

Regulatory Impact Statement: Repeal of network approval legislation

Coversheet

Purpose of Document	
Decision sought:	<i>Cabinet approval to repeal the network approval legislation</i>
Advising agencies:	<i>Ministry of Education</i>
Proposing Ministers:	<i>Associate Minister of Education, Hon David Seymour</i>
Date finalised:	<i>19 March 2024</i>
Problem Definition	
<p>The requirement to seek network approval introduced a barrier to entry for potential new early learning services. This could restrict supply, limit market competition, and therefore introduce a barrier to the market responding to parental and community needs.</p>	
Executive Summary	
<p>Network approval provisions were introduced into the Education and Training Act 2020 (the Act) in February 2023 over concerns about the impact of oversupply of early childhood education (ECE) services on the overall quality of services. Since its introduction, anyone proposing to establish and provide a new licensed ECE service (except for excluded services) must first obtain network approval from the Minister of Education before they are able to apply for a licence.</p> <p>Prior to the network approval provisions, the policy settings for proposed new services were more straightforward as any service that fulfilled the licensing criteria could join the market. Concerns with lower quality provision and over supply were met through a combination of licensing requirements and market decisions by parents.</p> <p>We have heard from some sector groups that the legislation has introduced an unnecessary regulatory burden and barrier to new market entrants. In addition, we have heard that some parents continue to have trouble accessing services that meets their needs, and there continues to be concerns expressed about the affordability of childcare services.</p> <p>The Government has a focus on removing unnecessary regulation. The only option considered alongside the status quo was to repeal the network approval provisions in their entirety.</p> <p>Repealing the network approval provisions would represent a reversion to previous policy settings whereby the market determined the appropriate level of supply to respond to demand. Under these settings, new services are able to apply directly for a licence. There are potential benefits with removing the requirement for new proposed services to</p>	

seek network approval and on balance, the analysis supports repealing the network approval legislation.

Limitations and Constraints on Analysis

The Minister is seeking to remove the provisions in their entirety as soon as practicable in line with the Coalition Government's focus on removing unnecessary regulations. As such, the legislative change policy proposal work was completed in a condensed timeframe. Further, no other options were considered aside from repealing all of the network approval provisions. No consultation on the proposal in this RIS has been undertaken with the sector. This will occur at the select committee stage. This limits the feedback process which may particularly affect those that supported network approval provisions. There has, however, been feedback from the sector through other channels, for example sector Briefing for Incoming Ministers, and identified by the Early Childhood Advisory Committee (ECAC) and Early Childhood Council (ECC) as "quick win" policy changes to support the sector.

The network approval provisions have only been in place for approximately a year. This has meant there has been insufficient time to understand the impact (medium or long-term) network approval requirements has had on the ECE market. This includes the ability to evaluate any potential benefits for priority and excluded early childhood services or the children or families they would serve.

Responsible Manager(s) (completed by relevant manager)

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Ministry of Education

20 March 2024

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

Panel Assessment & Comment:

The Ministry of Education's RIA QA panel considered this statement and assessed it as meeting the Cabinet's quality assurance criteria for impact analysis. This assessment recognises the constraints imposed by the timeframe on the analysis of impacts and on obtaining stakeholder views, and the limitation of options to the status quo or repeal. Within these constraints, the statement provides clear and concise information to support decision making.

Section 1: Diagnosing the policy problem

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

ECE sector background

1. The ECE sector operates predominantly on a market-based model, comprised of approximately 2,000 self-managing operators and organisations, known as service providers. These entities are largely privately owned and operated¹ through a range of community-based and private ownership models.² The service providers operate around 5,000 individual services. This has resulted in a diverse network of services, varying in size, location, opening hours, instruction language and character or philosophy.
2. The system is structured so that it depends on potential market participants identifying and responding to the needs of their target communities. It is then up to market participants to run a sustainable business that aligns with these needs, while also complying with the regulations and licensing criteria specific to the sector. The market would determine the appropriate level of supply and concerns with lower quality provision was met through a combination of licensing requirements and market decisions by parents.
3. The market-driven nature of the ECE sector has resulted in a diverse mix of services in different communities and across New Zealand. Table 1 offers a regional overview in 2023, which illustrates how the proportion of licensed positions by service type can vary across the regions.

