



## Briefing Note: Education and Training Bill – fifth tranche Cabinet paper for lodging

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| <b>To:</b>                                    | Hon Chris Hipkins, Minister of Education |                     |           |
| <b>Date:</b>                                  | 9 October 2019                           | <b>Priority:</b>    | High      |
| <b>Security Level:</b>                        | In Confidence                            | <b>METIS No:</b>    | 1204420   |
| <b>Drafter:</b>                               | Warren George                            | <b>DDI:</b>         | s 9(2)(a) |
| <b>Key Contact:</b>                           | Ben O'Meara                              | <b>DDI:</b>         |           |
| <b>Messaging seen by Communications team:</b> | No                                       | <b>Round Robin:</b> | No        |

### Purpose

The purpose of this paper is to provide you with a final version of the fifth tranche Education and Training Bill Cabinet paper for lodgement. This version incorporates feedback received during departmental consultation.

### Summary

- Departmental consultation on the E&T Bill fifth tranche Cabinet paper has been completed. Comments have been received from the Treasury, Te Puni Kōkiri, the Ministry of Social Development (MSD), Oranga Tamariki, the Ministry of Justice, Tertiary Education Commission, Office of the Children's Commissioner, and the Teaching Council of Aotearoa New Zealand. Other agencies also provided feedback supporting the paper.
- Te Tiriti o Waitangi provisions have been moved from this paper into the Tomorrow's schools legislative amendments Cabinet paper.
- Regarding the physical restraint changes, we have replaced the term "physical force" with "restrictive physical force", which would limit the type of force authorised to that which prevents, restricts or subdues the movement of a student's body or part of the student's body. The Ministry of Social Development and the Children's Commissioner prefer this approach. The Teaching Council of Aotearoa New Zealand do not support this, as they do not believe it would address the current confusion about what can and cannot be done. We plan to address the concerns raised by the Teaching Council of Aotearoa New Zealand through the statutory guidelines on restrictive physical force.
- Licensing of early learning services proposals have been amended to address Ministry of Justice concerns at a proposed fine for operating without a licence. The proposal in the consultation version of the paper was that the fine should be \$2000 per day. The Ministry of Justice was concerned that this could result in exorbitant and disproportionate

finer. The paper has been amended to propose a fine of a maximum of \$50,000 for operating without a licence where there was no reasonable excuse to do so. The Ministry of Justice supports the new approach.

- Other changes are minor and technical in nature, and have been made in response to comments received from Departments.

#### Proactive release recommendation

**Agree** that this Briefing will not be proactively released until the Education and Training Bill has been introduced to Parliament.

**Agree / Disagree**



Dr Andrea Schöllmann  
**Deputy Secretary**  
**Education System Policy**

09/10/2019

Hon Chris Hipkins  
**Minister of Education**

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## Amendments and comments related to physical restraint proposals

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1. The Office of the Children's Commissioner, the Ministry of Social Development and Oranga Tamariki–Ministry for Children expressed concerns about the proposed change from “physical restraint” to “physical force.” The focus of these concerns was that physical force is much broader than physical restraint, and could include actions such as pushing or tripping. Physical force was seen as being a more coercive term, which does not speak to the intention of preventing ākongā from hurting themselves or others. Oranga Tamariki noted that they are seeking to shift the language in their regulatory framework from “use of force” to “physical restraint”.
2. We have replaced the term “physical force” with “restrictive physical force”, which would limit the type of force authorised to that which prevents, restricts or subdues the movement of the student's body or part of the student's body. The Ministry of Social Development and the Children's Commissioner prefer this approach. Oranga Tamariki–Ministry for Children noted that specific guidance around the use of physical restraint in serious situations would still be needed so teachers could be sure what they can and cannot do.
3. The Teaching Council are not supportive of this change, as they do not believe it would address the current confusion about what can and cannot be done. We plan to address the concerns raised by the Teaching Council of Aotearoa New Zealand and Oranga Tamariki–Ministry for Children through the statutory guidelines on restrictive physical force.
4. A Teaching Council comment has been added to the Cabinet paper.

## Agency comments on other aspects of the paper

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5. The Treasury support te Tiriti proposals, as were included in the consultation version of this paper. They also support physical restraint proposals. Treasury commented primarily on the ECE network licensing proposal, and have said that it's important to note that the Ministry has limited information on which areas have oversupply or undersupply of early learning provision, and that this is why the Ministry has started work on network profiling. They also queried what analysis might have been undertaken of compliance costs. They indicated a concern that the burden could disproportionately affect very small providers.
6. Te Puni Kōkiri agreed with all recommendations, but did ask if whānau, hapū and iwi were consulted on these proposed changes. They indicated that ECE network planning needs to take into account Māori population demographics, need and forecasting of population changes, as well as where bilingual ECE or kōhanga reo are. They queried the impact of ECE licensing framework changes on kōhanga reo fees.
7. The Ministry of Justice was concerned at the proposal for a \$2000 fine for operating an early learning centre without a licence. The Ministry of Justice's suggestions have been reflected in the paper.

## The key changes from the consultation version

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8. **Te Tiriti** provisions on the Tiriti clause and the Ministerial statement of expectations were moved from this paper (into the Tomorrow's School's companion paper), as requested by your office.
9. **The physical restraint** proposals to replace the term “physical restraint” with “physical force” have been modified to refer to “restrictive physical force”, and a Teaching Council comment has been added.

10. **Licensing of early learning services** proposals have been amended to address Ministry of Justice concerns at a proposed fine for operating without a licence. The proposal in the consultation version of the paper was that the fine should be \$2000 per day. The Ministry of Justice was concerned that this could result in exorbitant and disproportional fines. The paper has been amended to propose a fine of a maximum of \$50,000 for operating without a licence where there was no reasonable excuse to do so. The Ministry of Justice supports the new approach.
11. **Te Kura staff membership.** The proposals requiring a staff member to be on Te Kura's board have been amended slightly by omitting reference to a 'staff representative' and replacing it with reference to a 'staff member'. This recognises that all members must act in the interests of the institution as a whole rather than solely being a representative of staff within the institution (see section 176A of the Education Act 1989).
12. New paragraphs have been added to Financial Implications (paragraph 49) Regulatory Impact Analysis (paragraphs 53-56), and Disability Perspective (paragraph 58).

## Next Steps

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13. This paper will be lodged for consideration at SWC. We will provide you with suggested talking points once the paper is lodged.