

# Briefing report

## Education Review Office (ERO): ERO's Proposals for Legislative Change in 2021

Date	29 January 2021
Security Level	N/A
ERO Priority	Medium
ERO Reference	M21-1
Date requested	ERO initiated
Date due	ERO initiated
Proactive release	Recommended

Addressee	Action sought	Deadline
<b>Associate Minister of Education</b>	<p>It is recommended that you: <i>(copy from Recommendations in briefing letter)</i></p> <ul style="list-style-type: none"> <li>a) <b>note</b> that changes to the Education and Training Act are on the agenda for 2 February, Education Ministers' meeting.</li> <li>b) <b>note</b> that ERO has put forward two proposals to ensure the safety of children in early learning services and quality early learning, primary and secondary education.</li> <li>c) <b>note</b> that ERO proposes Ministers agree that the Ministry and ERO bring them options and recommendations on how to: <ul style="list-style-type: none"> <li>• improve the safety of children in early learning services</li> <li>• improve the quality of early learning, primary and secondary education</li> </ul> <p>in time for inclusion in the Bill, due to be entered into the house this year.</p> </li> <li>d) <b>note</b> that this briefing is recommended for proactive release</li> </ul>	



Attachments:

***Education Review Office (ERO):  
ERO's proposals for Legislative  
Change in 2021***



Comments:

Minister's Office to complete	
Noted	<input type="checkbox"/>
Seen	<input type="checkbox"/>
Approved	<input type="checkbox"/>
Referred to:	
Date signed by Minister:	



Our Ref: M21-1

29 January 2021

**Hon Jan Tinetti**  
**Associate Minister of Education**

## **ERO's Proposals for Legislative Change in 2021**

### **Purpose**

1. This memo updates you on two proposals to improve the safety of children in early learning services and ensure quality of secondary education. Both proposals require changes to the Education and Training Act ('the Act').

### **Changes to the Act are on the agenda for the agency meeting on 2 February**

2. At the end of last year, the Ministry of Education ('the Ministry') asked the Education Review Office (ERO) for any proposals that may require changes to the Act.
3. ERO identified two proposals:
  - **Improve the safety of children in early learning services:** providing ERO with powers to direct services to address health and safety issues when there is an immediate concern for children's safety.
  - **Ensure quality early learning, primary and secondary education:** clarifying the scope of ERO to ensure students under the age of 19 receive quality education.
4. We understand that the changes to the Act are on the agenda for the education sector agency meeting on Tuesday, 2 February.

### **Improve the safety of children in early learning services**

#### *The issue*

5. When reviewing early learning services, ERO's qualified expert reviewers are identifying unacceptable or immediate risks to children's health and safety. For example, unsupervised sleeping, unsupervised eating, and unlatched gates to the road.
6. When one of these issues is identified, ERO informs the Ministry through established operational protocols. The operational protocols specify that, within

three days, the Ministry carry out their own investigation before deciding what action to take.

7. ERO is concerned that the current process risks children being harmed. Any process that requires double handling is less effective. Additionally, ERO is seeing cases where similar issues are being identified when reviewers return to the same early learning services a year later.
8. Currently ERO has no formal way of addressing these issues, other than informing the Minister responsible for ERO on the results of its reviews.

### *Proposal*

9. ERO's proposal is based on the Education and Care Services National Law Act in Australia, where the ERO-equivalent can issue 'emergency action notices' when they identify risks to the health and safety of children.
10. The Ministry is aware that there is a need to improve the way government intervenes when an immediate health and safety risk is identified. They are currently consulting on a regulatory change, similar to the Australian model, that would allow the Ministry to issue a written direction when they identify an immediate health and safety issue. One option would be to extend this regulation to ERO.
11. We understand that the Ministry is more likely to favour a legal status quo, where the operational protocols are updated. This option could also include a requirement that the Ministry takes immediate action and have ongoing checking on progress.
12. Some of the issues that may need to be worked through include:
  - What is the best course of action for ERO to take when they identify an immediate risk to children's safety?
  - What is the best way to put that action in place – legislation, regulation or operational protocol?
  - What are the operational considerations, including financial implications and natural justice processes?
  - What are iwi/hapū views on how the function applies in a Māori medium environment?

## **Ensure quality early learning, primary and secondary education**

### *The issue*

13. ERO's reading of the Act is that there are three critical gaps in reviewing the quality and impact of early learning, primary and secondary education in New Zealand. These gaps are largely in education services that are targeted to priority learners:

- *Early learning, primary and secondary education:* evaluation and review of programmes that support early learning services and schools in the delivery of their programmes. Examples include: Professional Learning and Development programmes, Kiwi Can, SWiS providers, or early intervention services.
- *Secondary education:* evaluation and review of funded services, where the young people are all over the age of 16, including those alternative education programmes, Service Academies, learning support services and RTLB services that are targeted to only over 16-year olds.
- *Secondary education:* evaluation and review of education providers who sit outside of state schooling or secondary-tertiary partnerships. E.g. education to young people over the age of 16 in youth justice residences, or secondary-level education that is provided by tertiary institutions.

### *Proposal*

14. ERO is not advocating for a significant change in the scope of our function and is not proposing to go further into tertiary level education. ERO sees reviewing and evaluating the quality and impact of these services as an important part of our system evaluation function and would like to ensure that the Act reflects this.
15. One option could be to clarify the meaning of an education service in the Act to ensure ERO has the power to review the services described above. This would be a small change to the legislation.
16. Another option could be to describe ERO's function in terms of the objective of the service. This is how the Parliamentary Commissioner for the Environment scope is determined in legislation.
17. Some of the issues that may need to be worked through include:
  - How would this change work with the role of other government agencies including the Ministry, NZQA and TEC?
  - What is the best way to structure the legislation?
  - What are the operational considerations, including financial implications?

### **Next steps**

18. The Ministry has not shared with us their timeframes for their legislative work programme. However, we understand policy proposals are due by mid-March with the intention of the bill having its first reading later this year.

19. We propose that at the meeting on 2 February Ministers agree that the Ministry and ERO urgently bring them options and recommendations on how to:

- improve the safety of children in early learning services
- improve the quality of early learning, primary and secondary education.

And that this advice is in time for inclusion in the Bill, due to be entered into the house this year.

### Recommendations

20. It is recommended that you:

- a) **note** that changes to the Education and Training Act are on the agenda for the 2 February, Education Ministers' meeting. **Yes / No**
- b) **note** that ERO has put forward two proposals to ensure the safety of children in early learning services and quality early learning, primary and secondary education. **Yes/No**
- c) **note** that ERO proposes Ministers agree that the Ministry and ERO bring them options and recommendations on how to:  
• improve the safety of children in early learning services  
• improve the quality of early learning, primary and secondary education  
in time for inclusion in the Bill, due to be entered into the house this year. **Yes/No**
- d) **note** this briefing is recommended for proactive release. **Yes/No**



Ruth Shinoda  
**Acting Chief Executive**

NOTED/APPROVED



Jan Tinetti  
**Associate Minister of Education  
with responsibility for the Education Review Office**

31 / 01 / 2021