

Cabinet Paper material

Proactive release

Minister & portfolio	Hon Jan Tinetti, Minister of Education Hon Jo Luxton, Associate Minister of Education
Name of package	20 Hours ECE funding conditions for home-based ECE services
Date considered	28 August 2023
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These documents have been proactively released:

Cabinet Paper: 20 Hours ECE funding conditions for home-based ECE services

Date considered: 28 August 2023

Author: Office of the Minister of Education

Regulatory Impact Statement: Use of Childcare Subsidy for compulsory top-up fees charged by home-based ECE providers

Date considered: 28 August 2023

Author: Office of the Minister of Social Development

Social Wellbeing Committee Summary: SWC-23-MIN-0115

Date considered: 28 August 2023

Author: Committee Secretary

Social Wellbeing Committee Minute: SWC-23-MIN-0115

Date considered: 28 August 2023

Author: Committee Secretary

Cabinet Minute: CAB-23-MIN-0398

Date considered: 28 August 2023

Author: Secretary of the Cabinet

Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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Section 9(2)(g)(i) to protect the free and frank expression of opinions by departments

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

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Proactively Released

In Confidence

Office of the Minister of Education

Office of the Associate Minister of Education (Early Childhood Education)

Cabinet Social Wellbeing Committee

20 Hours ECE funding conditions for home-based ECE services

Proposal

- 1 We seek Cabinet agreement to create a new category of allowable payments for hours of ECE funded by 20 Hours ECE from 1 March 2024, to enable home-based educators to maintain their income during these hours.

Relation to government priorities

- 2 This paper relates to the wider government work programme to improve the wellbeing of, and reduce cost of living pressures for, New Zealanders and their families.

Executive Summary

- 3 The Budget 23 initiative extending 20 Hours ECE has brought to light an existing problem with the 20 Hours ECE policy in home-based ECE settings. Parents must not be charged fees for the hours of 20 Hours ECE – this is a current funding condition that will be continued as part of the extension. This feature was highlighted as part of Budget 23.
- 4 Home-based services pass through a portion of the 20 Hours ECE subsidy to educators, who are the people providing education and care to children. This pass through may be lower than the educator's usual hourly fee. Almost all home-based educators are independent contractors, meaning they do not have the protection of the minimum wage. Where the pass through is lower than their regular hourly fee, educators must either accept lower pay or seek voluntary top ups from parents. The lower pay may be substantially less than minimum wage.
- 5 To address this problem, we seek to create an additional category of allowable payments for 20 Hours ECE. This payment would enable educators to seek payments from parents to top up the 20 Hours ECE pass through to their normal hourly fee. This enables educators to maintain their income, while parents would see a reduction in fees for the hours of 20 Hours ECE.
- 6 This would be implemented at the same time as the extension of 20 Hours ECE to two-year-olds in March 2024. The delay in implementation enables the development of funding conditions that provide assurance that parents will benefit from a reduction in fees.
- 7 We also seek Cabinet agreement to allow parents and caregivers to access the Ministry of Social Development's (MSD) Childcare Subsidy, Guaranteed Childcare Assistance Payment (GCAP), and Early Learning Payment to pay for these new

allowable payments. We propose this cost is met through a fiscally neutral reprioritisation from both Vote Education and Vote Social Development.

Background

- 8 The Associate Minister of Education (ECE) and I previously advised Cabinet that separate consideration relating to the Budget 2023 extension of the 20 Hours ECE Subsidy to two-year-olds may be required for home-based services [CAB-23-MIN-0172 refers]. We committed to updating Cabinet if funding conditions for home-based services significantly departed from those for other ECE services.
- 9 Under current 20 Hours ECE funding conditions, services must not charge fees for the hours of 20 Hours ECE. Services can request optional charges for the hours of 20 Hours ECE for provision above minimum standards, such as providing food. They can also request donations from parents.

Current 20 Hours ECE funding conditions are problematic in home-based services

- 10 Currently around 11,000 children attend home-based ECE services. Around 40% of these children are aged three- to five-years-old and are eligible for 20 Hours ECE. Extending 20 Hours ECE to two-year-olds means around 65% of the children in home-based services will become eligible for 20 Hours ECE.
- 11 Home-based early childhood services provide early childhood education (ECE) in an educator's home, the child's own home or a home nominated by the child's parent. Home-based services oversee ECE in networks of homes. They must employ certificated ECE teachers to undertake the guidance and oversight role. Educators provide the education and care for children. The Ministry licenses and funds the service provider and does not pay educators directly.
- 12 Parent fees generally go directly to the educator and are usually set by the educator at an hourly rate that can vary from educator to educator within a network. Most educators are self-employed contractors, but some are employees of parents (known as nannies). Employment Relations Act provisions for employees, such as the minimum wage, do not apply to educators who are independent contractors. Educators can provide education and care to a maximum of four children at any one time.
- 13 We understand home-based providers 'pass-through' a portion of the 20 Hours ECE Subsidy to educators – around \$5-\$6 per child per hour. This pass-through may not cover educators' normal hourly fee. This means educators may receive less income for the hours covered by 20 Hours ECE than for other hours they work. Depending on how many children an educator is caring for and the level of pass-through, their income for 20 Hours ECE may be considerably less than the minimum wage.
- 14 Where educators are self-employed, they sometimes seek "top-up payments" from parents to cover the difference over these hours. ^{9(2)(g)(i)}

^{9(2)(g)(i)}

- 15 Where educators are employees of the parents, home-based providers are not able to comply with the 20 Hours ECE funding condition that parents are not charged for the hours of 20 Hours ECE. This is because parents must pay their employee at least minimum wage.
- 16 The extension of 20 Hours ECE to two-year-olds from 1 March 2024 is likely to exacerbate this issue, as 20 Hours ECE will be available to a greater share of children in home-based services.
- 17 Following the announcement of the extension of 20 Hours ECE to two-year-olds, home-based sector representatives publicly raised this as an issue with current settings. Minister Luxton recently met with home-based service representatives, who reiterated this feedback.

Analysis

- 18 Extending 20 Hours ECE to two-year-olds is a key initiative in this year's Budget to ease cost of living pressures on parents by reducing the cost of ECE. While it is important that parents benefit from this initiative, this should not be at the expense of the people providing the care for children.
- 19 Continuing with the settings that parents must not be charged for 20 Hours ECE would require some educators to give up income for the hours funded through 20 Hours ECE. We do not consider this to be tenable, particularly as we understand many educators are low paid workers who are not in a position to forego income.
- 20 We considered the following options to address this issue:
 - 20.1 Allowing home-based services to operate educator by educator opt in to 20 Hours ECE
 - 20.2 Creating a new category of allowable payments for 20 Hours ECE to enable educators to receive their normal hourly income (preferred).
- 21 These are discussed in the sections below. A third option of removing 20 Hours ECE eligibility from home-based services was discounted, as this would restrict parent choice on where to use 20 Hours ECE for their children.
- 22 Section 548(5) of the Education and Training Act 2020 provides the Minister of Education statutory authority to determine any conditions of the grants paid to licensed early childhood services out of money appropriated by Parliament. However, given the significance of the changes proposed in the preferred option below, including potential fiscal implications, we seek Cabinet's agreement to the proposal.

Educator by educator opt in – not recommended

- 23 Under current funding conditions, an ECE service must opt in to 20 Hours ECE as a whole service – they cannot choose which parents to offer 20 Hours ECE to. The choice on whether to take up 20 Hours ECE rests with the parents.

- 24 This option would change this funding condition for home-based services only. It would require home-based services to only offer 20 Hours ECE where the pass-through to educators is the same as or more than the educator's usual hourly fee.
- 25 This option maintains fidelity with the core funding setting of 20 Hours ECE – that parents are not charged for those hours – while also ensuring that educators do not lose income.
- 26 However, this option creates compliance costs for services and may be confusing for parents. It would also likely reduce the number of parents who benefit from 20 Hours ECE in home-based ECE. For these reasons, this is not our preferred option.

A new category of allowable payments – preferred option

- 27 There are currently two categories of allowable payments for the hours of 20 Hours ECE – optional charges and donations. Parents can choose whether to pay these, though if they agree to optional charges, this becomes a fee that can be enforced by the service.
- 28 As outlined above, optional charges are for provision above minimum standards that can be separated out and not provided if parents choose not to pay. A top-up payment for educators does not fit in this category, as it is for the educator's time providing education and care to children.
- 29 This option would create an additional category of allowable payments specific to home-based educators. This would allow educators to seek top-up payments from parents, to make up the difference between the home-based provider 'pass-through' and the educators' regular hourly fee. The allowable payment would be a fee that parents would be required to pay.
- 30 This option has a significant drawback – it undermines the intent of 20 Hours ECE as being free for parents. However, on balance, this is our preferred option. More parents can benefit from reduced fees in this option compared to the educator by educator opt in, and it safeguards educators' income. This option strikes a balance between fairness for educators and affordability and accessibility of ECE for parents.

Managing risks of a new category of allowable payments

- 31 We see two main risks with this proposal:
 - 31.1 Parents not receiving the intended benefit of reduced fees.
 - 31.2 Centre-based services seeking the creation of additional categories of allowable payments for their services.
- 32 We intend to manage the first of these risks partly via the new transparency requirements for 20 Hours ECE that will be introduced on 1 March 2024. These requirements require services to publish their hourly fees and to report their fees to the Ministry.
- 33 The allowable payment will be defined as the difference between the 20 Hours ECE pass-through from the home-based provider and the educator's regular hourly fee. To

ensure that this is transparent for parents, home-based services will be required to publish their 20 Hours ECE educator pass-through. This also limits the incentive for services to reduce the level of educator pass-through. If pass-through is reduced and the allowable payment becomes too high for parents, it would also disincentivise them from using their 20 Hours ECE with home-based services.

- 34 We considered whether to also set the level of pass-through for 20 Hours ECE, to ensure that parental fees are reduced by a minimum set amount. We decided against this at this time, as we lack information on where this should be set.
- 35 Home-based services will need to monitor the allowable payments to ensure they do not exceed the difference between the pass-through and the educator's regular fee. If the Ministry audits a home-based service and finds any of the allowable payments do not comply, the service will need to repay all its 20 Hours ECE funding to the Crown and be reimbursed at the ECE Subsidy funding rate. This is a significant funding consequence for a service.
- 36 We intend to manage the second of these risks through communication to the sector. This includes being clear on the problem that this policy seeks to address and how the home-based sector differs from centre-based services. A key difference is that centres can use optional charges and minimum enrolment policies that are more difficult for home-based educators.
- 37 Home-based services are a flexible option for parents that complements centre-based provision, and it is important to keep this provision viable. Allowing home-based educators to earn their regular income for the hours of 20 Hours ECE supports this.

Implications for Childcare Assistance

Childcare Subsidy and Guaranteed Childcare Assistance Payment

- 38 The Ministry of Social Development administers Childcare Assistance, the purpose of which is to support low to middle-income parents and caregivers with the costs of childcare to enable them to enter or remain in employment, education or training.
- 39 At present, the Childcare Subsidy and the Guaranteed Childcare Assistance Payment (GCAP)¹ cannot be paid for hours being funded through 20 Hours ECE. This is to preclude more than one subsidy being paid to cover fees for the same hour of ECE, as 20 Hours ECE currently requires that no compulsory fees are charged for these hours. To help parents and caregivers with any additional costs resulting from the new category of compulsory allowable payments for 20 Hours ECE, the Minister for Social Development and Employment seeks Cabinet approval to allow parents and caregivers access to the Childcare Subsidy and GCAP to cover these payments.
- 40 As this is a new policy change, funding will be required and is proposed to be met through fiscally neutral reprioritisation from both Vote Education and Vote Social Development. This would support around 560 children receiving Childcare Assistance for compulsory allowable payments for home-based educators from March 2024.

¹ GCAP helps with the costs of ECE for young parents receiving young parent payments to comply with youth activity obligations and non-beneficiary young parents to remain in secondary school.

- 41 Reprioritisation from Vote Education is from savings in the Targeted Assistance for Participation (TAP) initiative² and is proposed to be transferred to Vote Social Development to meet the direct increase in costs of Childcare Assistance (including the Early Learning Payment discussed below). Reprioritising TAP to support low and middle-income parents with the cost of ECE is consistent with the original purpose of TAP, which is to improve ECE participation.
- 42 The reprioritisation within Vote Social Development is from the \$26 million agreed through Budget 2023 to improve the administration of Childcare Assistance. This reprioritisation will reduce the scope of the administrative improvements, as approximately 15% of the funding will now be used to cover the implementation costs of this change. MSD is currently in the process of identifying which elements will not be progressed or be delayed, with a focus on retaining those that will most impact on improving client experience.^{9(2)(f)(iv)}

Early Learning Payment

- 43 The Early Learning Payment (ELP)³ is another form of Childcare Assistance and is administered by the Minister for Social Development and Employment under the Family Start and Early Start (Childcare Assistance) Programme. The Minister for Children has policy responsibility for this payment.
- 44 Currently, there is nothing to preclude the Early Learning Payment (ELP) from being paid for hours funded through 20 Hours ECE. This is because ELP is only available for eligible children aged between 18 months and three years, so no overlap with 20 Hours ECE funding was possible.
- 45 In a similar way to the treatment of Childcare Subsidy and GCAP it is intended that the ELP would also be made available to help parents and caregivers with any additional costs arising from the new compulsory allowable payments for 20 Hours ECE.
- 46 This operational treatment of ELP is consistent with the purpose for this payment, which is to enable children who are at risk of poor wellbeing outcomes to attend ECE, by helping parents and caregivers with the costs of ECE fees.
- 47 This use of ELP would be funded through reprioritisations from Vote Education, and Vote Social Development, as outlined above.

Implementation

- 48 The new category of allowable payments and the associated funding conditions will be published in September 2023 and will come into effect in March 2024. Although the allowable payment addresses a problem with the current funding conditions, this timing provides the necessary lead-in time for the associated reporting and safeguards.

² TAP provides funds for building early learning services in parts of the country where participation rates are low, to increase or retain children's attendance.

³ ELP is paid to parents/caregivers who are enrolled in Family Start or Early Start.

- 49 Parents and caregivers will be able to access the Childcare Subsidy, GCAP and ELP to help with the compulsory allowable payments from 1 March 2024.

Cost-of-living Implications

- 50 This proposal means that for some parents using home-based services, 20 Hours ECE provision will not be free, although it will reduce the current cost of using these services.
- 51 Home-based makes up a very small proportion of 20 Hours ECE expenditure – just under 3% (\$31.5 million) in 2020/21. This is smaller than home-based services' share of all three- to five-year-olds attending ECE (4.5% in 2022). This indicates that most parents currently choose to use 20 Hours ECE at centre-based services. We expect this to also be the case when 20 Hours ECE is extended to two-year-olds.
- 52 This proposal will have a positive impact on home-based educators by safeguarding their income, thereby allowing them to maintain their standard of living.

Financial Implications

- 53 In order to enable parents and caregivers to access the Childcare Subsidy, GCAP and ELP to help with any additional costs arising from the new category of allowable payments, funding is proposed to be met as follows:
- 53.1 \$2.529 million increase in costs of Childcare Assistance, over the forecast period. This funding is proposed to be met through a transfer from Vote Education to Vote Social Development.
- 53.2 \$3.903 million over the forecast period in implementation costs, made up of \$1.697 million for IT, \$1.358 million for depreciation, and \$0.848 million in other operational costs. This funding is proposed to be met from reprioritisation within Vote Social Development.

Legislative Implications

- 54 Cabinet agreement is required to amend the Childcare Assistance provisions in the Social Security Regulations 2018 to ensure that Childcare Subsidy is not payable for hours covered by 20 Hours ECE funding, except where there are compulsory top-up fees charged by home-based ECE educators.
- 55 The Minister for Social Development and Employment will amend the Guaranteed Childcare Assistance Payment Programme and the Family Start and Early Start (Childcare Assistance) Programme⁴ to ensure that GCAP and ELP are not payable for hours covered by 20 Hours ECE funding except in the case of compulsory top-up fees charged by home-based ECE educators.

⁴ Although the ELP is part of the Minister for Children's portfolio, it is paid through the Family Start and Early Start welfare programme established by the Minister for Social Development and Employment under the Social Security Act 2018.

Impact Analysis

Regulatory Impact Statement

- 56 A Review Panel of MSD Principal Analysts has reviewed the Regulatory Impact Statement prepared by MSD to support the proposal to amend the Social Security Regulations 2018 to allow the Childcare Subsidy to be used for the new top-up fees. The Review Panel consider that the information and analysis summarised in the Regulatory Impact Statement does not meet the Quality Assurance criteria.
- 57 As this proposal is a flow-on from wider decisions about top-up fees for 20 hours ECE, the Panel recognises that this has limited the scope of options considered, and analysis undertaken. The Panel recognises that while the analysis in the paper is as good as could be expected in the circumstances, it does not meet the criteria.

Climate Implications of Policy Assessment

- 58 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 59 This proposal has implications for women:
- 59.1 It safeguards income for home-based educators, who are predominantly women. In 2022, there were 4,510 home-based educators, 95% of whom were women.
- 59.2 It will mean the hours of 20 Hours ECE are not free for some parents using home-based services, although the cost will be reduced. This may affect the uptake of ECE and the labour force participation of primary caregivers, who are more likely to be female. This effect is likely to be small, as the majority (95%) of two- to five-year-old children attending ECE are in centre-based services. This proposal may mean more parents choose to use their 20 Hours ECE in centre-based services.
- 60 There is no data available on educators by ethnicity, so we are unable to comment on whether this has a differential impact for educators by ethnicity. This proposal would safeguard income for home-based educators.
- 61 This proposal would have implications for some of the approximately 7,400 children in home-based services who are two to five years old and would be eligible for 20 Hours ECE. Around 1,200 of all 2-5 year olds enrolled in home-based services are Māori (16%) and 1,200 are Pacific (16%). These children would be eligible for 20 Hours ECE, but depending on their educator's regular hourly fee and the pass-through from the provider, it may be a reduced cost for the hours of the subsidy rather than free.

Human Rights

62 There are no human rights implications arising from this paper.

Use of external Resources

63 This paper did not use external resources.

Consultation

64 The following agencies have been consulted: Ministry of Social Development, Oranga Tamariki, Treasury, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, Te Kawa Mataaho (Public Service Commission). The Department of the Prime Minister and Cabinet has been informed.

Communications

65 We will communicate this amendment with home-based ECE sector representatives. The Early Childhood Advisory Committee will also be briefed on the change. The Ministry of Education will communicate this change to the wider sector through an announcement in the Early Learning Bulletin that is sent to all services.

66 Once the exact wording of these funding conditions is finalised in October 2023, these will be publicly promulgated via the ECE Funding Handbook, which is published on the Ministry of Education's website.

Proactive Release

67 We intend to proactively release this paper subject to the provisions of the Official Information Act 1982.

Recommendations

The Minister of Education and Associate Minister of Education (Early Childhood Education) recommend that the Committee:

- 1 **note** that Ministers previously advised Cabinet that separate consideration may be required for home-based services relating to the Budget 2023 extension of 20 Hours ECE to two-year-olds [CAB-23-MIN-0172 refers];
- 2 **agree** to create a new category of allowable payments for 20 Hours ECE for home-based services, to be implemented on 1 March 2024;
- 3 **note** that this new payment would ensure home-based educators are able to maintain their income for the hours covered by 20 Hours ECE, while parents would benefit from a reduction in fees for these hours;
- 4 **note** that the Ministry of Education will confirm the exact wording of these funding conditions as part of promulgating formal funding conditions to services in October 2023;

- 5 **agree** to allow parents and caregivers to access the Childcare Subsidy, Guaranteed Childcare Assistance Payment (GCAP) to pay for compulsory allowable payments for 20 Hours ECE for home-based services from 1 March 2024;
- 6 **note** that the Early Learning Payment (ELP) will also be accessed by parents and caregivers to pay for compulsory allowable payments for 20 Hours ECE for home-based services from 1 March 2024;
- 7 **approve** the following fiscally neutral adjustments to give effect to the policy decisions in recommendations 2, 5 and 6 above, with no impact on the operating balance and/or net debt:

	\$m – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Vote Education Minister of Education					
Non-Departmental Output Expense:					
Support for Early Learning Providers	(0.184)	(0.586)	(0.597)	(0.603)	(0.559)
Vote Social Development Minister for Social Development and Employment					
Benefits or Related Expenses:					
Childcare Assistance	0.184	0.586	0.597	0.603	0.559

- 8 **agree** that the implementation costs to the Ministry of Social Development of \$1.697 million in capital and \$2.205 million in operating expenditure over the forecast period, to give effect to the policy decisions in recommendations 2 and 5 above, will be met from reprioritisation within Vote Social Development that will reduce the funding and scope of the proposed administrative improvements to Childcare Assistance agreed in Budget 2023;
- 9 **agree** that the changes to appropriations for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 10 **agree** to amend the Social Security Regulations 2018 to ensure that Childcare Subsidy is not payable for hours covered by 20 Hours ECE funding, except where there are compulsory allowable payments for 20 Hours ECE for home-based services;
- 11 **note** that the Minister for Social Development and Employment will amend the GCAP Programme to make clear that GCAP is not payable for hours covered by 20 Hours ECE funding, except in the case of compulsory allowable payments charged by home-based ECE educators;

- 12 **invite** the Minister for Social Development and Employment to instruct the Parliamentary Counsel Office to draft the necessary changes to the Social Security Regulations 2018 to give effect to recommendation 9 (above).

Authorised for lodgement

Hon Jan Tinetti

Minister of Education

Hon Jo Luxton

Associate Minister of Education

Proactively Released

Regulatory Impact Statement: Use of Childcare Subsidy for compulsory top-up fees charged by home-based ECE providers

Coversheet

Purpose of Document

Decision sought:	This analysis has been done to enable the Childcare Subsidy to be paid where there are compulsory top-up fees charged by home-based ECE providers for hours covered by 20 Hours ECE funding.
Advising agencies:	Ministry of Social Development
Proposing Ministers:	Minister for Social Development and Employment
Date finalised:	10 August 2023

Problem Definition

The Minister of Education proposes to allow home-based ECE educators to charge compulsory top-up fees (from 1 March 2024) for childcare that is funded under 20 Hours ECE. This is to ensure that home-based educators, many of whom are on low incomes themselves, do not have to give up income for the hours funded through 20 Hours ECE and the home-based ECE sector remains viable.

Under current settings, this increased childcare cost will be passed directly and in full onto parents and caregivers*. The Ministry of Social Development provides the Childcare Subsidy to support low and middle-income families with childcare costs. However, current settings do not allow the Childcare Subsidy to be paid for any hours of childcare funded under 20 Hours ECE, as currently providers are unable to charge compulsory fees for these hours.

*For brevity, hereafter referred to as parents.

Executive Summary

The Minister of Education proposes to create a new category of allowable payments for hours of ECE funded by 20 Hours ECE from 1 March 2024, to enable home-based educators to maintain their income during those hours. This will require parents using home-based educators to pay a compulsory hourly fee to bridge any gap between the 20 Hours ECE funding and the educator's hourly wage. These fees are hereafter referred to as top-up fees.

The Childcare Subsidy (administered by the Ministry of Social Development) helps low- and middle-income parents with the cost of childcare for children under 5 years of age. Under current settings, parents would not be able to access the Childcare Subsidy for the new top-up fees because regulation 23 of the Social Security Regulations 2018 prohibits the payment of the Childcare Subsidy for hours of childcare that are funded under 20 Hours ECE. This is

because providers are currently unable to charge compulsory fees for these hours.

The Minister for Social Development and Employment is seeking Cabinet agreement to amend the Social Security Regulations 2018 to allow the Childcare Subsidy to be used for the new top-up fees. This is a consequential change resulting from the Minister of Education's proposal to allow home-based educators to charge a new category of compulsory fees.

The proposed regulatory change ensures that the Childcare Subsidy continues to be available to low and middle-income parents to assist with all compulsory childcare fees. Enabling Childcare Subsidy to cover these new compulsory fees is the only feasible option that can be implemented by 1 March 2024 that does not result in low and middle-income parents having to cover the full cost of the new fees.

Limitations and Constraints on Analysis

No other options were substantively considered (other than the status quo) given that there was no other option that could be implemented by 1 March 2024 that does not result in low and middle-income parents having to cover the full cost of the new fees.

There is also no rationale for creating a new payment to cover these fees when an existing subsidy could do so at a lower cost and within its current policy intent (ie. covering compulsory childcare fees for low- to middle-income families) and would also not increase the complexity of the system.

As the proposed option is the only feasible option able to be implemented by 1 March 2024, no multi-criteria analysis has been done, as agreed with Treasury's RIA team.

No consultation or stakeholder engagement has been done due to the short time between MSD becoming aware of the issue and the date that the Minister of Education intends to lodge the Cabinet paper (17 August 2023). However, the Ministry of Education consulted with groups representing home-based educators through the development of their policy advice that recommended the introduction of compulsory top-up fees for home-based educators.

Responsible Manager(s) (completed by relevant manager)

Polly Vowles

Manager, Income Support Policy Team, Ministry of Social Development



10 August 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:

Ministry of Social Development

Panel Assessment & Comment:

The Review Panel considers that the information and analysis summarised in this Statement does not meet the Quality Assurance criteria. The Panel recognises the limitations on the analysis available, including timeframes and the scope of options considered particularly as this is a flow-on impact from a wider decision about 20 Hours ECE. The Panel recognises that while the analysis in the paper is as good as could be expected in the circumstances, it does not meet the criteria.

Considering each of the four criteria:

Complete – partially meets

- While the problem, preferred option and benefits and risks are clearly articulated, the Statement does not contain all the material necessary for a RIS. However, the limitations of analysis are set out clearly in the paper, including agreement with Treasury RIA team not to undertake multi-criteria analysis within the RIS.

Convincing – does not meet

- Because this is a flow on from another decision about 20 hours ECE for home-based providers, the proposals are constrained.
- There are significant limitations on the analysis available, as only the proposed option and status quo were considered.

Consulted – does not meet

- There has been no consultation on the specific options, nor is it clear what level of consultation would be appropriate for this type of proposal.
- While this is somewhat mitigated by consultation occurring on the proposal to allow home-based ECE to charge top-up fees, the views of impacted parties are not known.

Clear and concise – meets

- The paper is well written and concise.

Section 1: Diagnosing the policy problem

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

The Budget 23 initiative extending 20 Hours ECE to two-year-olds has brought to light an existing problem with the 20 Hours ECE policy in home-based ECE settings. Under current 20 Hours ECE funding rules, ECE providers are not able to charge compulsory fees for the hours covered by 20 Hours ECE funding. Home-based educators do not receive the full 20 Hours ECE subsidy, as a portion is retained by the home-based service provider (which provides co-ordination and other services to their home-based educators). The amount of subsidy that is passed through to the educators may be lower than their usual hourly fee, meaning that they must either accept lower pay or seek voluntary top-up payments from parents. The lower pay may be substantially less than the minimum wage, but as home-based ECE educators are independent contractors, they do not have the protection of minimum wage legislation.

The Minister of Education proposes to allow home-based ECE educators to charge top-up fees from 1 March 2024 for childcare that is funded under 20 Hours ECE. This is to ensure that home-based educators, many of whom are on low incomes themselves, do not have to give up income for the hours funded through 20 Hours ECE and the home-based ECE sector remains viable. However, the change will require parents to pay a compulsory hourly fee to home-based educators to bridge any gap between the 20 Hours ECE funding and the educator's hourly wage.

The Childcare Subsidy helps low- and middle-income parents with the cost of childcare for children under the age of 5. Under current settings, the Childcare Subsidy cannot be paid for hours of ECE funded through 20 Hours ECE, because current settings do not allow for compulsory fees to be charged for these hours.

If no action is taken, low- and middle-income parents who use home-based ECE will have to cover the full cost of the new fees which may negatively impact their participation in employment, education or training and/or impact material wellbeing by increasing the pressure on household budgets. Home-based ECE is an important source of childcare for Māori and Pasifika parents who want childcare aligned to their cultural values, parents working non-standard hours, and people living in rural areas where there are fewer centre based ECE providers.

What is the policy problem or opportunity?

A regulatory barrier exists because regulation 23 of the Social Security Regulations 2018 prevents the Childcare Subsidy from being paid for hours of childcare that are funded through 20 Hours ECE. This means that low- and middle-income parents will not be able to access the Childcare Subsidy to help cover the cost of the new compulsory top-up fees that home-based ECE educators will be able to charge from 1 March 2024. MSD estimates that the parents of around 560 children will be affected.

What objectives are sought in relation to the policy problem?

The primary objective of Childcare Assistance is to improve the affordability of childcare by reducing the cost of compulsory fees for low and middle-income

families. This improved affordability supports parents to participate in the labour market.

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

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

The proposal is to amend regulation 23 of the Social Security Regulations 2018 to allow the Childcare Subsidy to be used to help with the new compulsory top-up fees. Currently, regulation 23 prevents the payment of the Childcare Subsidy for ECE hours funded through 20 Hours ECE as there are no compulsory fees allowed for these hours.

This is a consequential change resulting from the Minister of Education's proposal to allow home-based ECE educators to charge top-up fees as it ensures that Childcare Subsidy continues to be available for all compulsory fees. As it is the only feasible option able to be implemented by 1 March 2024, no multi-criteria analysis has been done, as agreed with Treasury's RIA team.

Note: The Guaranteed Childcare Assistance Payment (GCAP) and the Early Learning Payment (ELP) are two other types of childcare assistance. Cabinet agreement is being sought to allow GCAP and ELP to be used for compulsory top-up fees, however this does not require regulatory change. These payments serve the same purpose as the Childcare Subsidy (to subsidise the costs of compulsory childcare fees) and are provided instead of Childcare Subsidy for particular population groups - GCAP is provided to young parents and ELP to children of families participating in Family Start and Early Start programmes provided by Oranga Tamariki.

Proactive

What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
Additional costs of the preferred option compared to taking no action			
Regulated groups	Parents and caregivers eligible for Childcare Subsidy and who use home-based ECE providers	Low. MSD estimates that the parents of around 560 children will be impacted	High. Allowing Childcare Subsidy to be used for the new top-up fees will help to reduce childcare costs for affected families and will not create any new direct costs
Regulators	MSD – implementation costs to make required changes (IT, training, communications etc)	Increased expenditure on subsidies: \$2.529m over the forecast period Implementation costs: \$3.903m over the forecast period	<u>Medium confidence in expected annual expenditure.</u> Costs have been forecast to the best of MSD's ability, however, are dependent on assumptions regarding the number of children in home-based care whose parents are eligible for Childcare Assistance <u>High confidence in implementation costs.</u>
Others (eg, wider govt, consumers, etc.)	N/A		
Total monetised costs	Costs for subsidies have been forecast, based on assumptions about the number of children in home-based care whose parents are eligible for Child Care Assistance. Costs for implementation costs have been determined by MSD.	\$6.432m over forecast period	High

Non-monetised costs	<p>New recipients of Childcare Subsidy will need to complete application forms and current recipients will need to advise MSD regarding childcare hours that they are using that have top-up fees applied and will continue to be required to advise MSD of any changes in their hours of employment, education, or training.</p> <p>Home-based ECE providers will need to advise MSD about: the amount of top-up fee they are charging parents per hour.</p>	Low. Overall system is already in operation	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Assisting eligible parents with the increased cost of home-based ECE resulting from the new fees could directly contribute to lower material hardship rates by reducing cost pressures on household budgets for low- and middle-income families. Without the ability to access the Childcare Subsidy, parents may stop using home-based care and leave their work, education or training; and parents considering entering employment, education and training may decide not to do so	<p>Low - medium.</p> <p>MSD estimates that the parents of around 560 children will gain by an average of around \$19.60 a week per child once this is implemented on 1 March 2024</p>	<p>Medium.</p> <p>The number of affected children and the financial benefit to parents and caregivers have been forecast to the best of MSD's ability, however, are dependent on assumptions regarding the number of children in home-based care whose parents are eligible for Childcare Assistance, and the total amount that home-based providers charge as top-up fees</p>
Regulators	Increased support with childcare costs could assist MSD with broader goals of supporting parents into sustainable employment	Low	Medium
Others (eg, wider govt, consumers, etc.)	Supports the Government's objectives to: Overhaul the welfare system; implement Employment Action Plans; deliver the Child and Youth Wellbeing Strategy.	Low - medium given the relatively small number of children impacted. Approximately 35,000 children currently receive the Childcare Subsidy.	Medium
Total monetised benefits	No costings available for monetised benefits		

Non-monetised benefits	Reduces costs for low- to middle-income households and supports labour market participation	Low - medium	Medium
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Section 3: Delivering an option

How will the new arrangements be implemented?

The changes can be made by the Governor General through amending regulation 23 of the Social Security Regulations 2018 by Order in Council pursuant to s424(2)(c) of the Social Security Act 2018. The system for paying the Childcare Subsidy to ECE providers on behalf of eligible parents already exists, and changes will be made to enable Childcare Subsidy to be paid for top-up fees for home-based educators for hours covered by 20 Hours ECE.

Changes to MSD's IT system will be made by 1 March 2024.

The main way of communicating the change will be via the Ministry of Education's Early Learning Bulletin to ECE providers. Home-based ECE providers will be encouraged to inform their clients. We will prepare messaging for the MSD website and staff to assist with communicating the change to eligible parents.

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

MSD will remain the overall steward of the Childcare Subsidy and other forms of Childcare Assistance and its enabling legislation.

Sufficient data is already collected regarding the usage of Childcare Subsidy to make monitoring the effects of this change possible if needed. Extra data collection will not be required.

There is no planned evaluation of the proposed change.

Proactively Released



Cabinet

Minute of Decision

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Report of the Cabinet Social Wellbeing Committee: Period Ended 25 August 2023

On 28 August 2023, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 25 August 2023:

Out of scope

SWC-23-MIN-0115

20 Hours ECE Funding Conditions for Home-Based ECE Services

CONFIRMED

Portfolios: Education / Associate Education
(Hon Jo Luxton)

Out of scope

Rachel Hayward
Secretary of the Cabinet



Cabinet Social Wellbeing Committee

Summary

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20 Hours ECE Funding Conditions for Home-Based ECE Services

Portfolio	Education / Associate Education (Hon Jo Luxton)
Purpose	This paper seeks agreement to a new category of allowable payments to ensure home-based educators can maintain their income for the hours covered by 20 Hours ECE.
Previous Decisions	In May 2023, Cabinet noted that Budget 2023 announcements would include amended funding decisions to extend 20 Hours Early Childhood Education (ECE) to two-year-olds and that the Ministry of Education would undertake further work to consider how these funding conditions could be implemented in home-based services [CAB-23-MIN-0172].
Proposal	<p>Home-based services give a portion of the 20 Hours ECE subsidy to the educators caring for children, which may be lower than the educator's usual hourly fee and the minimum wage. Creating a new allowable payment will enable educators to seek payments from parents to top up their income. Parents would see a reduction in fees for the 20 hours ECE.</p> <p>Approval is also sought to allow parents and caregivers to access the Childcare Subsidy, Guaranteed Childcare Assistance Payment and Early Learning Payment to pay for these top up payments.</p>
Impact Analysis	The attached regulatory impact statement does not meet quality assurance criteria. The proposal is a flow on from wider decisions about top-up fees, which has limited the scope of options considered and analysis undertaken. The Panel recognises the analysis is as good as can be expected in the circumstances.
Financial Implications	Costs are estimated at \$2.529 million increase in Childcare assistance and \$3.903 million implementation costs over the forecast period, to be funded through reprioritisation within Vote Social Development.
Legislative Implications	An amendment to the Social Security Regulations 2018 is required to ensure that Childcare Subsidy is not payable for hours covered by 20 Hours ECE funding, except where there are compulsory top-up fees charged by home-based ECE educators.
Timing Matters	The new category of payments will be implemented from 1 March 2024 when

20 hours ECE is extended to 2-year-olds.

Communications The Ministers intend to advise the home-based ECE sector of the changes. The Ministry of Education will advise the wider sector.

Consultation Paper prepared by MoE, Treasury, TPK, MfW, MPP, OT, Te Kawa Mataaho, and MSD were consulted. DPMC (Prime Minister) was informed.

The Minister indicates that the Minister of Finance and SWC members were consulted.

The Minister of Education and Associate Minister of Education (Hon Jo Luxton) recommends that the Committee:

- 1 note that in May 2023, Cabinet noted that Budget 2023 announcements would include amended funding decisions to extend 20 Hours Early Childhood Education (ECE) to two-year-olds and that the Ministry of Education would undertake further work to consider how these funding conditions could be implemented in home-based services [CAB-23-MIN-0172];
- 2 agree to create a new category of allowable payments for 20 Hours ECE for home-based services, to be implemented on 1 March 2024;
- 3 note that the above new payment will ensure home-based educators are able to maintain their income for the hours covered by 20 Hours ECE, while parents would benefit from a reduction in fees for these hours;
- 4 note that the Ministry of Education will confirm the exact wording of the above funding conditions as part of promulgating formal funding conditions to services in October 2023;
- 5 agree to allow parents and caregivers to access the Childcare Subsidy, and Guaranteed Childcare Assistance Payment (GCAP) to pay for compulsory allowable payments for 20 Hours ECE for home-based services from 1 March 2024;
- 6 note that the Early Learning Payment (ELP) will also be accessed by parents and caregivers to pay for compulsory allowable payments for 20 Hours ECE for home-based services from 1 March 2024;

- 7 approve the following fiscally neutral adjustments to give effect to the policy decisions in paragraphs 2, 5 and 6 above, with no impact on the operating balance and/or net debt:

	\$m – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Vote Education Minister of Education					
Non-Departmental Output Expense: Support for Early Learning Providers	(0.184)	(0.586)	(0.597)	(0.603)	(0.559)
Vote Social Development Minister for Social Development and Employment					
Benefits or Related Expenses: Childcare Assistance	0.184	0.586	0.597	0.603	0.559

- 8 agree that the implementation costs to the Ministry of Social Development of \$1.697 million in capital and \$2.205 million in operating expenditure over the forecast period, to give effect to the policy decisions in paragraphs 2 and 5 above, will be met from reprioritisation within Vote Social Development that will reduce the funding and scope of the proposed administrative improvements to Childcare Assistance agreed in Budget 2023;
- 9 agree that the changes to appropriations for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 10 agree to amend the Social Security Regulations 2018 to ensure that the Childcare Subsidy is not payable for hours covered by 20 Hours ECE funding, except where there are compulsory allowable payments for 20 Hours ECE for home-based services;
- 11 note that the Minister for Social Development and Employment will amend the GCAP Programme to make clear that GCAP is not payable for hours covered by 20 Hours ECE funding, except where there are compulsory allowable payments charged by home-based ECE services;
- 12 invite the Minister for Social Development and Employment to instruct the Parliamentary Counsel Office to draft the necessary changes to the Social Security Regulations 2018 to give effect to paragraph 10 above.

Rachel Clarke
Committee Secretary

Hard-copy distribution:
Cabinet Social Wellbeing Committee



Cabinet Social Wellbeing Committee

Minute of Decision

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20 Hours ECE Funding Conditions for Home-Based ECE Services

Portfolio Education / Associate Education (Hon Jo Luxton)

On 23 August 2023, the Cabinet Social Wellbeing Committee:

- 1 **noted** that in May 2023, Cabinet noted that Budget 2023 announcements would include amended funding decisions to extend 20 Hours Early Childhood Education (ECE) to two-year-olds and that the Ministry of Education would undertake further work to consider how these funding conditions could be implemented in home-based services [CAB-23-MIN-0172];
- 2 **agreed** to create a new category of allowable payments for 20 Hours ECE for home-based services, to be implemented on 1 March 2024;
- 3 **noted** that the above new allowable payments will ensure home-based educators are able to maintain their income for the hours covered by 20 Hours ECE, while parents would benefit from a reduction in fees for these hours;
- 4 **noted** that the Ministry of Education will confirm the exact wording of the above funding conditions as part of promulgating formal funding conditions to services in October 2023;
- 5 **agreed** to allow parents and caregivers to access the Childcare Subsidy and Guaranteed Childcare Assistance Payment (GCAP) to pay for compulsory allowable payments for 20 Hours ECE for home-based services from 1 March 2024;
- 6 **noted** that the Early Learning Payment (ELP) will also be accessed by parents and caregivers to pay for compulsory allowable payments for 20 Hours ECE for home-based services from 1 March 2024;

- 7 **approved** the following fiscally neutral adjustments to give effect to the policy decisions in paragraphs 2, 5 and 6 above, with no impact on the operating balance and/or net debt:

	\$m – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Vote Education					
Minister of Education					
Non-Departmental Output Expense:					
Support for Early Learning Providers	(0.184)	(0.586)	(0.597)	(0.603)	(0.559)
Vote Social Development					
Minister for Social Development and Employment					
Benefits or Related Expenses:					
Childcare Assistance	0.184	0.586	0.597	0.603	0.559

- 8 **agreed** that the Ministry of Social Development's implementation costs for the above, of \$1.697 million capital and \$2.205 million operating expenditure over the forecast period, will be met from reprioritisation within Vote Social Development that will reduce the funding and scope of the proposed administrative improvements to Childcare Assistance agreed in Budget 2023;
- 9 **agreed** that the changes to appropriations for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 10 **agreed** to amend the Social Security Regulations 2018 to ensure that the Childcare Subsidy is not payable for hours covered by 20 Hours ECE funding, except where there are compulsory allowable payments for 20 Hours ECE for home-based services;
- 11 **noted** that the Minister for Social Development and Employment will amend the GCAP Programme to make clear that GCAP is not payable for hours covered by 20 Hours ECE funding, except where there are compulsory allowable payments charged by home-based ECE services;
- 12 **invited** the Minister for Social Development and Employment to issue drafting instructions to the Parliamentary Counsel Office to give effect to paragraph 10 above.

Rachel Clarke
Committee Secretary

Present:

Hon Kelvin Davis (Chair)
Hon Grant Robertson
Hon Dr Megan Woods
Hon Dr Ayesha Verrall
Hon Andrew Little
Hon Priyanka Radhakrishnan
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Jo Luxton

Officials present from:

Office of the Prime Minister
Office of the Chair
Ministry of Social Development
Officials Committee for SWC