



## **Education Report:** Dates for regulating the promotion of healthy eating and nutrition in all schools, and the provision of healthy drinks in primary schools

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	3 December 2021	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1278189
<b>Drafter:</b>	Dan Martin	<b>DDI:</b>	463 1941
<b>Key contact and number:</b>	9(2)(a)	<b>DDI:</b>	463 8704
<b>Messaging seen by Communications team:</b>	N/A	<b>Round robin:</b>	No

### Purpose of report

This paper provides options for the commencement date of Regulations to replace and strengthen the current National Administration Guideline (NAG) related to healthy food and nutrition.

### Summary

1. We have developed three options for the commencement date of the Regulations proposed to replace the current NAG 5b. The Regulations will require school boards to promote healthy eating and nutrition for all children. They will also introduce a new duty on school boards to only provide healthy drinks for students in years 1-8.
2. We recommend that the Regulations commence in January/February 2023, at the start of term 1 (Option 2). This option means a legal duty to promote healthy eating and nutrition is in place at a similar time to the existing NAG ceasing to have effect in January 2023. It also ensures sufficient lead in time for schools to implement this new duty, with Term 4 operating as a transition term.
3. We identified two other options – option 1 involves Regulations commencing in October 2022. However, this option is not preferred because school boards will have limited time to implement and prepare for these changes. Option 3 involves Regulations commencing at the start of term 4 in 2024. This would result in a significant gap between the NAG 5b duty ceasing and the Regulations commencing, resulting in schools having no formal responsibility to promote healthy eating and nutrition during this time.
4. If you agree to option 2, we will provide you with a draft discussion document and Cabinet paper in late January 2022, to be considered at the Social Wellbeing Committee in February 2022. To meet the deadline for lodgement at Social Wellbeing Committee in February, we are proposing to undertake departmental consultation in January 2022.

## Recommended Actions

---

The Ministry of Education recommends that you:

- a. **note** that we have identified three options for the commencement date for Regulations to promote healthy food and nutrition in all schools, and a new duty to only provide healthy drinks in primary schools:
- i. Option 1 – commencement date of October 2022 (start of Term 4)
  - ii. Option 2 – Gazetting of Regulations in October 2022 with a commencement date of January/February 2023 (start of Term 1)
  - iii. Option 3 – commencement date of October 2024 (start of Term 4)
- Noted**
- b. **note** that our preferred option is option 2, because it aligns with the start of a new school year and ensures the duty is in place at a similar time to the existing National Administration Guideline ceasing to have effect in January 2023
- Noted**
- c. **agree** the date when the proposed Regulations should commence:
- i. Option 1: October 2022, at the start of term four; or
  - ii. Option 2: January/February 2023, at the end of term one (preferred option); or
  - iii. Option 3: October 2024, at the start of term four
- Agree / Disagree**
- Agree / Disagree**
- Agree / Disagree**
- d. **agree** that we can undertake departmental consultation on a Cabinet paper in January 2022, ahead of you reviewing the draft Cabinet paper
- Agree / Disagree**

## Proactive Release Recommendation

---

- e. **agree** that the Ministry of Education release this report in full once it has been considered by you and following Cabinet's announcement of a decision to consult on proposals.
- Agree / Disagree**

9(2)(a)



**Group Manager**  
**Te Puna Kaupapahere - Policy**  
03/12/2021

Hon Chris Hipkins  
**Minister of Education**

20/12/21

## Options for introducing Regulations relating to healthy food and drinks

---

1. On 29 June 2021, you agreed to us commencing work on transferring the existing National Administration Guideline 5b, which requires school boards to “promote healthy eating and nutrition for all students” into Regulations. You also indicated that you would like to strengthen this requirement and impose a duty on school boards to provide only healthy drinks to students, which would apply to all schools with a cohort in years 1 - 8 (METIS 1257543 refers).
2. The current NAGs will cease to have effect on 1 January 2023. You have requested advice on options for dates, excluding 2023, when the new Regulations could come into force.
3. We considered three options for the date on which the Regulations could come into force. They are:
  - a. Option one – Regulations come into force at the beginning of term four, in October 2022;
  - b. Option two – Regulations are put in place in late 2022, but come into force at the start of Term 1 in 2023 (recommended option);
  - c. Option three – Regulations come into force during 2024, at the start of term four.
4. The risks and benefits of each option are summarised below.

