

Supplementary Departmental Disclosure Statement

Education and Training Amendment Bill (No 2)
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A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

The original disclosure statement for the Education and Training Amendment Bill (No 2) (the Bill), dated 9 November 2021 can be found at this link:

<http://disclosure.legislation.govt.nz/bill/government/2021/102>

This supplementary disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

24 November 2021

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Bill.

The supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

The main areas of change to the original disclosure statement include providing for amendments to the Network Management provisions to:

- introduce National and Regional Statements for network management that outline the Government's priorities for network management and provide data and information on supply and forecast growth, demand and need for licensed early childhood services;
- clarify that some factors that the Minister of Education (the Minister) must take into account as part their decision-making role need only be assessed at a high level;
- shift the initial administrative assessments of suitability of the applicant to the Secretary for Education and provide for a right of appeal of this assessment;
- strengthen the test of applicant suitability, by strengthening the fit and proper assessment by the Secretary for Education, and introducing a new capability assessment by the Minister of Education;
- introduce other provisions to provide transparency about the process, such as imposing conditions of approval and specifying when extensions to conditions or approval would be considered; and
- provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008.

Part One: General Policy Statement

This Supplementary Order Paper (SOP) proposes amendments to the Education and Training Amendment Bill (No 2).

The SOP as introduced amends the Bill to amend the network management provisions set out in the Act (sections 17 and 18). Sections 17 and 18 introduces new network management processes for prospective early childhood services seeking a licence. These provisions will have a delayed commencement date of no later than 1 August 2022.

These amendments have been introduced as part of a wider governmental initiative to ensure that the regulatory system is clear and fit for purpose.

The SOP amends the network management provisions to:

- introduce National and Regional Statements for network management that outline the Government's priorities for network management and provide data and information on supply and forecast growth, demand and need for licensed early childhood services;
- clarify that some factors that the Minister of Education (the Minister) must take into account as part their decision-making role need only be assessed at a high level;
- shift the initial administrative assessments of suitability of the applicant to the Secretary for Education and provide for a right of appeal of this assessment;
- strengthen the test of applicant suitability, by strengthening the fit and proper assessment by the Secretary for Education, and introducing a new capability assessment by the Minister of Education;
- introduce other provisions to provide transparency about the process, such as imposing conditions of approval and specifying when extensions to conditions or approval would be considered; and
- provide for transitional provisions, and consequential amendments to the Education (Early Childhood Services) Regulations 2008.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
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Regulatory Impact Statement: Network Management in Early Learning, The Ministry of Education, Date finalised: 5 November 2021. https://www.education.govt.nz/early-childhood/licensing-and-regulations/the-regulatory-framework-for-ece/early-learning-regulatory-review/#two
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2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

This SOP is not inconsistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

This SOP is not inconsistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

The SOP creates a new right of appeal to the District Court from adverse assessment decisions made by the Secretary

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on the proposals

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
Consultation for proposals on network management took place from 8 September 2021 to 13 October 2021. A discussion document was published online, and surveys were completed. The Ministry of Education also held a series of 8 information sessions to explain the proposals in more detail. Overall, respondents supported our major proposals.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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