
21 October 2021	Cabinet Paper lodged with Cabinet Office
28 October 2021	Cabinet Paper considered at LEG
8 November 2021	Cabinet Paper considered at Cabinet
11 November 2021	Government Response presented to the House

Annexes

Annex 1: Complaint about the Education (Early Childhood Services) Regulations 2008: Interim report of the Regulations Review Committee

Annex 2: Draft Government Response to the interim report of the Regulations Review Committee regarding a complaint about the Education (Early Childhood Services) Regulations 2008.

Annex 3: Draft Cabinet paper, entitled Government Response to the Interim Report of the Regulations Review Committee on a Complaint about the Education (Early Childhood Services) Regulations 2008.

Proactively Released

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Annex 3: Draft Cabinet paper, entitled Government Response to the Interim Report of the Regulations Review Committee on a Complaint about the Education (Early Childhood Services) Regulations 2008.

Proactively Released