

Report: Transfer of private schools, hostels and ECE regulatory functions to ERO

To:	Hon Erica Stanford, Minister of Education		
Date:	28/05/2025	Deadline:	3/06/2025
Security Level:	Sensitive	Priority:	High
From:	Rachel Voller Senior Policy Manager	Phone:	9(2)(a)
Drafter:	Tatiana Warren	METIS No:	1348439

Why are we sending this to you?

- We are seeking your approval of the attached draft Cabinet paper which proposes to transfer responsibility for licensing, registration and compliance functions of private schools, school hostels and early learning services, including the Director of Regulation role, to the Education Review Office (ERO).

What action do we need, by when?

- Please return the signed paper by 3 June. Subject to your agreement, this would enable us to start agency consultation on 4 June and Cabinet Social Outcomes Committee (SOU) to consider the paper on 25 June.

Key facts, issues and questions

- You are progressing 9(2)(f)(iv) education system reform through an Education and Training (System Reform 9(2)(f)) Amendment Bill (ERE). The Bill is intended to be introduced in October 2025. (i)
- You have indicated you would like to transfer responsibility for private school registration and school hostel licencing to ERO. This is intended to clarify roles and responsibilities in the education system by having a clear regulator responsible for licensing and compliance regulatory functions.
- We need to confirm Cabinet's 14 April in-principle agreement that the responsibility for core regulatory functions related to licensing and certificating early childhood services be transferred to ERO [CAB-25-MIN-0123 refers].
- The attached draft Cabinet paper includes the necessary policy decisions required to support the transfer of these functions to ERO.

Alignment with Government priorities

1. Reallocating roles and responsibilities of education agencies is intended to improve the system's responsiveness and performance so that it can better deliver the Government's education priorities, including lifting student achievement.

Background

2. ERB will include reforms that signal a shift towards greater clarity of roles and responsibilities in the education system with the intention of strengthening accountability for achieving improved education outcomes.
3. 9(2)(f)(iv) [REDACTED]
4. Cabinet agreed in-principle on 14 April that the responsibility for core regulatory functions related to licensing and certifying for ECE be transferred to ERO as part of the response to the Ministry for Regulations' regulatory sector review of early childhood education (ECE) [CAB-25-MIN-0123 refers]. You are seeking to confirm these in-principle decisions as part of the attached draft Cabinet paper.
5. Cabinet also agreed to amend the Education and Training Act (the Act) to establish the Director of Regulation (DOR) role within the Ministry through the Education and Training (Early Childhood Education Reform) Amendment Bill. The DOR will have responsibility for core ECE regulatory functions, including licensing and certification, and proactive monitoring and enforcement of compliance. Cabinet agreed in-principle to transfer the DOR from the Ministry to ERO through ERE [CAB-25-MIN-0123 refers].

Private schools and school hostels

6. Private school registration and school hostel licensing are also regulatory licensing areas where responsibility can be transferred to ERO.
7. A key objective of your education reform is to design new functional arrangements that align with regulatory good practice. This includes bringing complementary regulatory functions (such as compliance monitoring and enforcement) together. Where functions could potentially be in conflict (such as support and enforcement), there needs to be a level of separation to create a healthy tension.
8. The Ministry for Regulation has advised that having a separate regulatory role is best practice when a regulatory agency has responsibilities that involve safety-critical functions, such as protecting the health and safety of children. In these contexts, regulatory decisions often carry high stakes, require impartial judgement, and must be free from real or perceived conflicts with other priorities within the organisation.
9. The Ministry for Regulation also noted that a statutory role dedicated to undertaking regulatory functions ensures:
 - Clear legal authority and accountability for regulatory decisions.
 - Operational independence from service delivery or evaluative functions that may create internal tension.
 - Greater public trust in the consistency, fairness, and transparency of regulatory outcomes.

