

Education Report: Review of the Early Learning Regulatory System: Scope and Timeframes

To:	Hon Chris Hipkins, Minister of Education Hon Tracey Martin, Associate Minister of Education		
Date:	3 February 2020	Priority:	High
Security Level:	In Confidence	METIS No:	1218418
Drafter:	Kirsty Macdonald	DDI:	s 9(2)(a)
Key Contact:	Damian Edwards	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

The purpose of this paper is for you to:

- **Agree** to the Terms of Reference for the Review of the Early Learning Regulatory System and the proposed scope, process and timelines for tranche one
- **Agree** to changes to the early childhood education (ECE) provisions in the Education and Training Bill.

Summary

- 1 The Ministry of Education has begun a Review of the Early Learning Regulatory System, which is intended to ensure that it is clear and fit for purpose to support high quality educational outcomes. We are seeking your agreement to Terms of Reference for the Review (attached as Annex 1).

Proposed scope and timing of the Review

- 2 We are proposing that the Review be completed in three tranches. The first tranche would address areas in the current regulatory regime that require clarification or pose a degree of risk to the health, safety and wellbeing of children. This tranche would include:
 - aspects of licensing identified as limiting the Ministry's ability to ensure regulatory standards are met
 - clarifying definitions of 'service provider' and 'child', and streamlining requirements relating to teacher qualifications and registration
 - introducing a fee for licence amendments.

s 9(2)(f)(iv)

3

- 4 We recommend a short timeframe for tranche one, with Cabinet approval to consult on draft regulations being sought in March 2020. This would enable amendments in this tranche to be agreed before the Election.
- 5 Tranches two and three would be completed in mid-2021 and mid-2022. Tranche two would primarily focus on regulatory changes arising from the Early Learning Action Plan. This includes regulating for 80% qualified teachers and regulatory changes arising from the Review of Home-based ECE. Tranche three would include longer-term pieces of work and any other matters that emerge from the Regulatory Stewardship assessment.
- 6 You have expressed interest in broadening the definition of parent-led service to include playcentres that are not affiliated with Playcentre Aotearoa. We seek your agreement to include consideration of a generic definition of parent-led services as part of tranche three.
- 7 Due to the impact on the sector, each of the tranches will involve public consultation. You may wish to announce the Review at the March meeting of the Early Childhood Advisory Committee.

Recommended amendments to ECE provisions in the Education & Training Bill

- 8 The upcoming Education and Training Bill includes network planning provisions that are due to come into effect upon enactment. These provisions include the introduction of two-stage licensing – a new process that will require considerable change within the Ministry and for the sector. We seek your agreement to delay the commencement of the network planning provisions in the Education and Training Bill to allow for these changes to be made.
- 9 One of the criteria in the Bill for determining if an applicant for a new licence is appropriate is that the applicants are fit and proper persons. There is currently no definition in the Bill of what is meant by a fit and proper person. We therefore seek your agreement to include a definition in the Bill that aligns with what is in the Education (Early Childhood Services) Regulations 2008.
- 10 The Education and Training Bill has a provision that would enable the Education Review Office to obtain information from parent entities of services they review. This provision was intended to apply only to early learning services, but as currently drafted applies more broadly. We seek your agreement to restrict this to parent entities of early learning services for which the Education Review Office has oversight responsibilities under the 1989 Act.

Recommended Actions

The Ministry of Education recommends you:

- a. **approve** the attached Terms of Reference for the Review of the Early Learning Regulatory System

Minister of Education **Approved / Not approved**

- b. **agree** to the proposed scope and timeframes for tranche one of the Review of the Early Learning Regulatory System

Minister of Education **Agree / Disagree**

- c. **agree** to consider a generic definition of parent-led services in the regulatory framework as part of the Regulatory Review

Minister of Education **Agree / Disagree**

Associate Minister of Education **Agree / Disagree**

- d. **agree** to announce the Review of the Early Learning Regulatory System at the Early Childhood Advisory Committee meeting on Wednesday 4 March