### **Option 1 – Regulations commence in October 2022 at the start of term four**

#### *Benefits*

5. This option would bring the Regulations into force the quickest, and provides sufficient time for policy and consultation work to take place to ensure the existing NAG can be transferred into new Regulations before the NAGs cease to have effect on 1 January 2023.
6. Triennial parent and staff school board elections should be completed by the end of September, and the new boards will learn about the new, strengthened duty to provide only healthy drinks as part of their usual induction.

#### *Risks*

7. The main risk with this option is that there is minimal time between the Regulations being gazetted and coming into force – reducing the time available for school boards to implement the new duty. There may be funding and practical implications for school boards to consider – for example revenue from tuck shops, contracts that may need to be cancelled with tuck shop providers and consideration of whether there is sufficient infrastructure (ie water fountains) on school sites.

### **Option 2 – Regulations commence in Jan/Feb 2023 at the start of term one**

#### *Benefits*

8. The main benefit of this option is that it gives school boards a longer lead in time to implement the new duty. This means greater alignment with school's annual budgeting cycle as well as Term 4 in 2022 operating as a transitional term.

9. This approach would also align better with the cessation of the NAGs and the introduction of new duties through Regulations.

#### *Risks*

10. The Regulations coming into force at the start of Term 1 in 2023 means there may be some impact on school boards adjusting to the new requirements over the holidays. However, gazetting the Regulations in October would allow for a transition term for school boards.

### **Option 3 – Regulations commence in October 2024 prior to term four**

#### *Benefits*

11. Delaying the Regulations coming into force until October 2024 would allow more time for the voluntary Healthy Active Learning policy led by Public Health Dietitians to roll out more widely across schools. This work is monitored by the Ministry of Health and may provide useful evidence for the scope and scale of the eventual Regulations and the associated Regulatory Impact Analysis.

#### *Risks*

12. The most significant risk presented by this option is that, between 1 January 2023 when NAG 5b ceases to have effect, and the Regulations coming into force in October 2024, there would be a period of twenty-two months during which all schools will have no formal responsibility to promote healthy eating and nutrition and primary schools could continue to provide unhealthy drinks.
13. It is not possible to say with certainty whether this would have a material effect on school approaches to promoting or providing healthy food and drinks in practice. We understand that 79 percent of primary schools and 16 percent of secondary schools were already water-only in 2016<sup>1</sup>. This exceeds the current requirements under NAG 5b, suggesting that many primary schools are willing to develop healthy school policies under the current NAG requirement. However, in secondary schools, this may lead to a temporary reduction in the amount of healthy food and nutrition promotion that takes place.
14. In order to mitigate this risk, a communications plan could signal to school boards the intention to develop Regulations in this area. This would make clear to school boards that NAG 5b no longer having effect is temporary, and that schools should anticipate replacement Regulations which replicate, and strengthen, the existing requirement.

#### **Recommended option**

15. Our preferred option is option 2 (Regulations are Gazetted in October 2022 and commence in Jan/Feb 2023 at the start of term one). This option ensures schools have more time to implement this new duty and aligns with the timing of the existing NAG ceasing to have effect in January 2023.

---

<sup>1</sup> According to a survey performed by the University of Auckland in 2016.

## Next steps

---

16. We are currently working through how the proposed Regulations will apply in practice in schools with both primary and secondary-aged students. We are considering options for managing these situations in ways that are workable for the schools concerned. We are also investigating any data we already hold on potential funding implications for schools of a new duty, as well as the alignment with the Ka Ora Ka Ako food and drink standards.
17. If you agree to option one or two, we will provide you with an Education Report, Cabinet paper and discussion document on 18 January 2022 for Ministerial consultation. If you agree to option three, advice will follow at a later date.