



## Education Report: Early Learning Regulatory Review: Strengthening the person responsible requirements

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	19 July 2021	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1255415
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<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	No

### Purpose of Report

This paper seeks your agreement to proposals for consultation relating to the person responsible requirement for teacher-led centre-based, hospital-based, and home-based ECE. Consultation on tranche two of the Early Learning Regulatory Review is due to start in September 2021.

### Summary

Every licensed service requires a person responsible. The person responsible duties vary between service types, but generally, they are considered responsible for children's education and care, comfort and health and safety. They also supervise children and staff.

We have evaluated the current person responsible requirement for teacher-led centres, hospital-based services and home-based services, and consider it would benefit from some changes.

Given their duties, particularly their supervisory role, the person responsible should be limited to experienced teachers. However, the current Regulations permit anyone with a recognised qualification and current practising certificate to hold the role. This gap could be addressed by requiring persons responsible to hold a Category One or Two practising certificate.

#### *Teacher-led centres and hospital-based services*

In teacher-led centres, persons responsible have a clear health and safety role and should be able to respond effectively to accidents. For this reason, we propose requiring persons responsible in these services to hold a current first aid qualification.

The person responsible duties for teacher-led centres are difficult to navigate and do not reflect the reality that the service provider is ultimately responsible for children. We suggest clarifying the person responsible role to clarify that they provide guidance to teaching staff, ensure staff understand the gazetted curriculum framework, and are expected to ensure risks and hazards are identified daily, and that appropriate steps are taken to ensure the health and safety of

children at the service. This proposal also clarifies that the person responsible counts towards ratio requirements and can move between separate spaces.

Similarly, we propose clarifying the education focus and supervision function for persons responsible in hospital-based services. We also suggest addressing an inconsistency in the Regulations to make it clear there must be an adult 'present' whenever a child is in the activity room.

### *Home-based services*

In home-based services, the supervisory role for persons responsible is also unclear as they are not ordinarily present in the home or required to provide supervision in relation to a particular area or licence. We propose requiring the home-based person responsible to be locally based and restricted from working on multiple licences, including simultaneously, over a minimum time-period to address these issues. In addition, we propose increasing the maximum licence size to 100 children to provide some flexibility alongside these restrictions.

We also propose strengthening the professional leadership of persons responsible in home-based services. We suggest making it explicit that they must support educators' professional development in the course of their work with them and guide the curriculum delivery when undertaking in-home visits.

These proposals give greater weight to what we expect from existing requirements, and align with the intent behind a package of related proposals designed to strengthen the role in home-based ECE following the 2018 Review.

### *Regulating for 80% qualified teachers*

Based on feedback from the Sector Advisory Group, we no longer recommend consulting on option 3 (80% in ratio at all times) because it would be unachievable for many services. In addition, we suggest consulting on only one of options 1 (enhanced status quo) and 1A (retaining a high percentage of ECE qualified teachers) because the options are substantially similar. Of these two, we recommend consulting on option 1A, which prioritises a high percentage of ECE qualified teachers.

We recommend consulting on new option 5, which would require services to have 50% ECE qualified teachers in ratio whenever children are present, and to employ 80% ECE or primary qualified teachers.

## **Recommended Actions**

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The Ministry of Education recommends that you:

- a. **agree** to publicly consult on:
  - i. requiring persons responsible in teacher-led centres, hospital-based services and home-based services to hold a Category One or Two practising certificate (proposal 1)

**Agree / Disagree**

*The person responsible requirement in teacher-led centre-based services*

- ii. requiring persons responsible to hold a first aid qualification (proposal 2)

**Agree / Disagree**

- iii. clarifying the person responsible functions and what is meant by 'supervising children and staff' (proposal 3)

**Agree / Disagree**

*The person responsible requirement in hospital-based services*

- iv. clarifying what is meant by being responsible for children's education and the current supervision requirement (proposal 4)

**Agree / Disagree**

*The person responsible requirement in home-based services*

- v. confirm changing the person responsible title to the 'visiting teacher' for home-based services, in line with consultation feedback from the 2018 Home-based Review

**Agree / Disagree**

- vi. requiring the person responsible to be 'locally based' (proposal 5)

**Agree / Disagree**

- vii. requiring the person responsible to be limited to a single service's licence at one time, with an increased maximum licence size (proposal 6)

**Agree / Disagree**

- viii. requiring the person responsible to support educators' professional development when contacting and visiting them (proposal 7)

**Agree / Disagree**

- ix. requiring the person responsible to guide and observe the curriculum delivery during home visits (proposal 8)

**Agree / Disagree**

- b. **note** you previously agreed to the following consultation options for regulating for 80% qualified teachers [METIS 1253466 refers]:

- i. Option 1: Enhanced status quo (80% ECE or primary qualified employed)
- ii. Option 1A: Retaining a high percentage of ECE qualified teachers (50% ECE qualified employed, 30% ECE or primary qualified employed)
- iii. Option 2: Match the Regulations with the funding rules
- iv. Option 3: 80% in ratio at all times

c. **note** that we tested these options with the Sector Advisory Group, who suggested modifying our criteria and options for consultation

d. **agree** to change consultation options for regulating for 80% qualified teachers to:

- i. **remove** option 1 (enhanced status quo), which is substantially similar to option 1A (retaining a high percentage of ECE qualified teachers)

**Agree / Disagree**

- ii. **remove** option 3 (80% at all times) because it is likely to be unachievable for many services

**Agree / Disagree**

- iii. **add** option 5 (ensuring ECE qualified teachers are always present)

**Agree / Disagree**

e. **agree** this Education Report is proactively released at the same time as Tranche 2 of the Early Learning Regulatory Review is released for consultation, with any information that may need to be withheld done so in line with the provisions of the Official Information Act 1982.

