

Cabinet Paper material

Proactive release

Minister & portfolio Hon Jan Tinetti, Minister of Education
Hon
Name of package Amendments to the Education (Early Childhood Services) Regulations 2008
Date considered 17 August 2023
Date of release

On 7 December 2022, Cabinet agreed on proposals to regulate for 80% qualified and certificated teachers in teacher-led ECE, and strengthen the person responsible role in teacher-led ECE, and licensed hospital-based and home-based services. In this paper Cabinet also agreed for the Ministry of Education to publicly consult on proposals to strengthen the existing licensing and enforcement provisions, as well as on a new definition for 'locally based' for persons responsible in licensed home-based education and care services.

However, in April 2023, the Minister of Education agreed to slow down progress on the proposal to regulate for 80% qualified and certificated teachers in teacher-led ECE, so that this initiative can be implemented in a way that is more manageable for the sector given the other changes underway and the evolving challenges the sector is facing. On 31 May 2023, (in the following paper Cabinet paper: Proposed amendments for Tranche 2 of the Early Learning Regulatory Review) Cabinet agreed to rescind previous Cabinet decisions to regulate for 80% qualified and certificated teachers in teacher-led ECE, due to the reasons outlined above. Therefore, final proposals for regulating 80% qualified and certificated teachers in teacher-led ECE have been withheld under s9(2)(f)(iv) of the Official Information Act 1982 in this suite of papers, as they are still under active consideration.

Also on 31 May 2023, Cabinet agreed on proposals to strengthen the existing licensing and enforcement provisions, however they did not agree to final proposals to define 'locally based', which is needed to implement the requirement that persons responsible in licensed home-based education and care services be locally based. On 17 August 2023, (in the following paper Education (Early Childhood Services) Amendment Regulations (No 2) 2023) Cabinet noted that this requirement is not being progressed and will be revisited at a time when this requirement is more manageable for the sector. Therefore, as this is still under active consideration, final proposals for defining 'locally based' for persons responsible in licensed home-based education and care services have been withheld under s9(2)(f)(iv) of the Official Information Act 1982 in this suite of papers.

These documents have been proactively released:

Cabinet Paper Amendments to the Education (Early Childhood Services) Regulations 2008

Date considered: 17 August 2023

Author: Office of the Minister of Education

Briefing Note: Cabinet paper for lodging and talking points – Amendments to the Education (Early Childhood Services) Regulations 2008 (licensing and person responsible requirements)

Date considered: 9 August 2023

Author: Ministry of Education

Cabinet Legislation Committee Minute: LEG-23-0139

Date considered: 17 August 2023

Author: Committee Secretary

You can read the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 here:
[Education \(Early Childhood Services\) Amendment Regulations \(No 2\) 2023 \(SL 2023/200\) Contents – New Zealand Legislation](#)

Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(a) to protect the privacy of natural persons

Section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinion

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

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

In Confidence

Offices of the Minister of Education and Associate Minister of Education
Chair, Cabinet Legislation Committee

**Amendments to the Education (Early Childhood Services)
Regulations 2008**

Proposal

- 1 This paper seeks authorisation to submit the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 to the Executive Council.

Executive Summary

- 2 The Ministry of Education (the Ministry) is undertaking a three-stage review of the early learning regulatory system (the Review) to ensure it is clear and fit for purpose to support high quality education and care for all children and their parents and whānau [SWC-20-MIN-0116 refers].
- 3 As part of Tranche 2 of the Review, we are seeking authorisation to submit the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 (the Amendment Regulations) to the Executive Council to:
 - 3.1 strengthen the role of persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services [CAB-22-MIN-0581 refers]; and
 - 3.2 strengthen existing licensing and enforcement provisions, including to allow the Secretary for Education (the Secretary) to add conditions to a service provider's provisional licence, provide a definition of 'permanently ceased to operate', and allow the Secretary to grant temporary service closures [CAB-23-MIN-0207.02 refers].
- 4 The Amendment Regulations implement key shifts in the regulatory system signalled in *He taonga te tamaiti – Every child a taonga: Early Learning Action Plan 2019–2029*, and the 2018 *Review of Home-based Early Childhood Education*. Public consultation on the proposed amendments took place from September to October 2021 and from January to February 2023.
- 5 The Amendment Regulations will come into force on 26 February 2024, with the requirement that persons responsible in teacher-led early childhood education and care centres, and licensed hospital- and home-based education and care services hold a Full (Category One or Two) practising certificate from 26 August 2024. This will help to ensure that service providers have sufficient time to comply with the new requirement.

