



Report: Scope of ECE reform Cabinet paper

To:	Hon David Seymour, Associate Minister of Education		
Cc:	Hon Erica Stanford, Minister of Education		
Date:	20/02/2025	Deadline:	21/02/2025
Security Level:	Confidential	Priority:	High
From:	Andy Jackson Hautū Deputy Secretary	Phone:	9(2)(a)
Drafter:	Hannah Aitken	METIS No:	1343100

Why are we sending this to you?

- This report provides you with information about the scope of the ECE reform Cabinet paper that is currently being developed. This includes a high-level summary of the decisions that will be sought by the Cabinet paper.
- The ECE reform Cabinet paper will go alongside a Ministry for Regulation Cabinet paper seeking endorsement of the ECE sector regulatory review recommendations.

What action do we need, by when?

- Please return the signed report by Monday 24 February 2025.

Key facts, issues and questions

- This report follows previous advice on proposed next steps for early childhood education (ECE) reform [METIS 1342496 refers].
- We are currently developing an ECE reform Cabinet paper that seeks decisions on policy options for the legislative amendments to be included in the Education and Training (ECE Reform) Amendment Bill, changes to regulations 9(2)(f)(iv) and financial implications.

Alignment with Government priorities

1. This report aligns with Government priorities to improve the quality of regulation, reduce regulatory burden and costs to business, and deliver better public services. The report provides further detail on proposed work to implement the recommendations from the Ministry for Regulation's ECE sector regulatory review.

Background

2. Following your previous decisions on next steps for early childhood education (ECE) reform [METIS 1342496 refers] work to develop an ECE reform Cabinet paper is underway. The Ministry for Regulation is currently developing a Cabinet paper seeking endorsement of the recommendations from its ECE sector regulatory review. This ECE reform Cabinet paper will go alongside the Ministry for Regulation's Cabinet paper.
3. In our previous report, we committed to providing you with further detail on the scope of decisions that are being included in the ECE reform Cabinet paper. This detail is provided in this paper. Work is also underway to review the ECE licensing criteria, this is being carried out in parallel and does not require Cabinet approval.

Key areas where the ECE reform Cabinet paper will be seeking decisions

4. The ECE reform Cabinet paper will seek decisions on:
 - A. Policy changes required to be included in the Education and Training (ECE Reform) Amendment Bill as well as changes to Regulations, including:
 - The purpose and objectives of ECE
 - Graduated enforcement tools
 - 9(2)(f)(iv)
 - B. 9(2)(f)(iv)
 - C. Financial implications;
 - D. 9(2)(f)(iv)
 - E. Issuing drafting instructions for proposed legislative and regulatory changes;
 - F. Risks.
5. The scope and high-level description of these decisions are summarised below.

Policy changes required to be included in the Education and Training (ECE Reform) Amendment Bill as well as changes to Regulations

6. The Cabinet paper seeks approval for policy changes needed to implement the recommendations from the Ministry for Regulation's ECE sector regulatory review and to provide for new graduated regulatory and compliance tools for the ECE system.
7. In summary, this Cabinet paper will seek policy approval for changes to the Education and Training Act 2020 and Education (Early Childhood Services) Regulations 2008 that will:
 - A. **Clarify the purpose, objectives and guiding principles for regulatory decision making.** A key finding of the Ministry for Regulation's ECE sector regulatory review report was that the ECE system lacks defined goals, clear outcomes and principles, leading to inconsistencies. The Cabinet paper will seek agreement for amendments


that will define a clear purpose and objectives and that will establish guiding principles to inform regulatory decision making.

B. **Introduce graduated enforcement tools** to be used by the ECE regulator (alongside non-regulatory measures) to encourage and enforce compliance and address the lack of proportional tools for dealing with non-compliance¹, moving away from the high stakes intervention of suspending or cancelling licences. These may include:


- **A record of non-compliance**, where a formal record is kept of an incident of non-compliance that was identified by the regulator and immediately addressed by the licence holder.
- **A written warning**, specifying the non-compliance that has been identified, and the remedial action must be taken by a specified date to avoid further compliance action.
- **A written direction to comply within 10 days**, where non-compliance is identified that poses a health and safety risk but can be remedied safely while the service continues to operate.
- **Requirement to engage specialist help**, where the service provider must employ or engage a specialist or expert in a specified area to support them to address non-compliance.
- **Requirement to develop and implement an improvement plan**, where the service provider must, within 15 working days, set out the specific actions that will be taken to address non-compliance, including timeframes, to the satisfaction of the regulator.
- **Additional conditions on the service licence**, may be specified (either temporarily or permanently) that must be met in order to operate. Where conditions are temporary, the requirements for the removal of the conditions must be specified.
- **Reclassification of the licence as provisional**, whereby the status of the service licence is downgraded to provisional, and conditions are set that must be met within specified timeframes and in the regulations, or the licence is cancelled. This would have a higher threshold than is used currently.
- **Suspension of the service licence**, whereby the service provider is prevented from operating until the regulator is satisfied compliance with the regulations has been achieved. This would have a higher threshold than is used currently.
- **Cancellation of the service licence**, whereby the service provider's licence to operate a service is permanently cancelled.
- **Public notification of non-compliance**. The regulator would be able to notify the public of any enforcement action if it is satisfied this is in the public interest and enforcement actions have already been taken in response to non-compliance.

¹ Our initial thinking is in line with previous advice to you on a graduated enforcement tools from the Ministry for Regulation (MFR2024-227) and similar to enforcement tools administered by the Australian Children's Education & Care Quality Authority (ACECQA).