10. Cabinet has already agreed in principle to a mechanism to create separation between ERO's review and regulatory assurance functions for ECE. As noted above, Cabinet agreed to establish a DOR to perform ECE regulatory functions, and that the DOR must not be the CRO, to ensure separation of functions. The DOR role is intended to provide role and responsibility clarity within ERO and ensure regulatory functions are clearly distinguished from the review functions ERO will continue to be responsible for. This follows the regulatory best-practice advice from the Ministry for Regulation.
11. In transferring the private school and school hostel regulatory assurance functions to ERO, we need to decide whether to follow the ECE approach of assigning the licensing and compliance functions to a DOR to manage the tension between the review/evaluation and licensing/compliance roles. The alternative option would be to assign the roles to ERO's CRO so that the CRO is responsible for both:
 - 11.1. reviewing (to supporting a lift in provider performance); and
 - 11.2. licensing/registration and/or intervention/enforcement decisions (to ensure compliance against minimum standards).

Options for allocating responsibility for performing regulatory functions for private schools and school hostels

12. ERO and the Ministry have two different preferred options:

Option 1 – Responsibility for regulatory functions sits with the Director of Regulation (Ministry recommended option)

13. This option would mean that the DOR would have responsibility for performing regulatory functions for ECE, private schools and school hostels. The CRO would retain performance review and evaluation functions specified in section 463 of the Act.
14. The DOR must not be the CRO and will be employed by the Chief Executive of ERO.
15. This option would be more difficult for ERO to operationalise as it would require ERO to establish new structures. It also would require ERO staff to have multiple lines of accountability depending on the functions they're carrying out.
16. Requiring independence of the regulatory functions via a DOR will:
 - a. Reduce the risk of unintended consequences and real or perceived conflicts.
 - b. Be consistent with Cabinet's decision for ECE and support role clarity and system coherence and meet regulatory best practice for safety-critical functions.
 - c. Reduce the risks of weak accountability and regulatory creep or going beyond the minimum legislative standard.
 - d. Support specialised capability in the review and regulatory compliance roles.
 - e. Provide role clarity so that the schooling sector know and understand who is responsible for regulatory roles and functions, leading to greater trust and confidence in the regulatory system and decision-making.
 - f. Ensure that there is a clear point of accountability for regulatory functions within ERO.

Option 2 – Responsibility for regulatory functions sits with the Chief Review Officer (ERO preferred option)

17. This option would see legal responsibility for performing the private school and school hostel regulatory functions being transferred to the CRO, who also retains responsibility for review and evaluation for private schools and hostels. The CRO would delegate powers to deliver review functions and the regulatory functions to ERO staff who would monitor compliance and review quality of services.
18. This option has the benefit of being relatively easy to operationalise within ERO's existing structures. It is operationally efficient and will provide efficiencies over the status quo. It also allows for ERO staff working with private schools and hostels to have one line of accountability.
19. The CRO is the Chief Executive of ERO.
20. There are several risks with this option, including:
 - a. Inconsistency with the ECE licensing and compliance regime which will be the responsibility of the DOR. Having the CRO responsible for private school and school hostel licensing (which are very similar licensing/registration regulatory functions) risks perpetuating system incoherence and creates confusion for the sector.
 - b. Possibility of conflict for the CRO when performing both their review and regulatory functions.
 - c. Risk of weak accountability or regulatory overreach as a result of the combination of the CRO's review and evaluation functions and their regulatory function.

The draft Cabinet paper

21. The attached draft Cabinet paper assumes Option 1 is your preferred option. We recommend, for consistency and to meet best regulatory practice, that the private school and school hostel regulatory functions reside with the DOR in ERO. We can amend the Cabinet paper as required to reflect your decision.
22. The draft Cabinet paper sets out the detailed case for change and decisions needed from Cabinet to transfer the relevant regulatory responsibilities from the Secretary to the new DOR.

