

Cabinet Paper material

Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
Name of package Early Learning Regulatory Review: Public Consultation on Tranche Two
Date considered 6 September 2021
Date of release

These documents have been proactively released:

Cabinet paper: Early Learning Regulatory Review: Public Consultation on Tranche Two
Date considered: 6 September 2021
Author: Minister of Education

Cabinet Minute: CAB-21-MIN-0356
Date considered: 6 September 2021
Author: Cabinet office

Cabinet Minute: CBC-21-MIN-0087
Date considered: 1 September 2021
Author: Cabinet office

1269506 Talking points for Cabinet
27 August 2021
Ministry of Education

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.

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

In Confidence

Office of the Minister of Education

Cabinet Social Wellbeing Committee

Public consultation on tranche two of the Early Learning Regulatory Review proposals

Proposal

- 1 I seek Cabinet agreement to publicly consult on proposals as part of tranche two of the Early Learning Regulatory Review. These proposals are set out in the attached discussion documents.

Relation to government priorities

- 2 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

- 3 The Ministry of Education is undertaking a comprehensive review of the early learning regulatory system (the Review). The purpose of the Review is to ensure the regulatory system is clear and fit for purpose to support high quality educational outcomes for our youngest learners.
- 4 Cabinet approved consultation for tranche one of the Review in July 2020. I am now seeking approval to publicly consult on tranche two proposals. These proposals are set out in three discussion documents relating to:
 - 4.1 Implementing the new network management function for licensed early childhood services (Discussion document one).
 - 4.2 Regulating for 80% qualified teachers and strengthening the person responsible requirement for teacher-led centres and hospital-based services (Discussion document two).
 - 4.3 Strengthening the person responsible requirement in home-based services (Discussion document three).
- 5 I propose a five-week consultation period from 8 September to 13 October 2021. I expect to report the feedback on discussion document one (implementing the network management function) to Cabinet's Social Wellbeing Committee in December 2021, where I will be seeking final policy decisions and approval to issue the drafting instructions for changes to the Education and Training Act 2020.

Background

- 6 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:
- 6.1 Tranche one policy changes were completed in July 2021. These changes were designed to address the immediate gaps in the current system and areas that pose a risk to children's health, safety, and wellbeing [LEG-21-MIN-0093 refers]. These changes are being implemented in two stages over the coming six months.
 - 6.2 Tranche two covers three substantive areas of change – implementing the network management function, regulating for 80% qualified teachers, and strengthening the person responsible requirement.
 - 6.3 Tranche three will address the remaining matters that require significant further work to develop and will likely involve a complete rewrite of the Education (Early Childhood Services) Regulations 2008.
- 7 I am seeking approval to publicly consult on proposals for tranche two of the Review. I propose a five-week public consultation period from early-September to mid-October 2021.

Tranche two policy matters: Implementing the new network management function

- 8 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 applying for licensing. These sections are in line with Objective 5 of the Early Learning Action Plan: Ensure early childhood services are part of a planned and coherent education ecosystem that is supported, accountable and sustainable.

Proposed changes to network management not for consultation

- 9 Currently the Minister of Education is responsible for assessing both sections 17 and 18. Section 17 is about whether the proposed service should be included in the network (a discretionary policy judgement), and section 18 is about whether the applicant is fit and proper (an administrative judgement which is also assessed by the Secretary at licensing).
- 10 Once the consultation processes outlined in this paper have been completed, I will propose some overarching changes to the network management framework as set out in the Act in sections 17 and 18. The key change is to make the fit and proper assessment in section 18 an assessment by the Secretary for Education rather than the Minister of Education.

- 11 In the network management or pre-application phase, an applicant will submit an application to the Ministry of Education. It is proposed that the Secretary for Education will assess if the applicant meets the fit and proper test and assess financial viability. This assessment will then be provided to the Minister of Education who would decide whether to approve the application, based on the Secretary's assessment and other factors such as the relevant attributes of the area to be served, and the needs of the local community. This approval will then enable the applicant to apply for a licence.
- 12 This shift would signal a clear difference between the discretionary policy components of the network decisions made by the Minister in section 17, and the administrative thresholds assessed by the Secretary as administrator of the system.

