

# Regulatory Impact Statement: Police vetting – removing the application period for specified employees

## Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing: final Cabinet decisions
Advising agencies:	The Ministry of Education
Proposing Ministers:	The Minister of Education
Date finalised:	3/8/2021
Problem Definition	
<p>The majority of workers in the education sector are children’s workers, and require a comprehensive safety check (including a Police vet) under the Children’s Act 2014 to be completed before they can start work. Non-teaching and unregistered employees of schools and ECE services, who are not also children’s workers under the Children’s Act, are required to be vetted under the Education and Training Act 2020 (the ETA). Under the ETA, employers have two weeks to apply for the vet, as long as the non-teaching and unregistered employees do not have unsupervised access to children before their vet is obtained.</p> <p>The application period causes confusion. It only applies to a limited number of workers in practice, but some employers and workers think that it applies to them when it doesn’t. Confusion is also caused by the different points at which vets must be obtained, as there is no equivalent application period for a safety check under the Children’s Act.</p>	
Executive Summary	
<p>The Children’s Act and the ETA set out a framework for ensuring the safety of children while engaging in education. The majority of workers in the education sector are children’s workers under the Children’s Act because they have regular or overnight contact with children, and are therefore subject to a comprehensive safety check before they can begin work, which includes a vet.</p> <p>Non-teaching and unregistered employees in ECE services and schools, who are not also children’s workers, require a vet under the ETA, but can begin work provided their employer applies for a vet within two weeks and they do not have unsupervised access to children during this time;</p>	

The two-week application period causes confusion because it is not clear about who it applies to, and creates different points in time when vets must be obtained under the two Acts.

The proposal is to amend the ETA:

- so that all non-teaching and unregistered employees of ECE services and schools must be the subject of a vet before they begin working in the service or school, to ensure the Children's Act and the ETA work more effectively together; and
- to remove the two-week period in the ETA to apply for a vet for non-teaching and unregistered employees after they start work.

Government intervention is required because otherwise the current confusion about how the two Acts work together will continue.

We identified three potential options:

- Option 1: ECE services and schools have two weeks to apply for a vet of non-teaching and unregistered employees (the status quo);
- Option Two – requiring ECE services and schools to apply for a vet before non-teaching and unregistered employees begin work; and
- Option Three – removing the application period, and requiring non-teaching and unregistered employees to obtain a vet before beginning work. This is our preferred option, and is reflected in the Cabinet paper.

We consider that the impacts, costs and risks of the preferred option are low. The application period only applies to a small number of employees. This proposal will have no impact on the required checks for teachers and teacher aides, the requirement to vet non-teaching and unregistered employees, or on the processing times for vets. The only change is to clarify the point at which a vet for non-teaching and unregistered employees is required.

We sought feedback on the costs, benefits and impacts of the proposal during the public consultation period. 33 submitters specifically disagreed with the proposal, but the feedback from submitters mostly related to vetting teachers and teacher aides. For example, many submitters thought that the proposal would impact on their ability to employ teachers and teacher aides, and to ensure the required ratios in ECE services. This is evidence of the level of confusion about the application period in the education sector.

The main benefit of this proposal is clarity and transparency around the requirements placed on employers and non-teaching and unregistered employees.

The vast majority of submitters considered that the application period was confusing (109 out of 181 submitters), and 98 submitters specifically agreed with the proposal, and an additional 27 submitters would agree if processing times for vets were improved. Many submitters commented that a benefit of this proposal is ensuring the safety of tamariki while engaging in education.

### Limitations and Constraints on Analysis

We have publicly consulted on this proposal, and used submissions for the analysis in this document. Prior to receiving these submissions, we had heard anecdotally of confusion caused by the differing requirements in the Children’s Act and the ETA for when the safety checking and vetting requirements must be applied for or be obtained. The submissions showed that the application period is not well understood. We have noted constraints in using this data as appropriate.

The application period is specified in legislation. Therefore, the range of options we have identified is limited to the status quo and legislative amendment.