Policy

- 6 As part of Tranche 2 of the Review, we are amending the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:
- 6.1 strengthen the role of persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services; and
 - 6.2 strengthen existing licensing and enforcement provisions, including to:
 - 6.2.1 allow the Secretary to add conditions to a service provider's provisional licence when further compliance issues are identified;
 - 6.2.2 provide a definition of 'permanently ceased to operate' for the purposes of cancelling a service provider's licence; and
 - 6.2.3 allow the Secretary to grant temporary service closures.

Strengthening the person responsible requirements

- 7 The person responsible plays an important role in ensuring the quality of early childhood education and care, including supervising and overseeing children, teachers, and other adults. In December 2022, following a period of public consultation from September to October 2021, Cabinet agreed to amend the Regulations to strengthen this role, including to:
- 7.1 require persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services to hold a Full (Category One or Two) practising certificate, and for this requirement to commence six months after the commencement of other regulatory changes agreed below for persons responsible;
 - 7.2 require persons responsible in teacher-led early childhood education and care centres to:
 - 7.2.1 supervise children in attendance and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff;
 - 7.2.2 provide education and care to children in attendance and guidance to teaching staff;
 - 7.2.3 ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching; and
 - 7.2.4 ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend;

- 7.3 require persons responsible in teacher-led early childhood education and care centres to hold an accredited first aid qualification and that they be included in the current 1:25 ratio for first aid qualification requirements;
 - 7.4 require persons responsible in licensed hospital-based education and care services to:
 - 7.4.1 supervise children and staff at the service and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults;
 - 7.4.2 ensure there is at least one adult present when children are in the activity room;
 - 7.4.3 provide education and care to children and guidance to teaching staff; and
 - 7.4.4 ensure all staff are implementing the gazetted curriculum framework and know how to use it;
 - 7.5 require that persons responsible in licensed home-based education and care services only work across up to two licences within each calendar month, and only one licence at any one time;
 - 7.6 increase the maximum licence size for licensed home-based education and care services from 80 to 100 children;
 - 7.7 require that persons responsible for licensed home-based education and care services be locally based, and undertake further consultation on a definition for 'locally based';
 - 7.8 require persons responsible in licensed home-based education and care services to take all reasonable steps to observe, support, and provide guidance on the curriculum delivery in the home during their visits and to keep records of these activities; and
 - 7.9 require that persons responsible in licensed home-based education and care services provide professional development to educators on a regular basis and to keep records of any such discussion [CAB-22-MIN-0581 refers].
- 8 Cabinet also agreed to proposals to require 80 percent qualified teachers in teacher-led early childhood education and care centres; however, these decisions were subsequently rescinded as part of slowing down the pace of change in the early learning sector [CAB-23-MIN-0207.02].

Strengthening existing licensing and enforcement provisions

- 9 In May 2023, following a period of public consultation from January to February 2023, Cabinet agreed to amend the Regulations to strengthen existing licensing

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and enforcement provisions. These changes provide greater clarity and certainty for service providers and will help to ensure the Ministry can be an effective and responsive regulator. Cabinet agreed to:

- 9.1 allow the Secretary, at their discretion, to add conditions to a service provider's provisional licence if new matters of non-compliance are identified, where this is considered fair and reasonable;
- 9.2 allow a date to be set by when a new condition that is added to a provisional licence must be complied with, that is fair and reasonable, and that differs to dates that have been set for any existing conditions, but is no later than 12 months from when the licence was reclassified as provisional;
- 9.3 define 'permanently ceased to operate' as when:
 - 9.3.1 the service provider has notified the Secretary that it has permanently ceased to operate; or
 - 9.3.2 the Secretary is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following:
 - 9.3.2.1 there being no children enrolled and/or attending the service; or
 - 9.3.2.2 there being no staff employed or engaged and working in the service; or
 - 9.3.2.3 the service provider has not claimed early childhood education funding;
- 9.4 allow the Secretary, at their discretion, to grant a service provider approval to temporarily close their service, on application, for a period of up to three months;
- 9.5 provide for the Secretary, at their discretion, to extend a temporary service closure for a further period of up to three months;
- 9.6 provide for the Secretary, at their discretion, to allow a service provider to temporarily close for more than six months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:
 - 9.6.1 the service provider intends to reopen the service; and
 - 9.6.2 it is not possible for the service provider to find premises for which they will be granted a temporary relocation licence;
- 9.7 provide that the Secretary may, at their discretion, grant approval to temporarily close to a service provider whose licence has been reclassified as provisional, if considered fair and reasonable; and

- 9.8 provide that the Secretary must not grant approval to temporarily close to a service provider whose licence has been, or is likely to be, suspended [CAB-23-MIN-0207.02 refers].

Amendment Regulations for additional Tranche 2 proposals of the early learning regulatory review

- 10 The Amendment Regulations 2023 give effect to the Cabinet decisions for additional Tranche 2 proposals of the Review as outlined above.
- 11 We note that the Amendment Regulations do not include the Cabinet decision for persons responsible in licensed home-based education and care services to be 'locally based' [CAB-22-MIN-0581 refers]. Cabinet is yet to make final decisions on a definition of 'locally based' which is needed to support implementation of this requirement. This is due to concerns about the possible impact of this change on the home-based sector given the wider challenges home-based services are currently reporting. We therefore intend to revisit this proposal when this is more manageable for the sector.

Timing and 28-day rule

- 12 Following approval by the Executive Council, the Amendment Regulations will be Gazetted at least 28 days before they come into force. The Amendment Regulations will come into force on 26 February 2024, with the requirement that persons responsible hold a Full (Category One or Two) practising certificate coming into force six months later on 26 August 2024. This timing will provide the sector with sufficient time to comply with the new requirement.

Compliance

- 13 There are no inconsistencies between the Amendment Regulations and:
- 13.1 the principles of the Treaty of Waitangi;
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 13.3 the principles and guidelines set out in the Privacy Act 2020;
 - 13.4 relevant international standards and obligations, for example, the United Nations Convention on the Rights of Persons with Disabilities; and
 - 13.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 14 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

- 15 The Amendment Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 16 Two Regulatory Impact Assessments were submitted at the time that Cabinet approval was sought for the policy relating to the regulations. These will be made publicly available once Cabinet decisions are made on the regulations.

Publicity

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

Proactive release

- 18 We propose to release this paper proactively following submission to the Executive Council. Proactive release will be subject to redaction as appropriate under the Official Information Act 1982.

Consultation

- 19 The following agencies have been consulted or informed on the regulations outlined in this paper: The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, Ministry for Business, Innovation and Employment, Ministry for Social Development, Ministry of Health, Ministry of Justice, Office for Disability Issues, part of Whaikaha - Ministry of Disabled Peoples, Oranga Tamariki – Ministry of Children, New Zealand Qualifications Authority, Teaching Council Aotearoa New Zealand, and Education Review Office.

