



Education Report: Review of the Early Learning Regulatory System: Tranche one consultation

To:	Hon Chris Hipkins, Minister of Education		
Date:	20 November 2020	Priority:	High
Security Level:	In Confidence	METIS No:	1245030
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

The purpose of this paper is for you to:

- **approve** the release of the public consultation material on tranche one of the Review of the Early Learning Regulatory System
- **approve** a minor change to draft regulations that arose during the drafting process, which retains the requirement to place conditions on provisional licences that Cabinet had agreed to remove.

Summary

- 1 The Ministry of Education has begun a comprehensive Review of the Early Learning Regulatory System (the Review), which is intended to ensure that the regulatory system is clear, fit for purpose, and supports high quality educational outcomes [METIS 12 4266 refers]. The Review is being completed in three tranches.
- 2 In August, Cabinet directed the Ministry of Education to undertake consultation on tranche one of the Review for eight weeks from October 2020 [SWC-20-MIN-0116 refers]. Consultation would primarily be seeking feedback on the draft regulations. You were authorised to approve the release of public consultation material and make decisions on any issues of detail without further reference to Cabinet.
- 3 We are seeking your approval to begin consultation on Monday, 30 November on the tranche one of the Review. Consultation will be through a discussion document and the draft regulations, which are attached as Annexes 1 and 2. As well as seeking submissions, we will be running a survey based on the questions in the discussion document as part of consultation.
- 4 We are also seeking your approval to a change to draft regulations. Cabinet agreed to amend Regulation 16 so that there is no mandatory requirement to place a condition

on a provisional licence that is issued as part of an investigation. This change was not included in the attached draft regulations. This is because conditions communicate to services what is required to have a provisional licence revoked and a full licence returned.

- 5 Feedback from the Sector Advisory Group is that consultation should be until February. This is because the eight weeks falls over the Christmas period when most services are closed. We therefore recommend that consultation run to 12 February 2021.

Recommended Actions

The Ministry of Education recommends you:

- a. **approve** the release of the attached discussion document and draft regulations, which form the public consultation material for tranche one of the Review of the Early Learning Regulatory System

Approved **Not approved**

- b. **approve** a minor change to draft regulations that arise during the drafting process, which retains the requirement to place a condition on provisional licence that has been issued as part of an investigation

Approved **Not approved**

- c. **agree** to the consultation period closing 12 February 2021

Agree **Disagree**

- d. **proactively release** this Education Report with any information that may need to be withheld done so in line with the provisions of the Official Information Act 1982.

Release **Not release**


John Brooker
Group Manager
Education System Policy

20/ 1/2020


Hon Chris Hipkins
Minister of Education

[28/11/2020](#)

Background

- 1 The Ministry of Education has begun a comprehensive Review of the Early Learning Regulatory System (the Review), which is intended to ensure that the regulatory system is clear, fit for purpose, and supports high quality educational outcomes [METIS 1234266 refers]. The Review is being undertaken in three tranches.
- 2 The first tranche of the Review focuses on areas in the current regulatory regime that require clarification or pose a degree of risk to the health, safety and wellbeing of children. The tranche-by-tranche approach is designed to address the most urgent and highest priority issues first, with those issues that require further work to be addressed in later tranches.
- 3 The proposals in tranche one of the Review are to:
 - create a cancellation pathway based on a service's provisional licence history
 - issue a provisional licence in the event of an incident to carry out an investigation
 - create written directions for health and safety matters that require immediate attention
 - clarify the provisions for licence amendments when the service provider changes
 - remove the 21-day minimum notice period for suspensions for not returning a full licence when invalid
 - remove the 21-day minimum notice period for suspensions for change of control
 - clarify the information used to assess an application for a probationary licence
 - increase the minimum room temperature from 16 degrees to 18 degrees Celsius
 - clarify that the fee for a new licence is payable upon application and is non-refundable
 - consolidate existing person responsible requirements
 - amend the Licensing Criteria for self-review and annual planning, requiring services to demonstrate regard for the Statement of National Education and Learning Priorities (NELP).
- 4 In August 2020, Cabinet agreed to the scope of proposals for the first tranche of the Review [SWC 20-MIN-0116 refers]. Cabinet also invited you to issue drafting instructions and authorised you to approve the release of public consultation material and make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet.
- 5 Cabinet directed the Ministry of Education to undertake consultation on draft regulations as part of tranche one of the Review for eight weeks from October 2020.

Public consultation materials - discussion document and draft regulations

- 6 The Ministry has worked with the Parliamentary Counsel Office (PCO) to develop draft regulations to support the public consultation based on what was agreed to by Cabinet (attached as Annex 2). These are now ready for public consultation.
- 7 We have drafted a discussion document to support consultation (attached as Annex 1). It provides further details and clarifications on the draft regulations, the issues that they

are trying to address, and why the proposed changes are considered desirable. The discussion document is currently in word format, but the version released publicly will be designed in line with Ministry's visual identity.

- 8 During the drafting of the discussion document, the Ministry sought feedback from the Sector Advisory Group to ensure the proposals were clearly explained. We have incorporated all the Group's feedback on the clarity and usability of the discussion document to date. For any further changes we may decide to make as a consequence of any late feedback, we will notify your office.
- 9 Due to the technical nature of these changes, consultation will be mainly aimed at sector audience. We are also considering how we might engage with parents and whānau who may be interested in some of the proposals, such as increasing the indoor temperature in services. Consultation will largely be undertaken through online channels, such as through an online survey based on the discussion document.
- 10 We propose starting consultation on Monday, 30 November.

Change to draft regulations through the drafting process

- 11 There has been one minor change as a result of the drafting process. This relates to the proposal to issue a provisional licence while an investment takes place. Cabinet had agreed to amend Regulation 16 so there was no mandatory requirement to place a condition on a provisional licence that has been issued as part of an investigation.
- 12 This change was not included in the final draft regulations. This is because placing conditions on a provisional licence provides clarity on what would be required of a service to have a provisional licence revoked and a full licence returned.
- 13 As noted above, you are authorised to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet [SWC-20-MIN-0116 refers].

Proposed changes to consultation timeframes

- 14 We originally planned for an eight-week consultation process beginning at the end of October. Due to delays during the drafting process, we now propose to begin consultation from Monday, 30 November.
- 15 Cabinet agreed to an eight week consultation period, but the Sector Advisory Group recommended that consultation go through until mid-to-late February. This is due to the Christmas holiday period. We propose that consultation ends on Friday, 12 February.

Next steps

- 16 If you approve the release of the public consultation material, the Ministry will begin consultation on 30 November. We will provide you with further advice in March 2021 on any proposed changes as a result of consultation feedback.

Annexes

Annex 1: Tranche One Discussion Document

Annex 2: Draft Regulations – Education (Early Childhood Services) Amendment Regulations 2020.

Proactively Released