



AIDE MEMOIRE

Proposed changes to the early learning regulatory system

Date:	29 July 2020	Priority:	High
To:	Hon Tracey Martin	METIS No:	1236086
From:	John Brooker	Security Level:	In Confidence

Proposal

1. I am seeking Cabinet's agreement for the Minister of Education to issue drafting instructions and begin public consultation on tranche one of the review of the early learning regulatory system (the Review).

Purpose of the Review

2. The Government is committed to a world class early learning system that delivers quality settings for our tamariki. This requires a regulatory system that is clear and fit for purpose.
3. The Review is intended to ensure the regulatory system supports high quality educational outcomes and enables the Ministry to perform its role as regulator and steward of the system.

We need to review the early learning regulatory system

4. The structure of the early learning sector has changed since the Regulations took effect in 2008. Previously, the sector was comprised primarily of community-based services. However, over the past decade, there has been a surge in private for-profit services.
5. The Ministry has also seen an increasing number of complaints and incident notifications regarding early learning services in recent years.
6. The Early Learning Action Plan 2019-2029 and Review of Home-based Early Childhood Education made a number of recommendations that require regulatory changes.
7. Earlier this year, the Regulations Review Committee reviewed a recent amendment to the Regulations. The Committee questioned the meaning and clarity of the Regulations and how they could be applied in a practical setting. Ultimately, the Committee recommended completely re-writing the Regulations to improve accessibility for users.

A staged approach to reviewing the Regulations

8. The Minister proposes reviewing the Regulations in three tranches. This allows high priority issues to be dealt with quickly, with other areas that require more work to come later.
9. Tranche one will address known issues within the current regulatory system that present limitations to ensuring regulatory standards are met, or are

cumbersome to implement. These issues pose a degree of risk to the health, safety and wellbeing of children.

10. Tranche two will cover commitments made in the Early Learning Action Plan and the Review of Home-based Early Childhood Education.
11. Tranche three are the areas that require significant further work. This includes ensuring that children are at the centre of our system and the system better supports the Crown's responsibilities under Te Tiriti o Waitangi.

Tranche one of the Review

12. As mentioned, tranche one targets regulatory gaps that require attention due to the degree of risk they pose to the health, safety and wellbeing of children.
13. Tranche one involves amending the Regulations and Licensing Criteria in eight ways:
 - 13.1. Clarifying that the fee for a new licence is payable upon application and is non-refundable (paragraphs 24-26)
 - 13.2. Clarifying the information used to assess an application for a probationary licence (paragraphs 27-29). Probationary licences are the category of licence for new services
 - 13.3. Clarifying the provisions for licence amendments when the service provider changes (paragraphs 30-37)
 - 13.4. Creating written directives for health and safety matters that require immediate attention (paragraphs 38-42)
 - 13.5. Clarifying provisions relating to provisional licences (paragraphs 43-50). Provisional licences are a key lever for ensuring compliance with the Regulations
 - 13.6. Removing the 21 day minimum notice period for licence suspensions for not returning a full licence when invalid and for a change in control (paragraphs 51-59). Licences are suspended when there has been serious non-compliance or there is a serious risk to the health safety or wellbeing of children.
 - 13.7. Consolidating existing person responsible requirements (paragraphs 60-63). The person responsible is the person within a service who is responsible for the education, care, comfort, and health and safety of the children attending
 - 13.8. Increasing the minimum room temperature from 16 degrees to 18 degrees Celsius (paragraphs 64-67).
14. After consultation, the Minister will return to Cabinet with final amendments to Regulations and the Licensing Criteria.

Timing

15. The Minister intends to start public consultation towards the end of October for tranche one. Consultation will take eight weeks, and will be conducted primarily online, drawing on a discussion document and draft regulations.
16. As tranche one supports high priority areas largely relating to children's health, safety and wellbeing, the Minister wants to action the changes by early next

year. We need Cabinet's support to start this process and to allow sufficient time for the Parliamentary Counsel Office to draft the new Regulations.