Minister of Education **Agree / Disagree**

- e. **agree** to delay the commencement of the network planning provisions in the Education and Training Bill to either two years following enactment of the Bill unless brought into effect earlier by Order in Council

Minister of Education **Agree / Disagree**

- f. **agree** to include a definition in the Education and Training Bill of 'fit and proper person' for the purposes of applying for a licence to operate a new early learning service under clause 17 of the Bill which is aligned with Regulation 8 of the Education (Early Childhood Services) Regulations 2008

Minister of Education **Agree / Disagree**

- g. **agree** to amend the Education and Training Bill to restrict the applicability of the Education Review Office's proposed power regarding parent entities, to parent entities of early learning services for which the Education Review Office has oversight responsibilities under the 1989 Act

Minister of Education **Agree / Disagree**

- h. **proactively release** this Education Report and attached Terms of Reference after Cabinet has agreed to the scope and process for the Review of the Early Learning Regulatory System

Minister of Education **Release/Not release**

Associate Minister of Education **Agree / Disagree**



Damian Edwards
**Associate Deputy Secretary
Education System Policy**

3/2/20



Hon Chris Hipkins
Minister of Education

17/2/20

Hon Tracey Martin
Associate Minister of Education

 / /

Recommended Actions

The Ministry of Education recommends you:

- a. **approve** the attached Terms of Reference for the Review of the Early Learning Regulatory System

Minister of Education **Approved / Not approved**

- b. **agree** to the proposed scope and timeframes for tranche one of the Review of the Early Learning Regulatory System

Minister of Education **Agree / Disagree**

- c. **agree** to consider a generic definition of parent-led services in the regulatory framework as part of the Regulatory Review

Minister of Education **Agree / Disagree**

Associate Minister of Education **Agree / Disagree**

- d. **agree** to announce the Review of the Early Learning Regulatory System at the Early Childhood Advisory Committee meeting on Wednesday 4 March

Minister of Education **Agree / Disagree**

- e. **agree** to delay the commencement of the network planning provisions in the Education and Training Bill to either two years following enactment of the Bill unless brought into effect earlier by Order in Council

Minister of Education **Agree / Disagree**

- f. **agree** to include a definition in the Education and Training Bill of 'fit and proper person' for the purposes of applying for a licence to operate a new early learning service under clause 17 of the Bill which is aligned with Regulation 8 of the Education (Early Childhood Services) Regulations 2008

Minister of Education **Agree / Disagree**


- g. **agree** to amend the Education and Training Bill to restrict the applicability of the Education Review Office's proposed power regarding parent entities, to parent entities of early learning services for which the Education Review Office has oversight responsibilities under the 1989 Act

Minister of Education **Agree / Disagree**

- h. **proactively release** this Education Report and attached Terms of Reference after Cabinet has agreed to the scope and process for the Review of the Early Learning Regulatory System