Proposed changes to network management for consultation

- 13 I am proposing to consult on a number of proposals to give effect to the new network management process:
 - 13.1 Introducing National and Regional Statements.
 - 13.2 Options to fulfil the Crown's Te Tiriti o Waitangi responsibilities.
 - 13.3 Changes to fit and proper requirements of potential providers.
 - 13.4 Options to assess financial position and licensing history.
 - 13.5 Introducing requirements for capability to deliver the service.
 - 13.6 Introducing the ability of the Minister of Education to set network approval conditions.
 - 13.7 Providing the right to challenge decisions.
 - 13.8 Clarifying conditions for extensions of network approval.
 - 13.9 Introducing a minimal fee for network approval applications.
- 14 Some of the proposals above, such as the introduction of National and Regional Statements, will require changes to the Act.

Introducing National and Regional Statements

- 15 I propose to consult on the introduction of National and Regional Statements to help guide the implementation of the network management function. The intention of the National and Regional Statements is to provide more information about the early childhood network so all potential applicants have information about the state of the network, including areas of oversupply or undersupply. The National and Regional Statements would be issued by the Minister of Education.

- 16 Statements are often used across government to guide investment and new development. For example, the National Policy Statement on Urban Development and Government Policy Statement on Land Transport.
- 17 The National and Regional Statements would:
 - 17.1 provide information about the licensed early childhood network to potential and current providers;
 - 17.2 outline strategic priorities and guide government investment and development;
 - 17.3 identify areas of undersupply and areas where new services are not required; and
 - 17.4 provide additional information about the legislative requirements.

Options to fulfil the Crown's Te Tiriti o Waitangi responsibilities

- 18 The Government has an enduring focus on improving education outcomes for Māori learners and giving effect to Te Tiriti o Waitangi and its principles. This is reflected in the new purpose section of the Act (section 4). We need to consider how the network management provisions will give effect to Te Tiriti o Waitangi. Specific Te Tiriti o Waitangi obligations are a recent addition to the Act, so this will be one of the first times the Government will consider how it should apply to the design and implementation of a new education function.
- 19 These proposals would directly contribute Ka Hikitia, the Māori Education Strategy, by supporting its guiding principles of productive partnerships and Te Tiriti o Waitangi. It would also contribute to the goals set out in the Maihi Karauna, the Crown's Strategy for Māori Language Revitalisation, and support Tau Mai Te Reo, the Māori Language in Education Strategy for all learners, by encouraging the establishment of services that support more learners to learn te reo Māori.
- 20 As part of fulfilling the Crown's Te Tiriti responsibilities under the Act, I have developed three initial proposals that prioritise:
 - 20.1 analysis of the current provision of te reo Māori pathways in licensed early childhood services and where potential gaps and opportunities in provision are located;
 - 20.2 the establishment of new Māori immersion and iwi-led licensed early childhood services; and
 - 20.3 interests of Māori in particular applications for approval. We anticipate that where an application for approval engages Tiriti rights or interests, for example those under a Tiriti settlement, or the interests of Māori in a particular community, it would be necessary that such decisions are properly informed by these considerations. This would include ensuring that the interests of local hapū and iwi are properly understood and appropriately weighed in making any decision. In some applications for

network approval, it is likely that Māori interests would need to be given significant weight, and it may be necessary to ascertain who has, or not, supported the proposed service, particularly if it is expressed to provide a te reo Māori pathway or to serve a Māori community. The exact detail of how this will be done is still to be worked through.

- 21 I propose to consult on our preferred proposals as set out in paragraph 20, and ask respondents to identify other proposals they consider would give effect to Te Tiriti o Waitangi and improve the Māori:Crown relationship. The consultation can also be used to help inform how this works in practice.

Changes to fit and proper requirements of potential providers.

- 22 Applicants must be assessed as fit and proper before they may establish a licensed early childhood service. I am proposing changes to the fit and proper test to ensure that they are consistent with other sectors and in line with best practice.

- 23 I propose the fit and proper test:

- 23.1 is clarified so it is clear that it applies to the applicant and every person involved in the governance of the proposed service;
- 23.2 includes all personal convictions relevant to providing an early childhood service. Currently this section is restricted to offences involving harm to children, violence and fraud and other potentially relevant matters; and
- 23.3 includes any relevant convictions of an organisation that an applicant or governance member has been associated with.