C. 9(2)(f)(iv)



D. 9(2)(f)(iv)




9(2)(f)(iv)



E. 9(2)(f)(iv)




9(2)(f)(iv)



8. 9(2)(f)(iv)



9. 9(2)(f)(iv)



9(2)(f)(iv)

10. 9(2)(f)(iv)

A. 9(2)(f)(iv)

B. 9(2)(f)(iv)

C. 9(2)(f)(iv)

11. 9(2)(f)(iv)

9(2)(f)(iv)

12. 9(2)(f)(iv)

13. 9(2)(f)(iv)

14. The Ministry for Regulation also recommended that Health (Immunisation) Regulations 1995 be revoked at the earliest opportunity. The regulation's primary purpose was for outbreak management; however, an alternative non-regulatory mechanism now exists for that purpose that does not rely on ECE service providers holding immunisation records. This will be included in the Ministry for Regulation's Cabinet paper.

Issuing drafting instructions for proposed legislative and regulatory changes

15. From our discussion with you in early February, we understand that urgent Budget night legislation is unlikely with the Parliamentary Counsel Office (PCO) work programme and capacity focused on other Government priorities. 9(2)(f)(iv). We have developed timing options based on the five possible Cabinet Legislation Committee sitting dates in June/July to enable the bill to be passed by mid-December 2025, while still allowing for a four month select committee process. These timing options have been provided in **Annex 1**. These options are subject to PCO's ability to draft and priority of House time. We recommend that your office discuss these options with the Attorney General's office as well as the Office of the Leader of the House.
16. The Cabinet paper will seek agreement to issue drafting instructions to the PCO for amendments to the Education and Training Act 2020 and the Education (Early Childhood Services) Regulations 2008 to give effect to the above proposals. It will also seek

authorisation for joint Ministers to make additional joint decisions on policy and drafting issues arising from these proposals.

Risks

17. As previously outlined in METIS 1342496, the speed of this legislative process means that elements of good regulatory stewardship will not be undertaken and our ability to carry out key activities such as options analysis, impact analysis and cost-benefit analysis will be very limited. This timing and pace will also impact the legislative drafting process, which will limit opportunities for quality assurance.
18. The timeline for this work will limit engagement or consultation with regulated parties and key stakeholders. This may be partly mitigated by public consultation that will be undertaken as part of the Select Committee process. We also note that the work on revising the Licensing Criteria will continue in parallel to the ECE reform work and will include public consultation on any proposed changes. We will continue to consider what other engagement opportunities there will be that will contribute to the ECE reform work, while maintaining the momentum for change.
19. These issues combined increase the policy failure risks and litigation risks associated with this work. The most effective mitigations for these risks would require adequate time to assess options and consult with regulated parties.
20. 9(2)(f)(iv) [REDACTED]
21. 9(2)(f)(iv) [REDACTED]

Next steps

22. The immediate next steps for the ECE reform Cabinet paper are summarised below:

Milestones	Date/s
Draft ECE reform Cabinet paper to MO	3 March 2025
Discussion of the draft Cabinet paper with the Minister of Education	5 March 2025
Joint departmental and Ministerial consultation	7 – 13 March
Final Cabinet paper to MO	19 March
Lodge Cabinet paper	20 March
EXP Committee meeting	25 March
Cabinet meeting	31 March
Issue drafting instructions to PCO	1 April

23. 9(2)(f)(iv) [REDACTED]

Annexes

The following is annexed to this paper:

Recommended actions

The Ministry of Education recommends you:

- a. **discuss** this report with the Ministry of Education and ERO at your agency meeting on 25 February;

Agree / Disagree

- b. **discuss and agree** with the Minister of Education the scope of decisions that will be sought by the ECE reform Cabinet paper by 27 February; 9(2)(g)(i)

Agree / Disagree

- c. **note** that the revocation of the Health (Immunisation) Regulations 1995 will be included in the Ministry for Regulation's ECE regulatory sector review Cabinet paper.

Noted

Proactive release:

- d. **agree** that this report is not released until final Budget and Cabinet decisions are made on the ECE reform work.

Agree / Disagree

9(2)(g)(i)

Andy Jackson
Hautū | Deputy Secretary
Te Pou Kaupapahere

20/02/2025

Hon David Seymour
Associate Minister of Education

23/2/25

Annex 1: Timing options for legislative delivery of ECE reform work

Cabinet approval of the ECE reform proposals will be sought on 31 March 2025, as per the next steps timeline provided in this report.

Based on when Legislation Committee sits in June and July, there are five possible timing options, which are set out below.

Milestones	Option 1	Option 2	Option 3	Option 4	Option 5
Draft LEG paper for consultation	16 May	6 June	27 June	4 July	11 July
Consultation & BORA vetting	19-23 May	9-13 June	30 June - 4 July	7-11 July	14-18 July
Final LEG paper to MO	28 May	18 June	9 July	16 July	23 July
Lodge LEG paper	29 May	19 June	10 July	17 July	24 July
LEG Committee	5 June	26 June	17 July	24 July	31 July
Introduction in House	w/c 23 June	w/c 14 Jul	w/c 21 Jul	w/c 28 Jul	w/c 11 Aug
Maximum PCO drafting time available	1 April to 16 May 46 calendar days 31 working days	1 April to 6 June 67 calendar days 45 working days	1 April to 27 June 88 calendar days 59 working days	1 April to 4 July 95 calendar days 64 working days	1 April to 11 July 102 calendar days 69 working days
Estimated date Bill could be passed with a four-month Select Committee process	20 November	11 December	11 December	18 December	Early 2026

Notes:

- Actual availability of PCO drafting time subject to other Government priorities such as Budget night legislation.
- A shorter Select Committee process (e.g. three-months) could potentially allow for the Bill to be passed in 2025 under all of these timing options.