Implementation, staffing and financial implications

23. 9(2)(f)(iv) [REDACTED] The attached Cabinet paper will seek approval for you, the Associate Minister of Education, the Minister of Finance and the Minister for Public Service to make joint decisions connected with the transfer of functions and related implementation matters.
24. ERO has advised that it can assume responsibility for ECE services, private schools and hostels within two months of ERE's enactment.
25. 9(2)(f)(iv) [REDACTED]
[REDACTED] We will advise on updated timing in a later draft of this Cabinet paper.
26. 9(2)(f)(iv) [REDACTED] The estimated amount of funding is still being determined, although the attached Cabinet paper does include estimates for the ECE transfer. When we have agreed the

total (including private school and school hostel) estimated funding required to be transferred, we will provide you with an updated draft of the Cabinet paper. The Cabinet paper seeks Cabinet's agreement to authorise you, the Associate Minister of Education and the Minister of Finance to jointly approve changes to funding and appropriations within existing baselines to enable the transfer of regulatory functions.

27. 9(2)(f)(iv)

We will provide updated costs including private schools and hostels as soon as possible so that they can be included in the draft Cabinet paper for Departmental and Ministerial consultation.

Next steps

28. We would like to begin Ministerial and agency consultation as soon as possible (ideally by Wednesday 4 June), so that we can lodge the Cabinet paper on 19 June for consideration at SOU on 25 June. This timeline will enable us to issue drafting instructions and give Parliamentary Counsel Office sufficient time to draft the Bill.

29. The table below sets out key next steps and dates:

Milestone	Date
Agency and Ministerial consultation	4 June – 17 June
Lodging Cabinet paper	19 June
SOU consideration of Cabinet paper	25 June

Recommended Actions

The Ministry of Education recommends you:

a. **note** that you have indicated your desire to transfer private schools and school hostels regulatory functions to ERO to help clarify roles and responsibilities in the education system by having a clear regulator responsible for regulatory functions;

Noted

b. **agree** to seek Cabinet's approval to transfer responsibility for licensing, registration and compliance functions for private schools and school hostels to ERO;

Agree / Disagree

a. **agree** to ask Cabinet to confirm its earlier in-principle agreement to transfer regulatory functions related to licensing and certifying for ECE to ERO [CAB-25-MIN-0123 refers];

Agree / Disagree

b. **note** that Cabinet agreed to establish a Director of Regulation role within the Ministry of Education [CAB-25-MIN-0123 refers];

Noted

- c. **note** Cabinet also made the in-principle decision that the Director of Regulation role will transfer to ERO as part of ERE [CAB-25-MIN-0123 refers];

Noted

- d. **agree** to EITHER:

- i. transfer responsibility for licensing, registration and compliance functions of private schools and school hostels to the Director of Regulation

(Ministry recommended option)
 why would we do smth different
 p ERE for private schools?
 OR
 discuss at Agency

Agree / Disagree

- ii. transfer the responsibility for licensing, registration and enforcement and compliance functions of private schools and school hostels to the ERO Chief Review Officer (ERO preferred option)

Agree / Disagree

- e. **note** that further work is underway to estimate staffing and financial impacts of the transfer of private school and school hostel functions, and these will be included in a revised draft of the Cabinet paper as soon as possible;

Noted

- f. **agree** to provide your comments on the attached draft Cabinet paper by 3 June;

Agree / Disagree

- g. **agree** we should begin Ministerial and agency consultation on the draft Cabinet paper on 4 June;

Agree / Disagree

- h. **agree** to forward this paper to the Associate Minister of Education.

Agree / Disagree

Proactive Release:

- i. **agree** that the Ministry of Education proactively release this paper once decisions have been made and affected staff have been informed subject to redactions as appropriate under the Official Information Act 1982.

R Pull

Erica Stanford

Agree / Disagree

Rachel Voller
 Senior Policy Manager
 Te Pou Kaupapahere

Hon Erica Stanford
 Minister of Education

28/05/2025

1,6,25