Minister of Education **Release/Not release**

Associate Minister of Education **Agree / Disagree**


Damian Edwards
Associate Deputy Secretary
Education System Policy

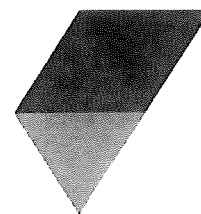
3/2/20

Hon Chris Hipkins
Minister of Education

1/1


Hon Tracey Martin
Associate Minister of Education

23/2/2020



Scope of the Review

- 1 The Ministry of Education (the Ministry) has recently begun a Review of the Early Learning Regulatory System to ensure it is fit for purpose to support high quality educational outcomes for all children. This will include ensuring there are effective pathways for dealing with services that are non-compliant with regulatory standards. This will require consideration be given to what is meant by high quality education in the early learning context as well as the Ministry's role as both a regulator, alongside other agencies, and as steward of the system.
- 2 This Review is timely due to the significant changes in the sector since the current regulatory system was established in 2008, as well as those proposed as part of the Early Learning Action Plan (Action Plan) and Review of Home-based Education. There have also been a number of incidents in recent years that have highlighted limitations or a lack of responsiveness in the current regulatory framework. This makes it difficult or cumbersome to hold service providers accountable and as a consequence may pose some level of risk to those attending early learning.
- 3 The outcomes of the Review will be tested against the objectives for education that the Government has set out for the education work programme. This will ensure that any changes proposed as part of the Review are aligned with the vision for education. Consideration will also be given to the impact on quality, equity and choice, which are key outcomes sought in the Action Plan.
- 4 As this Review is intended to cover the whole regulatory system, and is not targeted to a particular aspect of the system, it will be completed in tranches to ensure that the high priority issues are addressed in a timely fashion.
- 5 The Ministry is also developing a regulatory stewardship approach to assess our current stock of regulations against the Government's expectations for good regulatory practice. As part of this work we will be developing a prioritised action plan of regulatory changes required to enhance the system. This work will take a number of months to complete and will inform later tranches of the Review.
- 6 If we were to progress the full Review as one piece of work it would not be completed until 2022. This is because there is further policy work to be done on the less developed proposals in the Action Plan. This would mean that the high priority matters we have identified, and any high priority actions from the work on regulatory stewardship, would not be dealt with until 2022 which poses an element of risk.
- 7 We have developed a Terms of Reference document, which includes a more detailed scope and will guide the work. We have attached the Terms of Reference to this report for your approval.

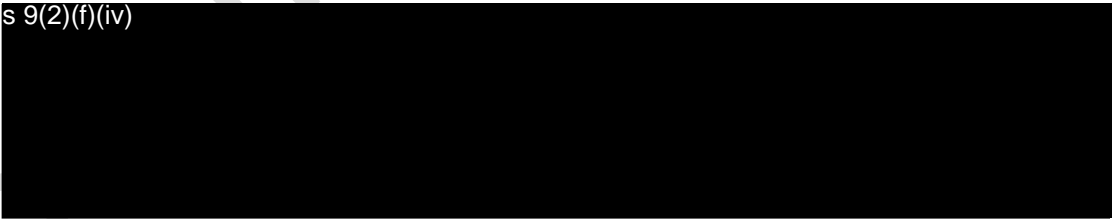
Tranche one

- 8 As a result of the Ministry's work on non-compliance in the early learning sector, a number of areas within the Education (Early Childhood Services) Regulations 2008 (the Regulations) have been identified as presenting limitations, or being cumbersome

to implement, to ensure regulatory standards are met. This may pose a degree of risk to the health, safety and wellbeing of children.

- 9 It is intended that the first tranche of work will enable us to provide final advice to Cabinet in early August.
- 10 Tranche one will consider the following matters relating to the licensing process:
 - a. Clarifying the circumstances in which the Secretary can put a service on a provisional licence¹ while an investigation into non-compliance takes place.
 - b. Introducing a cancellation pathway for services that are frequently on a provisional licence due to a failure to sustain compliance with regulated standards.
 - c. Reviewing what information we can take account of when assessing if a probationary² licence should be granted.
 - d. Creating a mechanism to issue a written directive for health and safety matters that require the service provider's immediate attention, regardless of whether there are other matters that warrant a full investigation.
 - e. Clarify that the fee for a new licence is payable upon application rather than before the licence is issued, and introduce a fee for licence amendments.
- 11 We will also be considering a number of matters relating to the accountability mechanisms within the Regulations. These include:
 - a. Considering if it is appropriate to continue to have a 21 day period before a licence suspension takes effect in certain circumstances.
 - b. Ensuring service providers who have had a change in governance are required to meet the same criteria as if applying for a new licence.
 - c. Clarifying the definitions of 'service provider' and 'child' to ensure transparency of the roles and responsibilities of service providers and individuals under the Regulations.

12 s 9(2)(f)(iv)



- 13 During the consultation on the person responsible changes it has come to our attention that there is some confusion in the sector around the qualifications and registration requirements for teachers. This is because the requirements are contained within the Education Act as well as two different sets of regulations. Therefore, there is an opportunity as part of tranche one to simplify the requirements by bringing them together into one set of regulations.