### Responsible Manager(s) (completed by relevant manager)

Dr. Andrea Schöllmann  
**Deputy Secretary**  
**Education System Policy**  
**Ministry of Education**

3/8/2021

### Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

Panel Assessment & Comment: The Ministry of Education’s Quality Assurance Panel has reviewed the Regulatory Impact Statement: *Police vetting – removing the application period for specified employees* dated 3 August 2021. The panel considers that it **meets** the Quality Assurance criteria. The Regulatory Impact Statement (RIS) provides a clear, concise and convincing case for the need to remove the two-week application period, and require non-teaching and unregistered employees to obtain a vet before beginning work. These changes will remove the confusion that the status quo creates and which was reinforced through the consultation on these proposals. Stakeholder views on these proposals have been sought and are reflected throughout the RIS.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. Currently the ETA requires that vets are obtained for non-teaching and unregistered employees at ECE services and schools before they have, or are likely to have, unsupervised access to children, and that a vet must be applied for within two weeks of the person beginning work (the application period). In practice these unvetted employees could be on site for up to six weeks while the vet is being processed.
2. In practice there are few workers that are subject to the application period under the ETA, because most education workers have unsupervised access to children and are therefore children's workers under the Children's Act 2014. Children's workers are required to obtain a comprehensive safety check before beginning work, which includes a vet, as well as a number of other components. This application period is therefore confusing, inconsistent between the two Acts, and difficult to administer.
3. The application period applies only to non-teaching and unregistered employees. It does not apply to teachers or teacher aides. There is no equivalent application period under the Children's Act. The application period does not apply to volunteers because they are not a non-teaching or unregistered employee.
4. The vetting provisions in the ETA predate the Children's Act, and they were not amended to recognise the new requirement for those who interact with children to now undergo a safety check.
5. The application period was inserted into the education legislation to provide employers with flexibility as vets took some time to be processed. Over time the need for this flexibility has decreased.
6. The status quo is expected to remain unchanged unless the provisions in the ETA are amended. The level of confusion about how the two Acts work together will continue until there is legislative amendment.
7. The key feature of the framework established by the Children's Act and the ETA is that adults must be checked before they can have unsupervised access to children. The exact nature of the checking will depend upon whether the employee is a children's worker or not. The objective of the framework established by the Children's Act and the ETA is to keep children safe while engaging in education.

## What is the policy problem or opportunity?

8. The application period causes confusion because it is not clear about who it applies to, and creates different points in time when vets must be obtained under the two Acts. There is no application period for children's workers as they must be safety checked before they begin working.
9. Stakeholders include employers and non-teaching and unregistered employees at schools and ECE services. As the majority of workers in the education sector are children's workers, the application period only applies to a small number of employees. It is unclear exactly how many workers the application period applies to, because it depends upon how ECE services and schools operate.
10. We asked submitters to provide examples of non-teaching and unregistered employees who were not also children's workers. However, many of the examples provided are actually children's workers, such as relief teachers, tutors, trainee teachers, non-qualified relievers, and teacher aides.
11. The majority of submitters considered that the application period was confusing (109 submitters out of 183), and 128 either specifically agreed with the proposal, or would if timeframes for processing vets were reduced. The main reason given by submitters for agreeing with the proposal was to ensure the safety of tamariki when engaging with education.
12. 33 submitters specifically disagreed with the proposal, with the main reason given being problems caused by the delays in vet processing times, including delays in appointments, candidates finding alternative employment, contributing to the teacher shortage, being unable to support students with learning support needs, and being unable to get relievers.
13. Most of these problems are not related to the proposal as teachers, teacher aides and relievers are not subject to the application period. The view expressed by submitters during the consultation period has reinforced our view that the application period is confusing.
14. The problem does not disproportionately affect any particular population groups.
15. We consider that the root cause of the problem is unintended consequences resulting from the design of the provisions in the Act. The application period was originally intended to provide flexibility for employers. However, vetting processing times have improved considerably in recent years, and there is an opportunity to amend the law to reflect that the application period is no longer needed. While current processing times are outside the 20-working days timeframe specified in the Service Level Agreement, primarily due to the high demand that is typical for this time of year, there is a downward trend. In 2015 it took 20.8 working days on average to process vets for education organisations. This has decreased to 11.5 working days in 2020, and is tracking at 10.7 working days on average in 2021 so far.
16. An unintended consequence of the design of the provisions in the Act is a confusion and a lack of alignment with the Children's Act.

