



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 Legislation Committee: Period Ended 30 September 2022

On 3 October 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 30 September 2022:

LEG-22-MIN-0160 **Education (Early Childhood Services Network Approval) Regulations 2022** CONFIRMED
Portfolio: Education

Out of scope

Rachel Hayward
Acting Secretary of the Cabinet



Cabinet Legislation Committee

Minute of Decision

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Education (Early Childhood Services Network Approval) Regulations 2022

Portfolio Education

On 29 September 2022, the Cabinet Legislation Committee:

- 1 **noted** that in July 2022, the Cabinet Social Wellbeing Committee agreed to create new regulations for network management under section 636(1)(a) of the Education and Training Amendment Act 2022, covering information requirements, decision-making requirements and fees [SWC-22-SUB-0129];
- 2 **noted** that the Education (Early Childhood Services Network Approval) Regulations 2022 (the Regulations) give effect to the decisions referred to in paragraph 1 above;
- 3 **authorised** the submission to the Executive Council of the Education (Early Childhood Services Network Approval) Regulations 2022 [PCO 24964/2.0];
- 4 **noted** that the Regulations come into force on 1 February 2023.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins
Hon Andrew Little
Hon David Parker (Chair)
Hon Poto Williams
Hon Michael Wood
Hon Dr David Clark
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

In Confidence

Office of the Minister for Education
Cabinet Legislation Committee

Education (Early Childhood Services Network Approval) Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Education (Early Childhood Services Network Approval) Regulations 2022.

Policy

- 2 From 1 February 2023 anyone wanting to operate a new licensed early childhood service will need to apply for network management approval from the Minister of Education before applying for a licence. Network management is set out in sections 17 and 18C of the Education and Training Amendment Act 2022 (the Act).
- 3 The purpose of network management is to take a more active role in managing the licensed early learning network to help ensure all children have access to quality licensed early childhood services by preventing oversupply and increasing provision in areas and communities currently underserved.
- 4 Cabinet has recently agreed to create new regulations for network management under section 636(1)(a) of the Act covering information requirements, decision-making requirements and fees [CAB-22-MIN-0281 refers]. The draft regulations give effect to Cabinet's decisions, in particular:
 - 4.1 information required in network management applications
 - 4.2 processing timeframes for the Secretary for Education and Minister of Education completing assessments and making decisions
 - 4.3 how official notice of network management approval will be given and its contents
 - 4.4 the Secretary completing assessments of fit and proper status using a statutory declaration
 - 4.5 the process to seek an amendment to an approval
 - 4.6 the introduction of a new fee for network management of \$500 plus GST for each application.
- 5 Cabinet authorised me 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 Cabinet's decisions. I have used this authorisation to set a requirement in the regulations for network approval-holders to submit an application for amendment to the expiry date or conditions of an approval at least 40 working days before the approval expires. Given the Minister of Education must endeavour to make a decision on amendment applications within 30 working days, the 40-day submission requirement gives some leeway to ensure the Minister is able to make a decision before the approval expires.

Timing and 28-day rule

- 6 I propose that the regulations come into force on 1 February 2023 to align with the commencement of network management as set out in the Act.
- 7 Subject to Cabinet's approval, I recommend that the proposed regulations be submitted to the Executive Council following Cabinet approval.

Compliance

- 8 There are no inconsistencies between the Education (Early Childhood Services Network Approval) Regulations 2022 and:
 - 8.1 the principles of the Treaty of Waitangi;
 - 8.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 8.3 the principles and guidelines set out in the Privacy Act 2020 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - 8.4 relevant international standards and obligations, for example, the United Nations Convention on the Rights of Persons with Disabilities; and
 - 8.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 9 No consultation requirements relate to these proposals, but these proposals were consulted on during April – June 2022.

Regulations Review Committee

- 10 There are no grounds identified under Standing Order 327 where the Regulations Review Committee could draw these regulations to the special attention of the House.

Certification by Parliamentary Counsel

- 11 The Education (Early Childhood Services Network Approval) Regulations 2022 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 12 An Annex to the Regulatory Impact Statements was submitted at the time that Cabinet approval was sought of the policy relating to the regulations. Other network management statements are available at:
<https://assets.education.govt.nz/public/Documents/Ministry/Legislation/ETB/Network-Planning-in-Early-Learning.pdf> and
https://assets.education.govt.nz/public/Documents/Early-Childhood/network-management/Regulatory-Impact-Statement_-_Network-Management-in-Early-Learning.pdf.
- 13 A Cost Recovery Impact Statement was prepared and submitted with the submission to Cabinet Social Wellbeing Committee [SWC-22-MIN-0129 refers].