Recommendations

We recommend that the Cabinet Legislation Committee:

- 1 **note** that on 7 December 2022 the Cabinet Social Wellbeing Committee agreed to amend the Education (Early Childhood Services) Regulations 2008 to:
- 1.1 require persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services to hold a Full (Category One or Two) practising certificate, and for this requirement to commence six months after the commencement of other regulatory changes agreed below for persons responsible;
 - 1.2 require persons responsible in teacher-led early childhood education and care centres to:

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- 1.2.1 supervise children in attendance and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff;
- 1.2.2 provide education and care to children in attendance and guidance to teaching staff;
- 1.2.3 ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching; and
- 1.2.4 ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend;
- 1.3 require persons responsible in teacher-led early childhood education and care centres to hold an accredited first aid qualification and that they be included in the current 1:25 ratio for first aid qualification requirements;
- 1.4 require persons responsible in licensed hospital-based education and care services to:
 - 1.4.1 supervise children and staff at the service and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults;
 - 1.4.2 ensure there is at least one adult present when children are in the activity room;
 - 1.4.3 provide education and care to children and guidance to teaching staff; and
 - 1.4.4 ensure all staff are implementing the gazetted curriculum framework and know how to use it;
- 1.5 require that persons responsible in licensed home-based education and care services only work across up to two licences within each calendar month, and only one licence at any one time;
- 1.6 increase the maximum licence size for licensed home-based education and care services from 80 to 100 children;
- 1.7 require that persons responsible for licensed home-based education and care services be locally based, and undertake further consultation on a definition for 'locally based';
- 1.8 require persons responsible in licensed home-based education and care services to take all reasonable steps to observe, support, and provide guidance on the curriculum delivery in the home during their visits and to keep records of these activities; and

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- 1.9 require that persons responsible in licensed home-based education and care services provide professional development to educators on a regular basis and to keep records of any such discussion [CAB-22-MIN-0581 refers];
- 2 **note** that on 31 May 2023 the Cabinet Social Wellbeing Committee agreed to amend the Education (Early Childhood Services) Regulations 2008 to:
- 2.1 allow the Secretary, at their discretion, to add conditions to a service provider's provisional licence if new matters of non-compliance are identified, where this is considered fair and reasonable;
- 2.2 allow a date to be set by when a new condition that is added to a provisional licence must be complied with, that is fair and reasonable, and that differs to dates that have been set for any existing conditions, but is no later than 12 months from when the licence was reclassified as provisional;
- 2.3 define 'permanently ceased to operate' as when:
- 2.3.1 the service provider has notified the Secretary that it has permanently ceased to operate; or
- 2.3.2 the Secretary is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following:
- 2.3.2.1 there being no children enrolled and/or attending the service; or
- 2.3.2.2 there being no staff employed or engaged and working in the service; or
- 2.3.2.3 the service provider has not claimed early childhood education funding;
- 2.4 allow the Secretary, at their discretion, to grant a service provider approval to temporarily close their service, on application, for a period of up to three months;
- 2.5 provide for the Secretary, at their discretion, to extend a temporary service closure for a further period of up to three months;
- 2.6 provide for the Secretary, at their discretion, to allow a service provider to temporarily close for more than six months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:
- 2.6.1 the service provider intends to reopen the service; and
- 2.6.2 it is not possible for the service provider to find premises for which they will be granted a temporary relocation licence;

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- 2.7 provide that the Secretary may, at their discretion, grant approval to temporarily close to a service provider whose licence has been reclassified as provisional, if considered fair and reasonable; and
- 2.8 provide that the Secretary must not grant approval to temporarily close to a service provider whose licence has been, or is likely to be, suspended [CAB-23-MIN-0207.02 refers];
- 3 **note** that the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 will give effect to the decisions referred to in recommendations 1 and 2 above;
- 4 **note** that the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 do not implement recommendation 1.7 above as Cabinet is yet to make final decisions on the definition of 'locally based', which is needed to implement this requirement; this will be revisited at a time when this requirement is more manageable for the sector;
- 5 **authorise** the submission to the Executive Council of the Education (Early Childhood Services) Amendment Regulations (No 2) 2023;
- 6 **note** that the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 will come into force by 26 February 2024, with the requirement that persons responsible in teacher-led early childhood and education centres, and licensed hospital- and home-based education and care services hold a Full (Category One or Two) practising certificate coming into force on 26 August 2024.