¹ A provisional licence is issued which when services are not complying with the Regulations or the conditions of their licence, or a complaint has been lodged that warrants an investigation.

² A probationary licence is issued to a new service prior to being assessed for a full licence.

- 14 We propose that in order for these high priority matters to be dealt with in the short term that we seek Cabinet approval to consult on draft regulations in March. If you agree, we will provide you with a draft Cabinet paper and regulatory impact statement in late February for your consideration.

Further tranches

Tranche two

- 15 Tranche two will include the actions in the Action Plan that, while relatively well defined, require further policy work and sector engagement before being implemented. These include:
- a. Regulating for 80 percent and aligning the qualification requirements between the Regulations and the Funding Handbook.
 - b. The regulatory changes required from the Home-based Review, including lifting the criteria for the standard rate.
 - c. If there are any regulatory changes required to improve the consistency and levels of teacher salaries.
- 16 There will also be scope to include any high priority matters that arise from the assessment as part of the work on the regulatory stewardship approach.

Tranche three

- 17 The final tranche of work will be for the remaining matters which either require significant further work to develop, including engagement with the sector, or are linked to other pieces of work. This includes incorporating the remainder of the actions from the regulatory stewardship assessment.

Playcentre

- 18 You have expressed interest in allowing for other parent-led service types within our regulatory system, including playcentres that are not affiliated with Playcentre Aotearoa. Under Regulation 44, only 'excluded services' are exempt from the requirement that 50% of staff must be qualified teachers. While excluded services include playcentres, they must be affiliated to Playcentre Aotearoa.
- 19 If you agree, expanding this definition could be considered as part of the regulatory review. A generic definition would enable services other than playcentres affiliated to Playcentre Aotearoa to receive parent-led funding rates if they meet requirements, and be exempt from meeting the 50% qualified teacher requirement.
- 20 It is likely that Playcentre Aotearoa would not support expanding the definition, as it could exacerbate existing financial sustainability issues if playcentres leave the organisation.

Next steps and public engagement

Communicating the Review

- 21 The Review is yet to be formally announced; however, it has been signalled to the sector including in the Action Plan.
- 22 We propose that you formally announce the Review at the next Early Childhood Advisory Committee (ECAC) meeting on Wednesday 4 March. If you agree, we will work with your office ahead of the announcement.
- 23 You may also wish to consider if a wider announcement is required following Cabinet agreement to the scope of tranche one later in March.

Public engagement

- 24 As indicated above, the intention is to have the first tranche of work through Cabinet before the House rises for the General Election. As there has been no sector engagement on these proposals, we are proposing that there be a round of public consultation. Engagement will run for six weeks (1 May to 12 June) using a discussion document, including the draft regulations, and will largely be undertaken through an online format. There will likely be some face-to-face hui required with some sector groups.
- 25 Tranches two and three will likely follow a similar process of a two stage public consultation process with the first stage being a public discussion document and the second stage being on the draft regulations themselves. The intention is to have tranche two implemented from mid-2021, and tranche three by mid-2022.
- 26 Public engagement will largely be geared towards a sector audience, particularly on those issues that are technical in nature. We will utilise existing forums, such as the Early Childhood Advisory Committee (ECAC), as well as our other networks and contacts to initiate engagement with the sector.
- 27 There are a number of issues in tranches two and three that will be of interest to parents, whānau and communities. We will consider the best approach to engage with these groups in a meaningful way.

Next steps

- 28 In order to undertake the consultation on the draft regulations prior to the Election we are proposing you take a paper to the Social Wellbeing Committee on 18 March and Cabinet on 23 March. This paper will seek agreement to undertake a regulatory review, the scope of tranche one, seek approval to issue drafting instructions, and approval to consult on those draft regulations. If you agree, we will provide a draft of the Cabinet paper and regulatory impact statement to you by 2 March.