### **What objectives are sought in relation to the policy problem?**

17. The objectives sought are to reduce confusion about what level of checking applies to employees in the education sector, and to ensure all employees are required to obtain a vet before they begin employment.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

18. We have identified the following decision criteria:
  - confusion between the frameworks set out in the ETA and the Children's Act is reduced;
  - the requirements placed on ECE services and schools are clear and workable;
  - any risks presented by unvetted employees are minimised;
  - does not erode the current safety protections afforded by the vetting provisions in the ETA or the Children's Act, or increase the risk of harm; and
  - compliance costs are reduced.

### What scope will options be considered within?

19. The scope of feasible options has not been limited by Minister's commissioning, previous policy decisions or stakeholder engagement.
20. No non-regulatory options are available as the application period is specified in the ETA.

## What options are being considered?

21. The options have been summarised in the below table:

<b>Option 1 - the status quo</b>
<p><b>Description</b></p> <ul style="list-style-type: none"> <li>• Non-teaching and unregistered employees can begin work as long as a vet is applied for within two weeks and they do not have unsupervised access to children</li> </ul> <p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Employers have flexibility</li> <li>• Does not erode current safety protections in the ETA or Children’s Act or increase the risk of harm</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Will not reduce confusion, clarify the requirements or make them more workable</li> <li>• Will not reduce compliance costs</li> <li>• Does not address the problems identified in section 1</li> </ul>
<b>Option 2- requiring ECE services and schools to apply for a vet before employees begin start</b>
<p><b>Description</b></p> <ul style="list-style-type: none"> <li>• An application must be lodged before non-teaching and unregistered employees can begin work, and they must not have unsupervised access to children until the vet is obtained.</li> </ul> <p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Employers retain some of the flexibility they currently have under the status quo</li> <li>• Does not erode current safety protections in the ETA or Children’s Act or increase the risk of harm</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Will not reduce confusion, clarify the requirements or make them more workable</li> <li>• Will not reduce compliance costs</li> <li>• Does not address the problems identified in section 1</li> </ul>
<b>Option 3- removing the application period</b>
<p><b>Description</b></p> <ul style="list-style-type: none"> <li>• The ETA is amended to remove the application period. Employers will be required to obtain the vet before non-teaching and unregistered employees begin work</li> </ul> <p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• The ETA and the Children’s Act will become more closely aligned, which will reduce confusion</li> <li>• Greater clarity for ECE services and schools, and will be more workable</li> <li>• Reduce compliance costs if additional staff are required to supervise non-teaching and unregistered employees</li> <li>• The risks presented by un-vetted employees are minimised.</li> <li>• Does not erode current safety protections in the ETA or Children’s Act or increase the risk of harm</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Loss of flexibility for employers</li> </ul>



### **Public consultation on option 3**

22. 109 submitters agreed that the application period causes confusion, and 128 specifically agreed with this option, or would if the processing time for vets was improved. The main reason given was to ensure the safety of all tamariki as they engage in education.
23. 33 submitters specifically disagreed with this proposal. The main problem raised by submitters was the length of time it takes to obtain a vet, which causes a number of problems, including: The biggest issue raised by submitters was the length of time taken to obtain a vet. A number of submitters cited problems this causes, including delays in appointments, candidates finding alternative employment, contributing to the teacher shortage, being unable to support students with learning support needs, and being unable to get relievers.
24. We agree that delays in the vetting process can cause some of the problems identified by submitters as set out above. However, the proposal only relates to non-teaching and unregistered employees, not teachers and teacher aides who are children's workers. This proposal will have no impact on the ability to employ teachers and teacher's aides, or on maintaining ratios in ECE services.
25. We also consider that the need for flexibility has diminished since the application period was introduced. In 2009, the Police Vetting Service (PVS) processed vets manually with paper-based procedures. The subsequent shift to an electronic-based system allowed for efficiency improvements, including allowing Police vets to be submitted electronically.
26. We have discussed the length of time it takes to process a vet application with the PVS. The PVS noted that vetting processing timeframes can fluctuate based on a number of factors, such as the time of year, the complexity of the vetting request, and whether the vetting request meets criteria for automation.
27. While current processing times are outside the 20-working days timeframe specified in the Service Level Agreement, primarily due to the high demand that is typical for this time of year, there is a downward trend. In 2015 it took 20.8 working days on average to process vets for education organisations. This has decreased to 11.5 working days in 2020, and is tracking at 10.7 working days on average in 2021 so far.
28. We consider that there will be an increase in the benefit to society compared with the status quo. This was identified by 36 submitters who commented that the proposal is necessary to protect our tamariki while they engage in education, as it will ensure that no unvetted adults will interact with children.