Authorised for lodgement

Hon Jan Tinetti

Minister of Education

Authorised for lodgement

Hon Jo Luxton

Associate Minister of Education

Briefing Note: Cabinet paper for lodging and talking points – Amendments to the Education (Early Childhood Services) Regulations 2008 (licensing and person responsible requirements)

To:	Hon Jan Tinetti, Minister of Education Hon Jo Luxton, Associate Minister of Education		
Date:	9 August 2023	Priority:	High
Security Level:	In Confidence	METIS No:	1315489
Drafter:	Veronica Adams	DDI:	9(2)(a)
Key Contact:	Paul Scholey	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper provides you with a Cabinet paper, including annexes, that seeks agreement to amendment regulations for Tranche 2 of the Early Learning Regulatory Review. The Cabinet paper must be lodged on 10 August 2023 for consideration by the Legislation Committee (LEG) on 17 August 2023.

This paper also provides talking points for LEG on 17 August 2023.

Summary

1. On 20 July 2023, we provided you with a draft Cabinet paper seeking approval of amendments to the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:
 - a. strengthen the person responsible role in teacher-led early childhood and education centres, licensed hospital-based education and care services, and licensed home-based education and care services; and
 - b. strengthen the existing licensing and enforcement provisions, including to allow the Secretary for Education (the Secretary) to add conditions to a service provider's provisional licence, provide a definition of 'permanently ceased to operate', and allow the Secretary to grant temporary service closures.
2. The draft Cabinet paper also noted that you are not progressing the requirement that would require persons responsible in licensed home-based education and care services be 'locally based' at this time, and that you will look to revisit this proposal when this is more manageable for the sector. This follows from feedback from the home-based sector who voiced concerns about the impact of this requirement, as well

as there being no Cabinet agreement on a definition for 'locally based' [METIS 1314263 refers].

3. We consulted with other government agencies from 21 to 28 July 2023. Overall, agencies were supportive of the Cabinet paper and amendment regulations, with two agencies suggesting further changes to the regulations. The Teaching Council Aotearoa New Zealand sought greater clarification and visibility of the proposed regulations regarding the person responsible requirements around holding a full practising certificate and having a first aid qualification. Additionally, the Education Review Office (ERO) sought a policy change so they could also have authority to add new conditions to a service provider's provisional licence, alongside the Secretary. We considered this feedback carefully but did not make any changes to the amendment regulations.
4. This Cabinet paper must be lodged on 10 August 2023 for consideration by LEG on 17 August 2023. If we do not meet this timeframe, there is a risk that final Cabinet approval of the amendment regulations might not be made before the House of Representatives is adjourned, meaning that these decisions, and the date from which they can come into effect, will be delayed until the next term of Government.

Proactive Release

- a. **agree** that this briefing is released after Cabinet decisions on the proposals, with any information that may need to be withheld done so in line with provisions of the Official Information Act 1982.

Hon Jan Tinetti
Agree / Disagree

Hon Jo Luxton
Agree / Disagree

P. Scholey
Paul Scholey
Senior Policy Manager, ECE Policy
Te Pou Kaupapahere

10/08/2023

Hon Jan Tinetti
Minister of Education

Jo Luxton
Hon Jo Luxton
Associate Minister of Education

B. S. 23

Background

1. On 20 July 2023, we provided you with a draft Cabinet paper seeking approval of amendments to the Regulations to strengthen the person responsible role in teacher-led early childhood and education centres, licensed hospital-based education and care services, and licensed home-based education and care services.
2. The Cabinet paper also seeks amendments to the Regulations to strengthen the existing licensing and enforcement provisions, including to allow the Secretary for Education to add conditions to a service provider's provisional licence, provide a definition of 'permanently ceased to operate', and allow the Secretary to grant temporary service closures.
3. We consulted with other government agencies from 21 to 28 July 2023. Overall, agencies were supportive of the proposed amendment regulations. Of the agencies who provided feedback, the Teaching Council Aotearoa New Zealand sought greater clarification of the person responsible requirements around them needing to hold a full practising certificate, and also sought greater visibility of the person responsible requirement that they must hold a first aid qualification. Additionally, the Education Review Office (ERO) sought a policy change so they could also have authority to add new conditions to a service provider's provisional licence.