29 The proposed timeframes for tranche one of the Review are as follows:

Date	Activity
2 March	Draft Cabinet paper and RIS to Minister's Office for consultation
4 March	Announcement at ECAC
12 March	Cabinet paper and RIS lodged with the Cabinet Office
18 March	SWC
23 March	Cabinet
1 May – 12 June	Public consultation
13 July	Final Cabinet paper to Minister's Office for consultation
23 July	Final Cabinet paper lodged with the Cabinet Office
29 July	LEG
3 August	Cabinet

Education and Training Bill – network planning provisions

Delayed commencement

- 30 The Education and Training Bill contains the enabling provisions for a network planning approach in early learning. We understand that your intention is for the Bill to be passed in July 2020. The network planning provision is currently due to come into force on enactment.
- 31 As the two stage licensing process will be new for both the Ministry and the sector, we will need to do further work on the operational policy and design, and ensure we have robust data sets in place to be able to effectively implement the changes. It is also likely that it will be desirable to make changes to the Regulations.
- 32 This work is unlikely to be completed in time to align with the enactment of the Bill. Our indicative date for implementation date is 1 July 2021, subject to resourcing. This timeframe will ensure the Ministry is able to give appropriate lead in time for the sector. However, implementation would be dependent on securing additional funding for staff to undertake an assessment of the applications and provide the Minister of Education with advice on those applications.
- 33 Therefore, we are seeking your agreement to delay the commencement of the network planning provisions until either two years following enactment of the Bill unless brought into effect earlier by Order in Council. This will be done through the departmental report to the Select Committee in early April.

Definition of fit and proper

- 34 One of the criteria that is used to determine an applicant's suitability to run an early learning service in the Bill is if the applicant is a 'fit and proper person' (clause 17 (2)(b)(ii) refers). The intention was for this to align with the definition of 'fit and proper persons' in the Education (Early Childhood Services) Regulations 2008, however, this reference hasn't been included in the Bill. Other similar provisions within the Bill, such as those relating to private training establishments, have a definition contained in the Bill.
- 35 Therefore to ensure clarity and transparency for those applying for approval to open a new service, we are seeking your agreement to include a clause to define fit and proper in the Bill which would align with the current definition in the Regulations.

- 36 We are proposing that any regulatory change required to implement the network planning approach be included as part of tranche two of the Review, this includes reviewing the definition of 'fit and proper persons' in the Regulations.
- 37 We also propose that there be a regulation making power in the new definition of fit and proper included in the Bill. This will mean there is scope for including any wider issues that are identified in the review of the definition in the Regulations in the decision making criteria at the first stage of the licensing process.

Education Review Office powers in the Education and Training Bill

- 38 On 23 October 2019, the Cabinet Social Wellbeing Committee:
- a. noted that "the Education Review Office does not currently have the power to obtain governance and management information from parent entities where it relates to early learning services under their control";
 - b. agreed that "the Bill include provisions to amend the interpretation of applicable organisation in section 323 of the current Education Act to include parent entities".
- 39 The provisions are only intended to apply to parent entities of the early learning services for which ERO has oversight responsibilities under the 1989 Act. The recommendation referred to above and the related provisions in the Bill as introduced have wider application beyond the early learning sector.
- 40 We recommend an amendment be made to the Bill to restrict the applicability of ERO's proposed power regarding parent entities, to parent entities of early learning services for which ERO has oversight responsibilities under the 1989 Act. If you agree, we will include this change in the draft Cabinet paper we will be providing you next week on the proposed changes to the Bill.

Financial Implications

- 41 While the matters in this paper do not have direct financial implications, a number of issues in tranches two and three will have a significant fiscal impact. These include the changes to adult:child ratios, regulating for an 80 percent qualified workforce and improving the consistency and levels of teacher salaries and conditions. Full implementation of these changes will be contingent on funding being made available through future Budgets.

Proactive Release

- 42 It is intended that this Education Report is proactively released after Cabinet has agreed to the scope and process for the Review of the Early Learning Regulatory System, as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Annexes

Annex 1: Terms of Reference: Review of the Early Learning Regulatory System