Options to assess financial position and licensing history

- 24 The Act introduced two new provisions relating to financial position and licensing history. The purpose of the provisions is to assess the suitability of an applicant to establish a new service.

- 25 In order to give effect to these provisions, I propose to consult on:

- 25.1 Assessing financial viability by the applicant providing any financial information that demonstrates the applicant has either sufficient resources to establish the service and/or a business plan that shows how sufficient resources will be attained.
- 25.2 Assessing licensing history, by the applicant providing a list of all early childhood services that they have been in control of or had any role as a governing member and the relevant timeframe for their involvement in these services.

Capability to deliver the service

- 26 I propose to consult on a new aspect to the Ministers' assessment – demonstrating capability to deliver the proposed early childhood service. This requirement would cover matters such as understanding the regulatory framework for early childhood services and specific expertise to deliver the type of service the applicant is proposing to offer.
- 27 An applicant would demonstrate capability by including information and capability relevant to the specific service type being proposed. 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. The requirement to demonstrate capability relevant to the specific service type would not be required at the licensing stage.

Network approval conditions

- 28 I propose to consult on introducing the ability to set conditions on applications for network management approval. Without the ability to set conditions, 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 providers would be disadvantaged by this.
- 29 The conditions would specify matters that the application for network approval has relied on, such as the service type, the address (if known), as well as the requirement to provide regular updates to the Ministry.
- 30 Depending on the circumstances, failure to meet conditions could result in the network approval to apply for a licence being cancelled by the Minister of Education.

Right to challenge decisions

- 31 I propose consulting with the early learning sector on two ways to challenge decisions:
- 31.1 Through a judicial review in the High Court in respect of decisions of the Minister not to approve an application. This is already provided for in law and can be quicker than the District Court process.
- 31.2 A proposed right of appeal to the District Court relating to a determination by the Secretary for Education that the applicant is not fit and proper or financially viable, following notice of an intention to make an adverse determination on this basis. This is intended to give applicants a chance to provide any additional information or reconsider the involvement of any particular person.

Extensions of network approval

- 32 The Act currently enables the Minister of Education to extend network approval beyond two years. This means that an applicant can be allowed more time to

set up a new service than originally agreed. I propose to consult on making it more explicit when extensions are likely to be considered. This is intended to ensure services are established as quickly as they can be in the areas where they are needed.

- 33 Extensions would only be contemplated in a limited range of circumstances. For example, where:

- 33.1 the area was subject to a natural disaster;
- 33.2 for new builds, the building is nearly complete, but there is an unavoidable delay beyond the applicant's control; or
- 33.3 there are other exceptional circumstances beyond the applicant's control.

Introducing a minimal fee for network approval applications

- 34 I propose that a minimal fee be introduced to partially recover costs incurred by the Ministry of Education to assess each application. These fees (of around \$500 plus GST) would be set out in the new regulations for network management.
- 35 A full cost recovery model is not being considered here. This is because it would be difficult to implement for a newly introduced provision where there is no guarantee of a licence, and therefore government funding. This would also be inconsistent with the current licensing fee that does not follow a full cost recovery.

Tranche two policy matters: Regulating for 80% qualified teachers and strengthening the person responsible requirement

- 36 I propose to consult on proposals in the following areas:
- 36.1 Regulating for 80% qualified teachers in teacher-led centres and hospital-based services.
 - 36.2 Improving the person responsible requirement for teacher-led centres and hospital-based services.

Regulating for 80% qualified teachers in teacher-led centre-based services and hospital-based services

- 37 The qualification requirements set out in the Education (Early Childhood Services) Regulations 2008 and the ECE Funding Handbook aim to ensure teacher-led centres and hospital-based services have a high proportion of qualified teachers. These services can only be licensed if 50% of required staff hold an ECE teaching qualification.
- 38 The funding system also incentivises services to use a high proportion of ECE and primary qualified and certificated teachers to cover minimum adult:child ratio requirements. Under the funding rules, services receive higher funding

rates if they demonstrate that they used 80-99% or 100% qualified and certificated teachers to cover minimum adult:child ratio requirements over a four-month funding period.

