



Education Report: ERO's mandate proposals for legislative change in 2021

To:	Hon Chris Hipkins, Minister of Education Hon Jan Tinetti, Associate Minister of Education		
Date:	5 March 2021	Priority:	Medium
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper outlines proposals for legislative amendments to the Education and Training Act 2020 (the Act) in relation to the Education Review Office's (ERO's) mandate, and seeks your direction on whether they should be pursued for inclusion in a future amendment bill.

Summary

1. ERO and the Ministry have been considering amendments for possible inclusion in the Education and Training Amendment Bill (No. 2), which will be introduced later this year, after a round of public consultation.
2. The areas of consideration are:
 - a. Extending ERO's powers to enable it to review education services provided to registered teachers, such as PLD programmes;
 - b. Extending ERO's review powers to include education provision for 16-18 year olds provided in Oranga Tamariki community group homes; and
 - c. Providing ERO with a power to direct early learning centres to address health and safety issues that pose an immediate risk to children.

3. ERO, supported by the Ministry, is proposing to extend ERO's powers to enable it to review education programmes for registered teachers because PLD is an important lever in improving the quality of teaching to students, and it fits with ERO's system evaluation function.
4. The Ministry and ERO agree that there should be investigation of whether changes will be required to enable ERO to review Oranga Tamariki community homes for 16-18 year olds if private education provision is to be used.
5. In relation to ECE, currently when health and safety issues that pose an unacceptable risk to children are identified by ERO during an Akanuku | Assurance Review, ERO contacts the Ministry, which then contacts the service on the same day and visits the service within three days. ERO has been considering whether its reviewers could issue written directions in these instances. ERO and the Ministry agree that further work is needed.
6. Any new ERO power would need to fit with the broader ECE regulatory system and Ministry powers such as any new powers needed to enforce a direction. There is an existing proposal within tranche one of the early learning regulatory review to enable the Ministry to issue written directions for health and safety matters that require immediate attention. Consultation on tranche one closed on 12 February, and changes are due to be implemented in the first half of this year.
7. We therefore recommend further work on opportunities for better alignment and coordination of ERO's and the Ministry's operational roles relating to early learning. This will include looking at legislative powers, protocols, joint training and stronger joint working. This work will report back to Ministers within six months.

Recommended Actions

The Ministry of Education and the Education Review Office recommend that you:

- a. **agree** that ERO's mandate should be extended to enable it to review educational programmes for registered teachers, such as professional learning and development programmes

Agree / Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

- b. **note** that section 462 of the Education and Training Act currently allows ERO to review all government programmes for primary and secondary students, but it does not allow ERO to review services provided to students over 16 who are not enrolled at a State school

Noted
Minister of Education

Noted
Associate Minister of Education

- c. **note** that there would be a gap in ERO's review powers if an over 16-year old student left a youth justice facility and moved into a community home, and was provided private tuition funded by Oranga Tamariki in that home

Noted
Minister of Education

Noted
Associate Minister of Education

- d. **agree** that the Ministry and ERO should engage with Oranga Tamariki to determine what their community home education plans are, what the best review model should be for the education services provided in these homes, and what might need to be amended in our legislation to support these reviews

Agree / Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

- e. **agree** that the Ministry and ERO will undertake further work on aligning the operational early learning roles of the two agencies, and report back to you with any proposed changes within six months

Agree / Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

Proactive Release Recommendation

- f. **agree** that this Education Report is released after Cabinet has made decisions on consultation proposals for the Education and Training Amendment Bill 2021.

Agree / Disagree
Minister of Education



Dr Andrea Schöllmann
Deputy Secretary
Education System Policy
05/03/2021



Ruth Shinoda
Deputy Chief Executive
Education Review Office
05/03/2021



Hon Chris Hipkins
Minister of Education
9 / 3 / 21



Hon Jan Tinetti
Associate Minister of Education
6 / 3 / 2021

I'm happy for extra work to be done on rec (e) but at this point I'm not convinced this wouldn't confuse the roles of ERO and the MOE. CH

Background

1. An Education and Training Amendment Bill (No.2) has been included in the 2021 Legislation Programme with a suggested priority of category 4: to be referred to select committee in the year. This Bill will contain amendments requiring earlier public consultation.
2. The Ministry has sought ERO's views on whether any legislative amendments are required. ERO has identified areas for amendments.

Area 1: Enabling ERO to review education for registered teachers

3. ERO is seeking to amend the scope of section 462 of the Education and Training Act 2020.
4. ERO would like to review education services provided to registered teachers, such as PLD programmes as it is an important lever in improving the quality of teaching to students, and it fits with its system evaluation function.
5. Section 462 does not currently allow for this because these services are for over 16 year olds who are not enrolled in State schools.
6. The Ministry supports this change.

Area 2: Reviewing education contracted by Oranga Tamariki

7. ERO currently reviews Oranga Tamariki provided education in any setting which includes a child under the age of 16.
8. ERO would like to review Oranga Tamariki provided education to young people over the age of 16 who are not enrolled in a state school. The Ministry and ERO agree that this is a technical gap. Whilst not currently an issue, as Oranga Tamariki moves its young people in youth justice residences to community-based homes, it is possible that private (non-State) teaching of solely over 16 year olds will be out of scope for ERO to review.
9. Oranga Tamariki is yet to determine what education delivery model will be used in these homes. ERO and the Ministry therefore suggest that they should engage with Oranga Tamariki to determine what their community home education plans are, what the best review model might be, and what we need to do in our legislation to support ERO's implementation of this model.

Area 3: directing early learning services to address health and safety issues

10. ERO has been considering a legislative amendment to enable its reviewers to issue written directions to early learning services to address health and safety issues that they consider an unacceptable risk to children. ERO is concerned about the safety of children in some early learning services.
11. Since March 2019, ERO has been undertaking Akanuku | Assurance Reviews in early learning services. These reviews have an explicit focus on services' compliance with licensing criteria. Akanuku | Assurance Reviews target services at greater risk of non-compliance.
12. As the regulator of the early learning sector, the Ministry has a range of powers, including the ability to reclassify a service's licence as provisional, and to suspend and cancel licences. The Ministry has recently consulted on a proposal to strengthen health and safety regulation as part of tranche one of the regulatory review. This proposal would

enable the Secretary to issue written directions for a health and safety issue that can be dealt with quickly and safely while the service remains open.

13. Consultation on Tranche 1 closed on 12 February and the changes are intended to be implemented in the first half of this year. Preliminary analysis shows that the majority of respondents are supportive of establishment of a written direction (86% agree or strongly agree), and with giving the Secretary the ability to suspend or reclassify a licence as provisional if the service does not comply with the direction (90% agree or strongly agree). The main areas of feedback have been regarding the length of time that services would have to comply with the written direction.
14. ERO and the Ministry agree that there is an opportunity for better alignment and coordination of the Ministry's and ERO's operational early learning roles. We recommend further work on this including looking at legislative powers, protocols, joint training and stronger joint working. The Ministry and ERO will come back to Ministers on any proposed changes within six months.