Publicity

- 14 Once the regulations are notified in the Gazette, the Ministry of Education will inform all early learning providers through the Early Learning Bulletin – an online publication sent to all licensed services and available on the Ministry of Education website.

Proactive release

- 15 The Minister proposes to release the paper proactively following submission to the Executive Council. Proactive release will be subject to redaction as appropriate under the Official Information Act 1982.

Consultation

- 16 The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Puni Kōkiri, 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.

Recommendations

I recommend that Cabinet Legislation Committee:

- 1 note that on 29 July 2022 the Cabinet Social Wellbeing Committee agreed to create new regulations for network management under section 636(1)(a) of the Act covering information requirements, decision-making requirements and fees [CAB-22-MIN-0281 refers];
- 2 note that the Education (Early Childhood Services Network Approval) Regulations 2022 will give effect to the decisions referred to in recommendation 1 above;
- 3 authorise the submission to the Executive Council of the Education (Early Childhood Services Network Approval) Regulations 2022; and

- 4 note that the Education (Early Childhood Services Network Approval) Regulations 2022 come into force on 1 February 2023.

Authorised for lodgement

Hon Chris Hipkins
Minister of Education

Proactively Released

**Education (Early Childhood Services Network Approval)
Regulations 2022**

Order in Council

At Wellington this day of 2022

Present:
in Council

These regulations are made under section 636 of the Education and Training Act 2020 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Education (Early Childhood Services Network Approval) Regulations 2022.

2 Commencement

These regulations come into force on 1 February 2023.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Education and Training Act 2020

applicant means an individual or entity that proposes to operate a licensed early childhood service

holder means an individual or entity granted a network approval that has not expired or been revoked

network approval means an approval under section 17 of the Act to apply for a licence to operate an early childhood service.

4 Application for network approval

(1) An application for a network approval must—

- (a) be in the prescribed form; and
- (b) contain the information set out in Schedule 1; and
- (c) be accompanied by the prescribed fee.

(2) The prescribed fee for an application for a network approval is \$575.

(3) The fee is inclusive of goods and services tax and is non-refundable.

5 Secretary may require additional information

(1) The Secretary may require an applicant for a network approval to provide any information or supporting evidence as the Secretary thinks fit in respect of any matter disclosed in relation to the matters set out in section 18(2)(a) to (k) of the Act.

(2) For the purpose of determining whether an applicant for a network approval meets any criteria the Secretary considers relevant under section 18(2)(l) of the

Act, the Secretary may require the applicant to provide information about any matter relevant to those criteria.

- (3) For the purpose of assessing whether a proposed early childhood service is financially viable under section 18A of the Act, the Secretary may require an applicant for a network approval to provide any evidence or information as the Secretary thinks fit in respect of that assessment.

6 When application is complete

For the purpose of regulations 7 and 8, an application for a network approval is a **complete application** when—

- (a) the applicant has met the requirements of regulation 4; and
- (b) the Secretary has received all additional information or evidence required under regulation 5.

7 Time frame for Secretary to make assessments under sections 18 and 18A of Act

After receiving a complete application for a network approval, the Secretary must make reasonable efforts to complete, within 30 working days,—

- (a) their assessment under section 18 of the Act; and
- (b) their assessment under section 18A of the Act.

8 Time frame for Minister to make decision under section 17 of Act

- (1) The Minister must endeavour to issue a decision under section 17 of the Act within 30 working days after receiving—

- (a) a complete application for a network approval; and
- (b) an assessment from the Secretary under section 18 of the Act in relation to that application for a network approval; and
- (c) an assessment from the Secretary under section 18A of the Act in relation to that application for a network approval; and
- (d) any additional information requested by the Minister under section 17(3) of the Act.

- (2) Subclause (1) does not apply if the Minister is considering multiple applications for network approval in regard to the same area to be served.