- 39 Objective 3.1 of the Early Learning Action Plan 2019-2029 recommends regulating for 80% qualified teachers in teacher-led centres, before regulating for 100% in the longer term. This will contribute to higher quality and richer teaching experiences for children, and support their learning and development.

- 40 I propose to consult on three options for regulating for 80% qualified teachers:

40.1 **Option 1: Retaining a high percentage of ECE qualified teachers.**

Services would be required to employ or engage 80% qualified and certificated teachers (measured against minimum ratio requirements) with 50% of these teachers needing to hold an ECE teaching qualification. This option would ensure each service has a strong base of qualified teachers to draw from and recognises the importance of having ECE-specific qualified teachers. It would also support the sustainability of services more than the other options because 80% qualified teachers would not always need to be in contact with children. Services would have more flexibility in rostering staff.

40.2 **Option 2: Match the Regulations with the funding rules.**

Services would need to use 80% qualified and certificated teachers to cover minimum ratio requirements, on average, over a four-month funding period. This would provide services with some flexibility to fluctuate above and below 80% at various times. On average, this would ensure a high proportion of qualified and certificated teachers are in contact with children. This option may not support the Ministry as a capable and effective regulator as it only allows the Ministry to assess compliance after a four-month funding period.

40.3 **Option 3: Ensuring ECE qualified and certificated teachers are always present.**

This would regulate for 80% in the same manner as option 1, but would require services to have 50% ECE qualified teachers in contact with children at all times. This would lift quality for the sector and ensure a minimum presence of ECE qualified teachers working with children whenever a service is open.

- 41 Under each of these options, I propose allowing ECE and primary qualified teachers with a practising certificate to contribute towards the 80% requirement. The key differences in the options are based on the minimum proportion of ECE qualified teachers that services employ, engage or use (options 1 and 3) and how the requirement is measured, i.e. an “at all times” count, versus a more flexible means of counting.

- 42 Each option highlights different key features. Option 1 should enable compliance for most services, option 2 matches the Regulations with the funding rules, and option 3 lifts quality the most but may be less achievable for services.

- 43 I note these options may impact on the sustainability of Māori bilingual and immersion services, Pacific services, hospital-based services, isolated services and services operating in low socio-economic areas. I intend to consult on the barriers that may prevent these services from reaching 80%, and what support they would need to operate at that level.

Strengthening the person responsible requirement for teacher-led centres and hospital-based services

- 44 Every licensed service requires a person responsible, with their duties varying between service types. Generally, the person responsible is considered responsible for children's day-to-day education and care, comfort and health and safety, and supervising children and staff.
- 45 In teacher-led centres and hospital-based services, persons responsible must be qualified and certificated teachers. However, they do not need a minimum amount of experience, which means that recent graduate teachers or teachers without satisfactory recent teaching experience to be persons responsible.
- 46 Given the importance of the person responsible role, I propose consulting on whether the person responsible in teacher-led centres and hospital-based services should be required to hold a Category One or Two practising certificate. This would ensure persons responsible are experienced teachers endorsed as meeting or likely to meet the Teaching Council's *Standards | Ngā Paerewa*.
- 47 This change would ensure that teaching staff are supervised by experienced teachers, which should lift pedagogy and improve child outcomes. It also enables graduate teachers and teachers returning to the profession after two or more years to focus on building their teaching practice.
- 48 For teacher-led centres, I propose consulting on the following:
- 48.1 Clarifying what is expected of persons responsible in their supervisory role, particularly regarding children's day-to-day education and health and safety.
 - 48.2 The person responsible would need to hold a first aid qualification to ensure they have the skills and knowledge to help children immediately following an incident.
- 49 For hospital-based services, I propose consulting on clarifying the supervision requirement for these services, and what is meant by being responsible for children's education. This clarification should better enable the person responsible to fulfil the education component of their role.

Tranche two policy matters: Strengthening the person responsible requirement in home-based services

- 50 Home-based services are distinct to other service types, as they are delivered in private homes by educators working with one to four children. While the person responsible (or co-ordinator) in home-based services is responsible for

children at the same ratio as teacher-led centres (i.e. 1:50), they also hold specific supervision or oversight responsibilities under Regulation 28.

- 51 In home-based services, the supervisory role for persons responsible can be unclear as they are not ordinarily present in the home or required to provide supervision in relation to a particular area or licence.
- 52 I propose to consult on five proposals which are designed to strengthen the role of the person responsible in home-based services. The person responsible would be required to:
- 52.1 Hold a Category One or Two practising certificate to ensure that the person responsible is experienced and can be expected to meet or likely to meet the Teaching Council's *Standards | Ngā Paerewa*.
 - 52.2 Be "locally based" to better support their existing supervision or oversight function. This requirement could either be a geographic requirement, linked to territorial authorities, or one based on a "reasonable travel time" between the homes in the service.
 - 52.3 Be limited to a single service's licence with an increased maximum licence size from 80 to 100 children. Overall, the proposal strengthens oversight or supervision from the person responsible, following issues raised in the Review of Home-based Early Childhood Education. The expected impact is greater continuity between educators and persons responsible, and minimisation of the unclear division of responsibility that can occur when the role is not licence specific.
 - 52.4 Support educators' professional development when contacting and visiting them. This requirement would give an explicit purpose to the provision of professional leadership already required of home-based persons responsible, and supports raising the quality and effectiveness of home-based educators. This would benefit the learning and development of our youngest learners.
 - 52.5 Observe and guide the curriculum delivery during home visits. During these visits, the person responsible would guide and observe educators' curriculum delivery when children are present, in line with the curriculum framework. This would strengthen professional leadership and development for the educators that have the greatest role in the education of the children in their care.

Consultation

- 53 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, Ministry of Health, Ministry of Justice, Ministry for Ethnic Communities, Ministry of Youth Development, Oranga Tamariki, Education Review Office, Teaching Council of Aotearoa New Zealand, Tertiary Education

Commission, Office for Disability Issues, Education New Zealand and the New Zealand Qualifications Authority have been consulted.

Communications

- 54 Consultation will last five weeks and take place from 8 September 2021 to 13 October 2021. It will be announced via the Early Learning Bulletin.
- 55 In addition to the discussion documents attached, the Ministry will produce summaries in English and other languages, and run an online survey to make it easy to provide feedback on the proposals. The Ministry will also undertake evening zoom hui for providers and teachers, and a number of face-to-face hui with Māori and Pacific early childhood services.

Financial Implications

- 56 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, over time, some services may close because they are unable to operate with 80% qualified teachers.

Population Implications

Population group	How the proposals 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 80% and person responsible proposals are intended to improve the quality of education and care in teacher-led centres, hospital-based and home-based services. The 80% options would lift minimum standards relating to qualified and certificated teachers in a service. This should improve children's learning outcomes. However, this proposal could affect services' ability to remain open if they have difficulty attracting and retaining qualified teachers. This is likely to be more pronounced for isolated services, immersion and bilingual services, services in low socio-economic communities, and hospital-based services. This would not support all children's participation in early learning.</p> <p>The person responsible proposals are intended to better support the supervision of teaching staff. This supports children's educational outcomes.</p> <p>In home-based ECE, the proposals are designed to support educators' learning and development, which could improve curriculum delivery and children's learning outcomes.</p>
Women	Some communities are still underserved, while some areas have experienced service growth beyond demand, which impacts on service

	<p>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. It should also provide opportunities for women to enter the early learning workforce (as teachers and managers) and the wider workforce.</p> <p>Regulating for 80% qualified teachers should ensure there are ongoing employment opportunities for qualified teachers, the majority of whom are female. However, if this change is made, it may reduce demand for unqualified teachers.</p> <p>The person responsible proposals would ensure graduate teachers and teachers recently returning to the profession can focus on teaching with oversight from an experienced teacher.</p> <p>The home-based proposals would support increased professionalisation for persons responsible and educators. However, these proposals could also add more responsibilities to women who have commitments outside of work.</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 early childhood services.</p> <p>However, the Ministry lacks data on how many disabled children attend early childhood services, so has limited means of assessing the effects of the proposed changes on this group of children.</p> <p>The online surveys will be screen-reader compatible for parents, whānau and teachers and the summary documents will be available in Easy Read versions. This will help enable engagement with people who require additional assistance.</p>
Māori	<p>The proposed network management settings relating to the Te Tiriti o Waitangi would give express recognition to the obligations of the Crown under Te Tiriti o Waitangi. Giving effect to these obligations would support Māori aspirations and recognise the importance of the Māori-Crown relationship. The changes aim to enable greater choice through supporting the provision of service types that are valued by families and whānau. This would strengthen the provision in te reo Māori to better support children's pathways for Māori medium schooling and kura.</p> <p>Most Māori children in licensed services are enrolled in teacher-led centres (60% of enrolments). The 80% and person responsible proposals would lift minimum standards in teacher-led centres, which should benefit these children.</p> <p>Māori bilingual and immersion services may find it difficult to meet a new 80% qualified regulatory standard. In November 2020, 13 Māori bilingual and immersion services (25% of these services) did not qualify for 80-99% certificated teacher funding rates. This suggests that regulating for 80% qualified teachers could affect the ability of these services to remain open, which would adversely affect Māori communities, particularly in relation to their aspirations for children's language, culture and identity. For this reason, I will specifically consult on the barriers preventing some Māori bilingual and immersion services from reaching 80% and what support they may need to operate at that level.</p>

	<p>A smaller proportion of Māori are in home-based services (17% of Māori enrolments) with only 7% of persons responsible role identifying as Māori. While the proposals are designed to improve quality in home-based settings, further consultation and analysis is needed to understand the impact the home-based proposals have in relation to the promotion of te reo Māori.</p>
Pacific peoples	<p>The proposed settings, particularly the National Statement, would set strategic outcomes for government. It is expected that one of these outcomes would include a focus on Pacific communities. The proposed settings would mean proposed new services are well positioned to provide quality early learning settings that meet the needs of Pacific communities.</p> <p>Most Pacific children in licensed services are enrolled in teacher-led centres (69% of enrolments). The 80% and person responsible proposals would lift minimum standards in teacher-led centres, which should benefit children attending these services.</p> <p>Pacific bilingual and immersion services may find it difficult to meet a new 80% qualified regulatory standard. In November 2020, 13 Pacific bilingual and immersion services (17% of these services) did not qualify for 80-99% certificated teacher funding rates. This suggests that regulating for 80% qualified teachers could adversely affect Pacific communities, particularly in relation to their aspirations for children's language, culture and identity. Hence, I will specifically consult on the barriers preventing some Pacific bilingual and immersion services from reaching 80% and what support they may need to operate at that level.</p> <p>A smaller proportion of Pacific children are in home-based services (16% of enrolments), with 9% of persons responsible identifying as Pacific. Pacific home-based ECE services tend to be highly concentrated – with 89% of enrolled Pacific children and 93% of Pacific staff in the person responsible role located in the wider Auckland region. Restricting the person responsible to a particular area and/or licence could affect Pacific services, depending on how the proposals are implemented.</p>

Human Rights

- 57 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.

Legislative Implications

- 58 Legislation is required to give effect to some of the network management implementation proposals in discussion document one. Feedback on these proposals will inform the revised proposals that I expect to submit to Cabinet in December 2021. In that Cabinet paper, I will be seeking 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.

- 59 All proposals in tranche two will require changes to the Education (Early Childhood Services) Regulations 2008.

Impact Analysis

Regulatory Impact Statement

- 60 The Regulatory Impact Analysis panel at the Ministry of Education has reviewed the interim regulatory impact statements and the discussion documents and have confirmed they will lead to effective consultation.

Climate Implications of Policy

Assessment

- 61 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.

Proactive Release

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

Recommendations

- 63 The Minister of Education recommends that the Committee:
- 1 **note** that the Ministry of Education is undertaking tranche two of the Early Learning Regulatory Review;
 - 2 **note** that the policy proposals in the three discussion documents are intended to:
 - 2.1 Give effect to the new network management function enabled through the Education and Training Act 2020;
 - 2.2 Regulate for 80% qualified teachers in teacher-led centres and hospital-based services;
 - 2.3 Strengthen the person responsible requirements in teacher-led centres, hospital-based services, and home-based services.
 - 3 **note** that the intended period of public consultation will be from 8 September to 13 October (five weeks);
 - 4 **note** that I intend to seek final policy approvals for network management proposals in December 2021;
 - 5 **agree** to the release of the following discussion documents subject to any minor editorial, formatting and layout changes required:

- 5.1 Implementing the new network management function for early childhood services (attached at Appendix 1)
- 5.2 Regulating for 80% qualified teachers and strengthening the person responsible requirement for teacher-led centres and hospital-based services (attached at Appendix 2)
- 5.3 Strengthening the person responsible requirement in home-based services (attached at Appendix 3).