## How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Requiring ECE services and schools to apply for a vet before non-teaching and unregistered employees begin work	Option 3 - Removing the application period
<b>Confusion between the ETA and the Children’s Act is reduced</b>	0	0 about the same as the status quo This option will still be inconsistent with the Children’s Act, and still cause confusion	++ much better than the status quo This option will reduce confusion as all workers will be required to obtain either a safety check under the Children’s Act or a vet under the ETA before they begin work
<b>Requirements placed on schools and ECE services are clear and workable</b>	0	0 about the same as the status quo This option does not clarify who the application period applies to, and will still require un-vetted employees to be supervised around children	++ much better than the status quo The requirement to obtain a vet before non-teaching and unregistered employees begin work will be clear and workable
<b>Risks presented by unvetted employees are minimised</b>	0	+ better than doing nothing/the status quo/counterfactual Under this option unvetted employees will still be allowed on site, but the period of time will be reduced.	++ much better than the status quo Risks are minimised as no unvetted non-teaching or unregistered employees will be allowed on site
<b>Does not erode the current protections or increase the risk of harm</b>	0	0 about the same as the status quo The current protections are not eroded, and the risk of harm is not increased.	0 about the same as the status quo The current protections are not eroded, and the risk of harm is not increased.
<b>Compliance costs are reduced</b>	0	+ better than the status quo Compliance costs are reduced if additional staff were required to provide supervision for a reduced period	++ much better than the status quo Compliance costs are reduced if additional staff were required to provide supervision
<b>Overall assessment</b>	0	Not preferred option	Preferred option

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

29. We consider that Option 3 – Removing the application period is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 1.

## What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence <b>Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups (school, ECE services)	No impact on cost. The only change is the time that a vet is required. No additional obligations to obtain a vet will be imposed	Low. Lack of flexibility may have a minor impact on employers, but it will not affect the ability to recruit teachers or teacher aides	High. We did not hear from submitters that the proposal will cause additional costs and have a great impact. The majority of the costs and impacts identified by submitters are not relevant to the proposal
Regulators (Ministry of Education, Education Review Office, Police Vetting Service)	None. The proposal will have no impact on the requirement to obtain vets so will not add additional pressure on the Police Vetting Service. Clear and workable arrangements will make it easier to regulate compliance	Low.	
Others (Parents, other caregivers, whānau)	No additional costs placed on parents	Low	
<b>Total monetised costs</b>			
<b>Non-monetised costs</b>		<i>Low</i>	
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups (schools, ECE services)	On-going benefit of reduction in confusion	High. Clarity and transparency are important to ensure understanding of how the ETA and the Children's Act work together	High. Submitters agreed that status quo was confusing and the majority agreed with the proposal. Many submitters commented that the safety of tamariki is paramount
Regulators (Ministry of Education, Education Review Office, Police Vetting Service)	On-going benefit of ensuring safety of tamariki while engaging in education	High	

Others (Parents, other caregivers, whānau))	Parents know that adults interacting with their children have been subjected to a level of scrutiny	High	High. A number of submitters commented that as parents they wish all adults are subject to a scrutiny before interacting with their children
<b>Total monetised benefits</b>			
<b>Non-monetised benefits</b>		<i>High</i>	

## Section 3: Delivering an option

### How will the new arrangements be implemented?

30. Legislative change is required to implement this proposal, and if it is agreed to, it will be added to the Education and Training Bill (No 2).
31. Communications will be provided through the Ministry's standard publications and other channels, such as social media and issuing guidance. The removal of the application period provides the opportunity to address some of the wider confusion about how the ETA and the Children's Act work together to ensure the safety of tamariki when they engage in education.

### How will the new arrangements be monitored, evaluated, and reviewed?

32. The Ministry of Education will monitor and evaluate the impact of the proposal on employers and non-teaching and unregistered employees. We have a number of channels for this, such as seeking feedback in Ministry publications, setting up face to face meetings with key stakeholders and issuing new and better guidance.
33. We will also continue to work with the PVS to identify and resolve any operational issues.