9 Notice of network approval

If the Minister grants a network approval, the Secretary must issue a notice to the applicant for that network approval that contains the following:

- (a) the applicant's name and contact information;
- (b) information about what type of early childhood service is to be operated by the applicant;

- (c) a list of the individuals who have been assessed as a fit and proper person in relation to the applicant:
- (d) a detailed description of the intended early childhood service, including any special characteristics, philosophy, or service provision:
- (e) the intended location of the service (and address, if known):
- (f) the proposed number of children that the intended early childhood service would provide education and care to, including the proposed number of children aged under 2 and the proposed number of children aged 2 or older (if known):
- (g) the date that the network approval was granted:
- (h) the date on which the network approval expires:
- (i) any conditions of the network approval, including any that require the applicant to provide progress reports to the Ministry or meet milestones on particular dates:
- (j) any other relevant information as the Secretary thinks fit.

10 Application for amendment to network approval

- (1) The holder of a network approval may apply for an amendment to—
 - (a) the expiry date of the network approval; or
 - (b) any condition of the network approval; or
 - (c) the date by which any condition of the network approval must be met or when it expires, as relevant.
- (2) An application for an amendment to a network approval must—
 - (a) be in the prescribed form; and
 - (b) contain the information set out in Schedule 2.
- (3) An application for an amendment to a network approval must be made at least 40 working days before,—
 - (a) in the case of an amendment to the expiry date of the network approval, that expiry date; or
 - (b) in the case of an amendment to a condition, the date on which that condition must be met or expires, as relevant.

11 Time frame for Minister to make decision on amendment to network approval

The Minister must endeavour to issue a decision on an application for an amendment to a network approval within 30 working days after receiving an application for an amendment to a network approval.

12 Notice of amendment to network approval

If the Minister grants an amendment to a network approval, the Secretary must issue a notice to the holder of that network approval that the amendment has been granted.

13 Secretary may prescribe forms

- (1) The Secretary may prescribe a form for an application for a network approval.
- (2) The Secretary may prescribe a form for an application for an amendment to a network approval.

Schedule 1

Application for network approval

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- 1 The following information about the applicant:
 - (a) the name of the applicant:
 - (b) contact details for the applicant:
 - (c) if the applicant is an entity or a group of individuals,—
 - (i) the name of every individual who is involved in the governance of the applicant:
 - (ii) details about, and evidence of, the legal or governance structure of the applicant:
 - (iii) a copy of the deed, constitution, or rules of incorporation of the applicant, as applicable:
 - (iv) proof of appointment of all individuals involved in the governance of the applicant (if relevant).
- 2 Which of the following types of early childhood service the applicant proposes to operate:
 - (a) a licensed early childhood education and care centre; or
 - (b) a licensed home-based education and care service; or
 - (c) a licensed hospital-based education and care service.
- 3 The following information about the proposed early childhood service:
 - (a) the proposed location of the premises (or address, if known):
 - (b) a description of the proposed premises, if available at the time of application:
 - (c) the proposed number of children that the proposed service would provide education and care to, including the proposed number of children aged under 2 and the proposed number of children aged 2 or older (if known):
 - (d) any special characteristics, philosophy, or service provision:
 - (e) the expected development of the proposed service if the network approval is granted, including—
 - (i) the date or expected date of any significant milestone relating to obtaining or building the proposed premises (including for a resource or building consent):
 - (ii) any other significant milestones that would have to be met before the project to establish the proposed service could proceed (including relating to finance and legal arrangements):

- (iii) the expected date of application for a licence to operate the service under the Education (Early Childhood Services) Regulations 2008.
- 4 Information and evidence about the following to allow the Minister to assess the requirements of section 17 of the Education and Training Act 2020:
 - (a) how the proposed early childhood service would meet the needs of the community it serves, including how the proposed service would address any statements relating to the network of early childhood services made by the Minister under section 17D of the Act that are relevant to the application:
 - (b) the relevant skills, qualifications, and experience of the applicant and of every individual who is involved in the governance of the applicant in relation to—
 - (i) the establishment of the proposed early childhood service, including managing the proposed development and meeting any significant dates or milestones identified under item 3(e)(i) and (ii); and
 - (ii) the provision of the proposed early childhood service, including any experience in operating licensed early childhood services and delivering education and care that incorporates any special characteristics, philosophy, or service provision identified in item 3(d).
- 5 The following information to allow the Secretary to assess whether the applicant, and every individual who is involved in the governance of the applicant, is a fit and proper person to be granted approval under section 18 of the Act:
 - (a) a copy of a Police vet obtained for each individual:
 - (b) a statutory declaration by each individual relating to the matters set out in section 18(2)(b) to (k) of the Act:
 - (c) in relation to the matters set out in section 18(2)(k) of the Act, the details of each early childhood service that each individual has been involved in or associated with, including—
 - (i) the name of the early childhood service provider; and
 - (ii) the nature of the individual's involvement in or association with the early childhood service; and
 - (iii) the period of time during which the individual was involved in or associated with the early childhood service.
- 6 The following information to allow the Secretary to assess the financial viability of the proposed early childhood service under section 18A of the Act:
 - (a) the estimated costs of establishing the proposed service, including applying for a licence under the Education (Early Childhood Services) Regulations 2008, up to the commencement of operation, together with sup-