Summary of agency feedback and our response

Improving the clarity and visibility of the person responsible requirements around practising certificates and first aid qualifications

4. The Teaching Council's feedback was that the amendment regulations could be made clearer by including that persons responsible *must be registered* as well as have a recognised qualification and hold a practising certificate, as per the new requirement. It was also suggested that the regulations should specify the exact name of the practising certificates ("Category One or Two" practising certificate"), rather than "full practising certificate" which is in the current regulations.
5. The Teaching Council also provided feedback that the requirement that persons responsible hold a first aid qualification needed to be more visible in the regulations, and suggested it be included with the other person responsible requirements in Part 3 of the amendment regulations, in addition to the table in Schedule 1.
6. The advice from our Legal Services team and the Parliamentary Counsel Office was that these changes were unnecessary. The term "full practising certificate" sets out the type of certificate required by persons responsible, whereas "Category One or Two" is a label assigned by the Teaching Council and is not a term used in legislation. Moreover, given the person responsible requirement is that they must hold a full practising certificate, this already implies that the person responsible must be registered.

Allowing for the Education Review Office to add new conditions to a service provider's provisional licence

7. One of the policy proposals outlined in the Cabinet paper is that the Secretary can add new conditions to a service provider's provisional licence when new compliance issues arise. ERO suggested that it be added as an authority that can add conditions to a service provider's provisional licence alongside the Secretary. This would be in cases where new compliance issues arise following an ERO review.

8. This would be a significant change to the current ECE policy and regulatory settings, needing further consultation with the sector and new Cabinet policy decisions. We have informed ERO that we cannot include this as part of the current amendment regulations before Cabinet, and will discuss this further with them for future consideration.

Next steps

9. The timeline for seeking Cabinet approval is outlined below.

Date	Activity
10 August 2023	Cabinet paper lodged for LEG
17 August 2023	LEG meeting
21 August 2023	Cabinet approval and Executive Council
By 25 August 2023	Regulations gazetted
26 February 2024	Regulatory amendments come into force (except requirement for person responsible to hold a Full (Category One or Two) practicing certificate – see below)
26 August 2024	Requirement that persons responsible must hold a Full (Category One or Two) practicing certificate comes into force

10. If we do not meet the above timeframes, there is a risk that final Cabinet approval of the regulations will not be made before the House of Representatives is adjourned on the week of 4 September 2023, meaning that these decisions, and the date from which they can come into effect, will be delayed until the next term of Government.

Annexes

The following are annexed to this paper:

Annex 1: s9(2)(g)(i)

Annex 2: Final Cabinet paper: Amendments to Education (Early Childhood Services) Regulations 2008

Annex 3: Education (Early Childhood Services) Amendment Regulations (No 2) 2023



Cabinet Legislation 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.

Education (Early Childhood Services) Amendment Regulations (No 2) 2023

Portfolio Education

On 17 August 2023, the Cabinet Legislation Committee:

- 1 **noted** that on 7 December 2022 the Cabinet Social Wellbeing Committee agreed to amend the Education (Early Childhood Services) Regulations 2008 to:
 - 1.1 require persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services to hold a Full (Category One or Two) practising certificate, and for this requirement to commence six months after the commencement of other regulatory changes agreed below for persons responsible;
 - 1.2 require persons responsible in teacher-led early childhood education and care centres to:
 - 1.2.1 supervise children in attendance and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff;
 - 1.2.2 provide education and care to children in attendance and guidance to teaching staff;
 - 1.2.3 ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching; and
 - 1.2.4 ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend;
 - 1.3 require persons responsible in teacher-led early childhood education and care centres to hold an accredited first aid qualification and that they be included in the current 1:25 ratio for first aid qualification requirements;