Table 1: Regional Distribution of Licensed Positions in Different Services (as at June 2023)³

Region in New Zealand	Education & Care	Home-based	Kindergarten	Playcentre	Te Kōhanga Reo
Northland Region	58%	8%	11%	10%	12%
Auckland Region	78%	10%	7%	3%	2%
Waikato Region	69%	4%	12%	7%	7%
Bay of Plenty Region	62%	10%	10%	4%	13%
Taranaki Region	57%	3%	19%	10%	11%
Gisborne Region	53%	3%	14%	5%	24%
Hawke’s Bay Region	52%	15%	15%	4%	14%
Manawatū-Whanganui Region	53%	11%	19%	5%	13%
Wellington Region	59%	5%	22%	6%	9%
Marlborough Region	59%	10%	20%	9%	2%
Nelson Region	48%	12%	30%	5%	4%
Tasman Region	58%	4%	22%	15%	1%
Canterbury Region	78%	4%	12%	6%	1%

¹ In 2023, from a total of 5,044 ECE services, 16 were owned by a Community Trust, 18 by a Health Board, 12 by a Local Authority, and 32 by a Public Education Institution.

² Community-based ownership models include incorporated societies, charitable, statutory and community trusts, and govt depts. Private ownership models include sole traders, partnerships, companies, and private trusts.

³ Figures for table 1 have been sourced from the ‘Pivot Table: Number of Licensed ECE Places (2000-2023)’ spreadsheet available on Education Counts.

West Coast Region	63%	0%	23%	14%	0%
Otago Region	63%	8%	20%	6%	1%
Southland Region	53%	9%	25%	7%	5%
New Zealand Total	69%	8%	12%	5%	6%

4. While ECE is not compulsory, a high proportion (96%) of children have regularly participated in ECE in the six months prior to starting school⁴. Notably, participation rates vary based on several factors, with some ethnicities and children from low socio-economic backgrounds tending to attend ECE less than the national average.

Introduction of network management

5. Prior to the introduction of network approval provisions in 2023, there was an increase in the number of children attending early learning services. The market response was to expand rapidly to meet the increase in demand (refer table at para 16). At the time there was a concern that the expansion resulted in issues with quality and a view that this has resulted in some areas experiencing under or oversupply of child places. In places where there had been significant increase in supply there was a concern that new entrants might provide a low-quality service at a lower price and crowd out existing services.
6. The Early Learning Action Plan (ELAP) set an objective for early learning services “to be part of a planned, diverse and coherent education ecosystem that is sustainable and meets the needs of communities across New Zealand”. Requiring proposed new services to seek network approval before they could apply for a licence was one of the actions to support this objective. It established a process to manage the supply of new licensed early childhood services. It therefore also provided existing services with more certainty around their revenue through restricting competition.
7. Cabinet decided to introduce network approval to manage the supply of new licensed ECE services and the network approval provisions came into effect in February 2023. A network approval applicant is required to pay a fee of \$575 (GST inclusive) and complete the application process (refer chart 1) that should demonstrate:
 - a) there is a need for a new service of the type and location they are offering, and
 - b) they are suitable (fit and proper), capable to provide and establish a service, and are financially viable.

Network approval application process

8. Applications from anyone intending to establish and operate a new licenced ECE are submitted to the Ministry of Education and the Secretary for Education assesses whether the applicant and people involved in the governance of the proposed service are ‘fit and proper’ and whether the proposed service is financially viable. These assessments are provided to the Minister of Education.
9. The Minister also issued a National Statement relating to the network of early childhood services that includes the following information:
 - The eleven strategic priorities

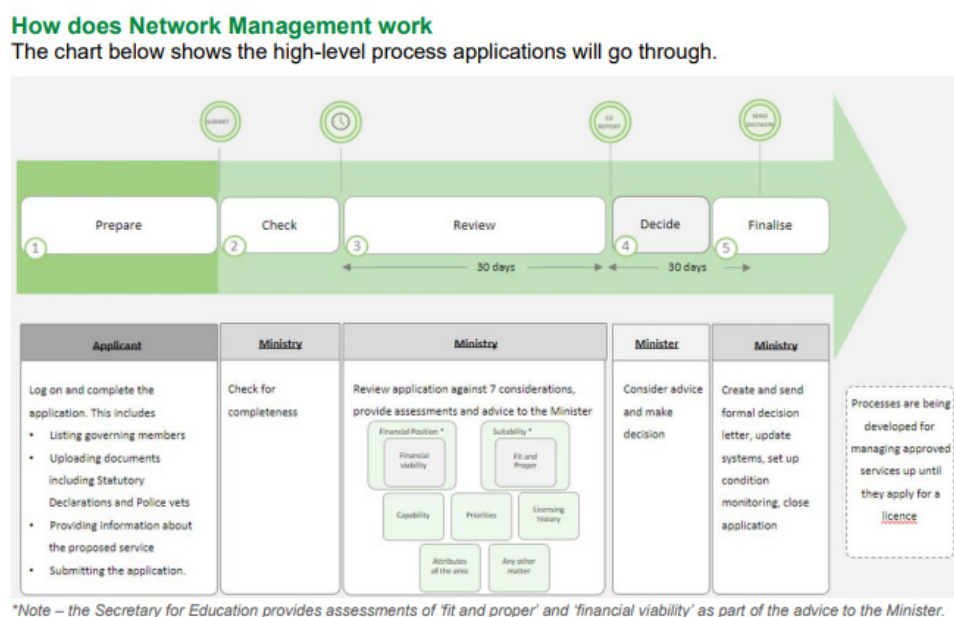
⁴ Data is for the year end 30 June 2023. Prior Participation Rates are published on Education Counts.

- Relevant background to the application process, in particular the information that the Minister will take into account when considering applications
- Information and data on the number of services and licensed places and population data

10. The Minister of Education (or delegate) then considers the Secretary’s assessments and other matters such as alignment with the National Statement, including the strategic priorities⁵ that were identified by the Government after consultation with the sector and Māori, community need and existing service availability, and licensing history⁶. Taking all this into account, the Minister decides whether to approve the application.

11. The following diagram sets out the full process that proposed new services are required to go through in order to gain network approval before they are able to apply for a licence. Once the applicant has prepared the material for the application, it takes up to 60 days for a decision to be made (refer chart 1). As well as the time and resources required to complete an application, applicants are also required to pay an application fee of \$575 (GST inclusive).

Chart 1: network approval process



12. As part of the application process, the Ministry has provided support to the sector. The support includes advice on the required process, the expectations on applicants

⁵ • Māori bilingual and immersion services; Hapū/iwi-owned services; Services with a distinct Māori identity and culture; Pacific bilingual and immersion services; Pacific language and/or cultural services; Language immersion services (non-English/Māori/Pacific); Services well-equipped for learning support needs ; Services well-equipped for migrants and former refugees; Services planned to operate on a new school site; Organisations funded by Targeted Assistance for Participation (TAP); Wrap around services.

⁶ Financial position; Suitability of the applicant; Capability to deliver the proposed service; Previous licensing history; Attributes of the area; Content of the National Statement, including the priorities (see footnote 4)

(including business planning requirements) as well as providing market information and data.

13. Once an applicant successfully receives network approval, the applicant applies to the Secretary for Education for a licence (they have up to 3 years to apply for a licence). Only those with network approval and excluded early learning services from the network approval requirements can apply for a licence. Network approval does not guarantee a licence will be granted to operate an early childhood service. The applicant still needs to meet all of the licensing application requirements.

Some services were excluded from the requirement to seek network approval

14. Kōhanga reo and other Māori immersion services are excluded from the requirement to seek network approval to support the supply of early childhood services provided in te reo Māori.

Amendments to support introduction of the network approval legislation

15. Following the enactment of the network management provisions, Cabinet agreed to make the following amendments to strengthen the regulations:
 - To enable the licence for an existing ECE centre to be amended, without requiring a new licence or an application for network approval, where the ECE centre has to permanently relocate because its land has been acquired by the Crown for public works or urban development.
 - Clarify that the Secretary for Education will take into account the new network approval provisions when considering an application to amend an existing licence.

Impact on the ECE market

16. Since the network approval requirement was introduced, there has been approximately 112 applications. Of these, 72 were approved and 4 have been declined and 36 applications are still being progressed or awaiting a decision. In the year to June 2022, the number of new services entering the market decreased markedly from the six previous years (refer table 2). The number of new services increased slightly in 2023, which includes four months of services being required to seek network approval was introduced.
17. The sector has faced several challenges in the past few years, including the impact of COVID, cost of living, workforce constraints and other cost pressures. This makes it difficult to assess the impact network approval has had on the market⁷. However, the number of new services being established reduced significantly in the year before the legislation was introduced. This suggests that other factors have also had an impact on supply and demand and the market response is for fewer new services being established, albeit with regional variations (refer table 1).

⁷ As Table 2 displays data for the year ended June of each period, the majority of the 2023 period would have been prior to when network management came into force in February of 2023.

Table 2: New licensed ECE services in the financial year (year ended June)

Service Type	2016	2017	2018	2019	2020	2021	2022	2023
Casual Education & Care	5	1	1	1		1	1	1
Education & Care	96	97	97	116	91	96	56	59
Home-based	56	48	44	22	13	23	8	10
Hospital-based		2						
Kindergarten	2	2	4	2	2	3	1	2
Playcentre						2		
Te Kōhanga Reo	1	4	1	1	3	4	1	
Grand Total	160	154	147	142	109	129	67	72

18. We are aware that some potential market participants did not apply for network approval due to the uncertainty that their application would be accepted in instances where their target location seemed adequately supplied, or the service type they planned to operate was not identified as a priority service. Other providers have changed the focus of their provision after engaging in the process of approval to better reflect the needs of the community or build their capability to be a successful provider.

What is the policy problem or opportunity?

Problems with the current state

19. The ECE sector is market based and the services are operated by community and privately owned businesses. Prior to the introduction of network approval provisions in February 2023, new services could be established and respond to the market as long as they met the licensing requirements. The network approval process added a regulatory barrier for potential new services. It required the Minister to determine the appropriate level of supply of ECEs in a community rather than relying on the market to determine the appropriate level of supply in the long term. This created a potential barrier to entry for new services wanting to respond to the needs of parents and communities and a barrier to competition being able to respond to what the market wants and supporting the provision of existing providers.

20. The sector has expressed concerns about the costs, regulatory burden and uncertainty caused by the network approval provisions, and this has led to some parts of the sector requesting its repeal. This applied to potential new services and existing providers who wish to expand their services (as this would require network considerations when assessing their licence amendment application). We further heard that some in the sector were concerned that the uncertainty through having to seek network approval might make it more difficult to secure financing.

21. At its meeting with the Minister of Education on 6 December 2023, the Early Childhood Advisory Committee (ECAC) raised concerns about the level of regulatory burden and cost facing the ECE sector, including the network approval legislation. These concerns were previously raised by some in the sector, including consultation on the ELAP and when the legislation was introduced in response to consultation on the regulations. However, some services have indicated that they view network approval positively as it restricts competition and provides more certainty for their ongoing business and

revenue. We note that sector views have likely shifted from the initial consultation but due to the timeframe we have not been able to test this.

What objectives are sought in relation to the policy problem?

22. The objective is to minimise the impact that regulatory burden has on proposed new ECE services being established and responding to the needs of parents.

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

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

23. The criteria for the analysis of the proposal relate to the regulatory burden services face to establish and provide and a new ECE service and the impact this may have on the market responding to community and parent need.
 - a. An efficient and transparent market that meets the needs of parents and the community
 - b. The impact and cost of regulation on ECE services is minimised
 - c. That new provision of education and care for children is of a high quality

24. There has been significant change in the market since network approval was proposed in the ELAP and the provisions introduced in February 2023. The sector has expressed its concerns about the impact of regulatory burden, services have faced cost pressures and workforce issues and there has been a change in demand factors. Therefore, the criteria have changed since network approval was introduced and the focus is on minimising the regulatory burden and the barriers new services face entering the market so that new services can more directly respond to the market needs.

What scope will options be considered within?

25. The Minister wanted to repeal the legislation as quickly as practicable and therefore repealing the legislation was the only option that could be considered. There are no feasible non-regulatory options available to address the problem as the problem stems directly from the cost and burden of the current regulatory requirements.
26. The tight timeframes meant that no consultation on the proposals outlined in this RIS has been undertaken with stakeholders, including parents, teachers, Māori/iwi. As such, we do not know how their views might impact on the feasible options.

What options are being considered?

Option One – Status Quo

27. All proposed new services are required to continue to apply for network approval before they can apply for a licence.

Option Two – Repeal network management legislation

28. This option means that proposed new services will no longer be required to seek network approval before they apply for a licence. This is the preferred option.

29. As primary legislation was amended to enable network approval, the relevant legislation needs to be repealed through an amendment Bill.

Options not considered

30. This analysis does not consider options relating to network approval for licence amendments in existing ECE services. Options of this sort are not direct responses to the problem of regulatory burden from network approval requirements, so are not feasible alternatives to the options analysed. Such options would be more likely to be seen as an extension of existing network approval requirements, and as regulatory overreach. For example, when the network approval requirements were amended to clarify that the Secretary could take into account network considerations when assessing a licence amendment application, some parts of the sector were concerned that it could introduce network approval for existing services.

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

	Option One – <i>Status Quo</i>	Option Two – Removing network approval requirements
<p>An efficient and transparent market that meets the needs of parents and the community</p>	<p style="text-align: center;">0</p> <p>The National Statement provided public information on the supply of early learning services and signalled what the Government’s strategic priorities are. It introduced an additional barrier and cost for potential new services to enter the market, potentially restricting competition and supporting existing providers.</p> <p>It also provides information on services that have received network approval to apply for a licence.</p> <p>Having to take into account network considerations when assessing licence amendments may create a potential barrier for existing services seeking to expand.</p> <p>The potential uncertainty may make securing support (e.g., financing) more difficult.</p> <p>Potentially benefits current services through imposing a barrier on new services to establish, restricting competition.</p>	<p style="text-align: center;">+</p> <p>Removes a barrier to entry for anyone intending to establish and operate a new licenced ECE service. This simplifies the establishment process for new services. New services are still required to meet the licencing requirements.</p> <p>Removing a barrier to entry supports competition in the market and enables new services to respond faster and more directly to the needs of parents and communities.</p> <p>Encourages competition in the ECE market through reducing a cost to new ECE providers through removing one of the regulatory requirements that proposed new services faced.</p> <p>This could result in more services entering the market and creating oversupply in the short term but in the longer-term services that are not valued by parents would be forced from the market.</p> <p>Information and data that was provided in the National Statement is available on the Ministry website. However, there is no published government strategic priorities.</p> <p>Removes the National Statement which signalled the Government’s priorities.</p>

<p>Impact and cost on ECE services</p>	<p style="text-align: center;">0</p> <p>The network approval requirements introduced a direct cost to the sector. Most proposed new services are required to pay a small fee and commit time and resources to apply for network approval.</p> <p>Applicants seeking network approval may face opportunity costs in instances where the approval process delays their time to market, which could potentially impact the revenue they might have earned otherwise.</p> <p>If existing services are unable to amend their licence (e.g., increasing the number of licensed child places) due to network approval considerations, it could potentially restrict the revenue they may have earned otherwise.</p>	<p style="text-align: center;">+</p> <p>The ECE sector has communicated its concern with regulatory burden. This removes regulation that new services face and as well as any established service that is wanting to amend its licence in a way that would have an impact on the network.</p> <p>Reduces the cost to entering the market – fee (\$575 inc GST), application process and time to complete the application and approval process before licence application.</p> <p>Evidence of business planning, understanding community need, financial position and capability to govern is not required. This places the onus on the business owner to ensure they have the appropriate capability and resources to start and operate a new business effectively.</p> <p>Reduces the risk of investment uncertainty as investment is not dependent on first obtaining network approval.</p>
<p>Quality of provision of education and care for children</p>	<p style="text-align: center;">0</p> <p>Provides signals to the market where there are gaps in provision and the Government’s strategic priorities and introduces an additional step for anyone considering establishing and operating a new ECE service.</p> <p>The network approval process includes a test of the suitability, financial position and capability of providers, providing some assurance that new services would be sustainable and meets</p>	<p style="text-align: center;">0</p> <p>Removing barriers to entry supports new providers being able to respond to parents’ needs. This could introduce low quality providers, or new providers who provide a service that results in low quality provision to exit the market. However, all providers are required to meet the licensing requirements and maintain the standards set in regulations.</p> <p>The fit and proper check is still completed at the licence application stage, however that assessment does not include a test of providers’ suitability, financial position and capability. The</p>

	<p>community needs in the area. The Ministry has supported and advised potential applicants.</p> <p>Through providing a barrier to new entrants into the market, this inhibits competition and may result in some existing services remaining in the market even if they do not meet a need.</p>	<p>onus is on business owners to ensure their business case is supported by the necessary resources, skills and capabilities. Some have not submitted a network approval application because of concerns that they would not meet the requirements.</p>
<p>Overall assessment</p>	<p style="text-align: center;">0</p> <p>As the network approval provisions were only in place for less than a year, there is insufficient evidence to demonstrate whether the change successfully delivered its objective of ensuring sufficient supply in underserved areas.</p>	<p style="text-align: center;">++</p> <p>Removing network approval legislation removes a regulatory barrier for new services being established. This removes a cost that new services face and a potential barrier to entering the market. This will support services responding to parents' needs.</p>

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

31. There are potential benefits with removing the requirement for new proposed services to seek network approval. It will remove a barrier to entry for new services and reduce the regulation that proposed new services face (but they will still need to meet all licensing requirements). This will likely support services to respond to parents and a competitive market supports low quality providers exiting the market. Therefore, on balance the analysis supports repealing the legislation.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	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 Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	No additional costs for proposed new services but removes a potential barrier to competition in the market for existing services.	None	Medium
Regulators	MoE will no longer receive network approval application fees, however since fees contributed towards the costs of network approval process this will have no overall impact.	None	High
Parents and children	Tests of suitability and capability are removed. This may result in services establishing that will not provide a viable long-term quality service, reducing security of provision for parents.	Low	Low.
Total monetised costs			
Non-monetised costs		<i>Low</i>	<i>Medium</i>

Additional benefits of the preferred option compared to taking no action			
Regulated groups	<p>New and prospective ECE services will no longer incur the costs associated with completing the application process, including the \$575 (GST inc) application fee.</p> <p>Affects existing services who may not be able to amend their license due to network approval provisions.</p>	Medium Network approval application fee is \$575 (inc GST).	<p>Medium</p> <p>The cost of the application fee is removed. While most businesses will undertake due diligence, market analysis anyway, they will not need to factor that into a network approval process before they apply for a licence.</p> <p>The opportunity cost to providers who may have been prevented or deterred from entering the market due to network approval provisions is challenging to estimate.</p>
Regulators	Removes an additional regulatory function freeing up resources to focus on other priorities.	Low	<p>Low</p> <p>The explicit aim of the proposal is not cost saving.</p>
Others (e.g. wider govt, consumers, etc.)	<p>A barrier is removed to the market responding to parent and community needs.</p> <p>Regulations can result in increased costs for businesses that may be passed on to consumers, however as a one-off cost this is unlikely to have an impact on fees.</p>	Medium	<p>Medium</p> <p>It is unlikely to have an impact on fees given the costs are relatively small and one-off.</p>
Total monetised benefits	\$57,500	Low	High
Non-monetised benefits		<i>Medium</i>	<i>Medium</i>

Section 3: Delivering an option

How will the new arrangements be implemented?

32. The Ministry will make changes to the guidance and relevant application forms for new licence applications. It will use its communication channels with the sector to make sure that the change is clearly understood, particularly through the transition phase.
33. Subject to Ministry priorities, it will continue to provide data and information to the sector, including to help support new providers understand the opportunity and need, particularly in underserved communities.

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

34. As network approval is set in legislation, the requirement for proposed new services to apply and to be approved by the Minister (or delegate) will continue until the legislation is repealed. Providing clear communications to the sector about the intent to repeal the legislation will help the sector work through what the proposed changes means for them.
35. There are no plans to review the legislation following this change. The process was largely standalone and so removing the legislation removes the requirement for proposed new services to seek network approval. They will be required to meet all aspects of the licence application.