porting information and evidence as to how those costs have been estimated:

- (b) either—
 - (i) evidence of access to sufficient financial resources to effectively establish and provide the proposed service, including any audited financial statements that relate to the applicant's operation of the proposed service; or
 - (ii) a business plan for obtaining access to sufficient resources to effectively establish and provide the proposed service.

- 7 Any further information that the applicant thinks may be relevant to their application.

Schedule 2

Application for amendment to network approval

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The following information:

- (a) a copy of the notice of the network approval issued by the Secretary under regulation 9;
- (b) details of the amendment to the current network approval that the holder is seeking;
- (c) an explanation of why it is necessary or desirable, in the holder's opinion, to amend the network approval in the way sought;
- (d) if a proposed extension of the date of expiry of the network approval would extend it more than 3 years after the date on which the network approval was granted, details of the exceptional circumstances that give rise to the proposed amendment;
- (e) a statutory declaration by every individual who is involved in the governance of the applicant that—
 - (i) all information provided with the original application for a network approval (as modified by any previous application for an amendment to the network approval) remains true and correct to the best of their knowledge; and
 - (ii) all information contained in the application for an amendment to a network approval is true and correct; and
 - (iii) there have been no other changes in circumstance since the network approval was granted that, if that change of circumstance had been known at the time that the network approval was granted, may have materially affected the Minister's decision to grant the network approval.

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 February 2023, relate to the network approval provisions for early childhood services under sections 17 to 18C of the Education and Training Act 2020 (the **Act**). A network approval is an approval granted by the Minister of Education (the **Minister**) under section 17 of the Act to apply for a licence to operate an early childhood service.

Regulation 4 requires an application for a network approval to be in the prescribed form, contain the information set out in *Schedule 1*, and be accompanied by the prescribed fee of \$575 (including goods and services tax).

Regulation 5 allows the Secretary for Education (the **Secretary**) to request certain additional information from a network approval applicant in order to make their assessments under sections 18 and 18A of the Act.

Regulation 6 sets out when an application for a network approval is a complete application for the purposes of calculating delivery time frames for the Secretary and Minister under *regulations 7 and 8*.

Regulation 7 provides that the Secretary generally has 30 working days from the date on which they receive a complete application for a network approval to make their assessments under sections 18 and 18A of the Act.

Regulation 8(1) provides that the Minister must endeavour to issue a decision on an application for a network approval within 30 working days after receiving—

- a complete application for a network approval; and
- an assessment from the Secretary under section 18 of the Act in relation to that network approval; and
- an assessment from the Secretary under section 18A of the Act in relation to that network approval; and
- any additional information requested by the Minister under section 17(3) of the Act.

Regulation 8(2) provides that *regulation 8(1)* does not apply if the Minister is considering multiple applications for network approval in the same area.

Regulation 9 sets out the information that must be contained in a notice of network approval given to an applicant.

Regulation 10 provides for the holder of a network approval to apply for an amendment to the conditions or expiry date of that network approval. The application for an amendment to a network approval must be in the prescribed form and contain the information set out in *Schedule 2*.

Regulation 11 provides that the Minister must endeavour to issue a decision on an application for an amendment to a network approval within 30 working days of receiving the application.

Regulation 12 requires the Secretary to issue a notice to the holder of a network approval that an amendment to that network approval has been granted.

Regulation 13 allows the Secretary to prescribe forms for an application for a network approval and for an amendment to a network approval.

Schedule 1 sets out the information that must be contained in an application for a network approval.

Schedule 2 sets out the information that must be contained in an application for an amendment to a network approval.

Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 5 November 2021 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://www.education.govt.nz/early-childhood/running-a-service/network-management-for-licensed-early-childhood-services/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Education.