- 1.4 require persons responsible in licensed hospital-based education and care services to:
- 1.4.1 supervise children and staff at the service and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults;
 - 1.4.2 ensure there is at least one adult present when children are in the activity room;
 - 1.4.3 provide education and care to children and guidance to teaching staff; and
 - 1.4.4 ensure all staff are implementing the gazetted curriculum framework and know how to use it;
- 1.5 require that persons responsible in licensed home-based education and care services only work across up to two licences within each calendar month, and only one licence at any one time;
- 1.6 increase the maximum licence size for licensed home-based education and care services from 80 to 100 children;
- 1.7 require that persons responsible for licensed home-based education and care services be locally based, and undertake further consultation on a definition for 'locally based';
- 1.8 require persons responsible in licensed home-based education and care services to take all reasonable steps to observe, support, and provide guidance on the curriculum delivery in the home during their visits and to keep records of these activities; and
- 1.9 require that persons responsible in licensed home-based education and care services provide professional development to educators on a regular basis and to keep records of any such discussion;

[SWC-22-MIN-0232];

2 **noted** that on 6 June 2023 Cabinet agreed to amend the Education (Early Childhood Services) Regulations 2008 to:

- 2.1 allow the Secretary of Education, at their discretion, to add conditions to a service provider's provisional licence if new matters of non-compliance are identified, where this is considered fair and reasonable;
- 2.2 allow a date to be set by when a new condition that is added to a provisional licence must be complied with, that is fair and reasonable, and that differs to dates that have been set for any existing conditions, but is no later than 12 months from when the licence was reclassified as provisional;

- 2.3 define 'permanently ceased to operate' as when:
- 2.3.1 the service provider has notified the Secretary that it has permanently ceased to operate; or
 - 2.3.2 the Secretary is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following:
 - 2.3.2.1 there being no children enrolled and/or attending the service; or
 - 2.3.2.2 there being no staff employed or engaged and working in the service; or
 - 2.3.2.3 the service provider has not claimed early childhood education funding;
 - 2.4 allow the Secretary, at their discretion, to grant a service provider approval to temporarily close their service, on application, for a period of up to three months;
 - 2.5 provide for the Secretary, at their discretion, to extend a temporary service closure for a further period of up to three months;
 - 2.6 provide for the Secretary, at their discretion, to allow a service provider to temporarily close for more than six months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:
 - 2.6.1 the service provider intends to reopen the service; and
 - 2.6.2 it is not possible for the service provider to find premises for which they will be granted a temporary relocation licence;
 - 2.7 provide that the Secretary may, at their discretion, grant approval to temporarily close to a service provider whose licence has been reclassified as provisional, if considered fair and reasonable; and
 - 2.8 provide that the Secretary must not grant approval to temporarily close to a service provider whose licence has been, or is likely to be, suspended;

[CAB-23-MIN-0207.02];

- 3 **noted** that the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 (the Regulations) give effect to the decisions referred to above;
- 4 **noted** that the Regulations do not implement the decision in paragraph 1.7 above as Cabinet is yet to make final decisions on the definition of 'locally based', which is needed to implement this requirement, and that this will be revisited at a time when this requirement is more manageable for the sector;
- 5 **authorised** the submission to the Executive Council of the Education (Early Childhood Services) Amendment Regulations (No 2) 2023 [PCO 25278/8.0];

- 6 **noted** that the Regulations will come into force by 26 February 2024, with the requirement that persons responsible in teacher-led early childhood and education centres, and licensed hospital- and home-based education and care services hold a Full (Category One or Two) practising certificate coming into force on 26 August 2024.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Ayesha Verrall
Hon Damien O'Connor
Hon Andrew Little
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Willow-Jean Prime
Hon Dr Duncan Webb
Hon Rachel Brooking
Hon Jo Luxton
Tangi Utikere, MP (Chief Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG