



Education Report: Education and Training Bill - amendments to be recommended for the Departmental Report

To:	Hon Chris Hipkins, Minister of Education		
Date:	12 February 2020	Priority:	High
Security Level:	In Confidence	METIS No:	1218628
Drafter:	Cindy O'Brien	DDI:	s 9(2)(a)
Key Contact:	Ben O'Meara	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper provides you with a draft Cabinet paper to seek proposed amendments to the Education and Training Bill in our Departmental report to the Select Committee.

Summary

1. The attached draft Cabinet paper seeks Cabinet approval for the following changes to the Education and Training Bill at Departmental report stage:
 - a. A new regulation making power to provide for dispute resolution panels to receive, obtain and use information related to dispute resolution proceedings;
 - b. Allowing dispute panels to recommend or direct (where parties have agreed to directions) that the school take any other action recommended or directed by the panel to remedy the matter in dispute;
 - c. Allow the Chief Referee to decline an application for dispute resolution for reasons including that the dispute relates to a trivial or vexatious complaint;
 - d. Delay the commencement of the new two-stage early learning services licensing process for two years (or earlier by Order in Council);
 - e. Provide for fit and proper person assessment criteria for stage one of the early learning services two-stage licensing process;
 - f. Provide for new regulations covering fee setting, approval processes and procedures, and approval conditions, to support the new first stage of the licensing process;
 - g. Provide for the first stage licence approval to be of fixed term duration;
 - h. Correct an error in the Bill to restrict the applicability of ERO's new power to obtain information from parent entities to the parent entities of licensed ECE services (rather than parent entities of all organisations ERO reviews).
2. The new dispute resolution panel provisions have resulted from the discussions we've had with MBIE and the Ministry of Justice.

3. Because the Departmental report is likely to be required to be presented on 1 April 2020, we will need Cabinet approvals for any policy changes in March. We are aiming for SWC on 11 March.
4. With your agreement, we plan to undertake Departmental consultation from Tuesday 18 February, to enable you to consult your colleagues in the week of 24 February, and to lodge the paper on 5 March.

Recommended Actions

The Ministry of Education recommends that you:

- a. **note** that the Education and Workforce Committee is due to report the Education and Training Bill back to the House by 4 May, and the Departmental Report is likely to be required by 1 April
- b. **agree** to the Ministry beginning Departmental consultation on the attached draft Cabinet paper

Noted

Agree / Disagree

Proactive release recommendation

- c. **agree** that this Education Report should NOT be proactively released until the Bill is reported back to Parliament.

Agree / Disagree



Dr Andrea Schöllmann
Deputy Secretary
Education System Policy

12/02/2020



Hon Chris Hipkins
Minister of Education

14/2/20

Background

1. The attached draft Cabinet paper sets out proposed amendments to the Education and Training Bill that require Cabinet policy approval if they are to be included in the Departmental Report on the Bill.
2. The amendments to the dispute resolution panel provisions have resulted from discussions with MBIE's Centre for Dispute Resolution and the Ministry of Justice.
3. The amendments to the ECE two stage licensing provisions are included in our Education Report to you of Monday 3 February, METIS 1213205 "Review of the Early Learning Regulation System: Scope and Timeframes". These relate to the need for a delayed commencement to enable time for a budget bid and the development of new processes to support the implementation of the new two-stage licensing process.
4. We have now clarified that the fit and proper person test currently in the ECE regulations needs to be modified to make it fit for purpose for the stage one network management approval part of the licensing process. This is reflected in the attached draft Cabinet paper, which explains that the stage one test recommended for the Bill is based on the test in the ECE regulations, and is informed by other fit and proper tests, including the one for private training establishments under the 1989 Act.
5. We have also determined that we will need a specific regulation making provision for the first stage of the licensing process to cover fee-setting, approval policies and procedures and approval conditions. We also recommend that Ministerial approval for stage one applications should lapse after five years, because not having a time limit risks providers "land-banking" capacity in the network for long periods of time without applying for a stage 2 licence to operate.
6. Finally, an error in the original Cabinet decision seeking approval for ERO's power to enter and review ECE parent entities has resulted in the Bill's provisions being drafted more broadly than intended. This error is also corrected in the attached draft Cabinet paper.

Annexes

Annex 1: (Draft) Cabinet paper: Education and Training Bill: additional policy approvals