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Appendices

Appendix 1: Implementing the new network management function for licensed early childhood services

Appendix 2: Regulating for 80% qualified teachers and strengthening the person responsible requirement for teacher-led centres and hospital-based services

Appendix 3: Strengthening the person responsible requirement in home-based services

Proactively Released



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 Business Committee: Period Ended 3 September 2021

On 6 September 2021, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 3 September 2021:

Out of scope

CBC-21-SUB-0087 Early Learning Regulatory Review: Public
Consultation on Tranche Two
Portfolio: Education

CONFIRMED

Out of scope

Michael Webster
Secretary of the Cabinet



Cabinet Business Committee

Minute of Decision

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Early Learning Regulatory Review: Public Consultation on Tranche Two

Portfolio **Education**

On 1 September 2021, the Cabinet Business Committee:

- 1 **noted** that the Ministry of Education is undertaking tranche two of the Early Learning Regulatory Review;
- 2 **noted** that the policy proposals in the three discussion documents attached under CBC-21-SUB-0087 are intended to:
 - 2.1 give effect to the new network management function enabled through the Education and Training Act 2020;
 - 2.2 regulate for 80 percent qualified teachers in teacher-led centres and hospital-based services;
 - 2.3 strengthen the person responsible requirements in teacher-led centres, hospital-based services, and home-based services;
- 3 **noted** that the intended period of public consultation will be five weeks, from 8 September to 13 October 2021;
- 4 **approved** the release of the following discussion documents, attached as Appendices 1 to 3 under CBC-21-SUB-0087, subject to any minor editorial, formatting and layout changes required:
 - 5.1 *Implementing the new network management function for early childhood services;*
 - 5.2 *Regulating for 80% qualified teachers and strengthening the person responsible requirement for teacher-led centres and hospital-based services;*
 - 5.3 *Strengthening the person responsible requirement in home-based services;*
- 5 **noted** that the Minister of Education intends to report back to the Cabinet Social Wellbeing Committee in December 2021 seeking final policy approvals to the new network management functions for early childhood services.

Jenny Vickers
Committee Secretary

Attendees: (see over)

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Dr David Clark
Hon Aupito William Sio

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

Proactively Released

INFORMATION UPDATE

Drafter: Tiantian Zhang
Metis Number: 1269506
Date: 27 August 2021

Request from Minister's Office

The Cabinet Business Committee (CBC) is considering your Cabinet paper *Public consultation on tranche two of the Early Learning Regulatory Review proposals*. Your office requested talking points to assist you at CBC.

Proactive Release

It is intended that this document is proactively released as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Talking points

Proposal

1. I am seeking Cabinet's agreement to publicly consult on proposals as part of tranche two of the Early Learning Regulatory Review (the Review).
2. These proposals will support the Government's focus on high quality educational and care 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.
3. I propose a five-week public consultation period from 8 September to 13 October 2021.

Tranche two policy matters for consultation

4. Tranche two of the Review covers three substantive areas of change –
 - 4.1. implementing the network management function,
 - 4.2. regulating for 80% qualified teachers, and
 - 4.3. strengthening the person responsible requirement.

Implementing the new network management function

5. I intend to seek final policy approvals from Cabinet for network management proposals in December 2021. From 1 August 2022, sections 17 and 18 of the Education and Training Act 2020 introduce a new network approval process for prospective early childhood services.

6. In the network approval phase, an applicant will submit an application to the Ministry of Education. The Secretary for Education will assess if the applicant meets the fit and proper test and assess financial viability. I will then decide whether to approve the application. This approval will enable the applicant to apply for a licence.
7. I am proposing to consult on nine proposals to give effect to the new network management process:
 - 7.1. Introducing National and Regional Statements.
 - 7.2. Options to fulfil the Crown's Te Tiriti o Waitangi responsibilities.
 - 7.3. Changes to fit and proper requirements of potential providers.
 - 7.4. Options to assess financial position and licensing history.
 - 7.5. Capability to deliver the service.
 - 7.6. Network approval conditions.
 - 7.7. The right to challenge decisions.
 - 7.8. Extensions of network approval.
 - 7.9. Introducing a minimal fee for network approval applications.
8. Some of the proposals above, such as the introduction of National and Regional Statements, will require changes to the Act.

Regulating for 80% qualified teachers in teacher-led centre-based services and hospital-based services

9. Objective 3.1 of the Early Learning Action Plan 2019-2029 recommends regulating for 80% qualified teachers in teacher-led centres, before regulating for 100% in the longer term. This will contribute to higher quality and richer teaching experiences for children.
10. I propose to consult on three options for regulating for 80% qualified teachers:
 - 10.1. Option 1: retaining high percentage of ECE qualified teachers – services would be required to employ or engage 80% ECE and/or primary qualified and certificated teachers with 50% of these teachers needing to hold an ECE teaching qualification
 - 10.2. Option 2: Match the Regulations with the funding rules – services would need to use 80% ECE and/or primary qualified and certificated teachers to cover minimum ratio requirements on average over a four-month funding period.
 - 10.3. Option 3: Ensuring ECE qualified and certificated teachers are always present – as with option 1 but would require services to have 50% ECE qualified teachers in contact with children at all times.
11. I note these options may impact on the sustainability of Māori and Pacific bilingual and immersion services, isolated services and services operating in low socio-economic areas. I intend to consult on the barriers that may prevent these services from reaching 80%, and what support they would need to operate at that level.

Strengthening the person responsible requirement for teacher-led centres and hospital-based services

12. I propose consulting on four proposals to ensure the person responsible role for teacher-led centres and hospital-based services remains clear, fit-for-purpose and safeguards children's best interest.
13. For teacher-led centres, I propose consulting on the following:
 - 13.1. Clarifying what is expected of persons responsible in their supervisory role, particularly regarding children's day-to-day education and health and safety.
 - 13.2. The person responsible would need to hold a first aid qualification. This would ensure they have the skills and knowledge to help children immediately following an incident.
14. For hospital-based services, I propose consulting on clarifying the supervision requirement for these services, and what is meant by being responsible for children's education.

Strengthening the person responsible requirement in home-based services

15. In home-based services, the supervisory role for persons responsible can be unclear as they are not ordinarily present in the home or required to provide supervision in relation to a particular area or licence.
16. I propose to consult on five proposals to strengthen the person responsible requirement in home-based services. The person responsible would be required to:
 - 16.1. Hold a Category One or Two practising certificate to ensure that the person responsible is an experienced teacher expected to meet or likely to meet the Teaching Council's Standards | Ngā Paerewa.
 - 16.2. Be "locally based" to better support their existing supervision or oversight function.
 - 16.3. Be limited to a single service's licence with an increased maximum licence size from 80 to 100 children.
 - 16.4. Support educators' professional development when contacting and visiting them.
 - 16.5. Observe and guide the curriculum delivery during home visits.

COVID-19 impact on consultation

17. Timeframes are already extremely tight due to the need to progress legislative changes for the network management proposals. These changes need to be included in the Education and Training Amendment Bill by the end of this year to enable implementation by 1 August 2022.
18. I had planned to start consultation earlier to give the public longer to provide their feedback. Unfortunately, due to level 4 lockdown this has been delayed.
19. The Ministry has advised that effective consultation can still be completed in a five-week window. Some key constraints may be that the Ministry may not engage effectively with key population groups, particularly Māori, and that the Ministry may be criticised for not allowing enough time for genuine engagement.

20. Despite these constraints, it is critical that consultation goes ahead due to the significance of the issues involved. I want to make sure that the public can have their say on these proposals. The public can also make submissions for network management through the Select Committee process for the Education and Training Amendment Bill.

Communications

21. To aid consultation, the Ministry will produce discussion documents for the three substantive areas of policy changes, summaries of these documents in English and other Pacific languages and run online surveys to make it easier for the public to provide feedback on the proposals and options.
22. The Ministry will also hold evening Zoom hui for providers and teachers, and a number of face-to-face hui with Māori and Pacific early childhood services. These may be changed to some online hui depending on the Covid-19 alert levels.