**Release / Not release**



Andrea Schöllmann  
**Deputy Secretary  
Education System Policy**

19/07/2021

Hon Chris Hipkins  
**Minister of Education**

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## Background

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- 1 The Education (Early Childhood Services) Regulations 2008 set out that every licensed early learning service must have at least one person responsible when children are present. The requirement ensures a qualified teacher has oversight of children's education and care, comfort and health and safety when attending an early learning service.
- 2 Depending on how the government regulates for 80% qualified teachers in teacher-led centres and hospital-based services, the person responsible requirement would be the only regulation guaranteeing a qualified and certificated teacher is present when children attend these services.
- 3 The Ministry also consulted on a package of proposals intended to strengthen the role in home-based ECE in the 2018 Review [METIS 1137153 refers]. These previous proposals and how they have been developed further are summarised from page 11.
- 4 Given the links to the 80% proposal and the Review of Home-based ECE, we consider tranche two of the Early Learning Regulatory Review the appropriate time to review and refine the detail of the person responsible requirement for teacher-led centres, hospital-based services and home-based services to ensure the role is clear, fit-for-purpose and safeguards children's best interests.

## The person responsible requirement

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- 5 Before 2008, the person responsible was generally limited to qualified and experienced teachers working in a service.<sup>1</sup> However, this changed in 2008, when persons responsible only needed to hold a recognised qualification and a current practising certificate, regardless of their level of experience.
- 6 This approach means that provisionally certificated teachers (i.e. graduate teachers), and those returning to the profession after a five-year absence, can act as a person responsible.
- 7 This may benefit service providers in teacher-led centre-based, hospital-based, and home-based services as it could help with staffing. However, from a quality and health and safety standpoint, it may not protect children's best interests.

### Teacher-led centres

#### *The current requirement*

- 8 In teacher-led centres, the service provider is required to nominate a person responsible who is directly involved in, and responsible for, the day-to-day education and care, comfort, and health and safety of children. The person responsible must also supervise children and staff providing education and care, with one person responsible for every 50 children in attendance.
- 9 While the person responsible has these day-to-day duties specified in the Regulations, the licensed service provider is responsible for ensuring all regulatory requirements are met, including the health and safety standards set out in regulation 46 and the licensing criteria. That the service provider is responsible for health and safety is also

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<sup>1</sup> Education (Early Childhood Services) Regulations 1998, reg 39; Education (Early Childhood Services) Regulations 1990, reg 41.

set out in the Health and Safety at Work Act 2015, which requires service providers (as the “person conducting a business or undertaking”) to ensure the health and safety of its workers and other persons, and workplaces, as is reasonably practicable.

- 10 The person responsible must hold an ECE or primary teaching qualification and a current practising certificate.
- 11 The requirement ensures that at least one ECE or primary qualified teacher is present whenever children attend. This is valuable because it ensures that at any given time in a service, regardless of the size or structure of the service provider, a qualified teacher is always present who:
  - has oversight of children and teaching staff providing education and care to children, which should ensure a base level of quality
  - has a clear role to play in ensuring the day-to-day health and safety of children, which would include taking steps to identify and address presenting risks or hazards
  - is a clear point of contact for teaching staff regarding children’s education and health and safety.

*The Regulations Review Committee and recent teacher feedback*

- 12 Before 2020, only ECE qualified teachers could be a person responsible in teacher-led centres. However, in response to tight teacher supply, Cabinet agreed to the Education (Early Childhood Services) Amendment Regulations 2019, which allowed primary qualified teachers to be persons responsible from January 2020. At the time, you signalled to Cabinet that you intended to review this change in late-2022.
- 13 The Regulations Review Committee reviewed the Education (Early Childhood Services) Regulations 2008 (the principal Regulations) following this change. The Committee considered the principal Regulations unclear, noting it was difficult to understand:
  - how many staff are required to be on site at an ECE at any one time
  - what qualifications those staff are required to have; and
  - whether it is possible for an ECE centre to be open without any ECE trained staff.
- 14 While the person responsible can be a primary qualified teacher, they are much more likely to be an ECE qualified teacher, as over 95% of qualified teachers in the sector hold an ECE teaching qualification.
- 15 In developing the person responsible proposals, we sought input from a focus group of teachers. They considered it important for the person responsible to hold an ECE teaching qualification because these teachers have the best understanding of early childhood development. This is similar to some of the feedback received through submissions in 2019. However, we do not consider it the right time to propose this change as there are still indications of tight teacher supply.
- 16 During an oral hearing, the Committee also queried whether a person responsible could count towards regulated ratio requirements since they supervise staff. In particular, they questioned whether a person responsible could supervise themselves and count towards regulated ratio requirements.
- 17 However, the person responsible does count towards minimum ratio requirements.<sup>2</sup> Not counting them towards ratios could prevent some services from qualifying for

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<sup>2</sup> Education (Early Childhood Services) Regulations 2008, sch 2.

higher funding rates and compromise their ability to stay open. It could also impact on their ability to reach a new 80% standard.

- 18 Currently, the person responsible must supervise/oversee children in the service and staff providing education and care. The key requirement is that the person responsible should be present whenever children attend. However, as the supervisor, they must be able to move freely between separate spaces. These points should be clarified in the Regulations.

*Replacing the person responsible requirement with the same responsibilities shared between qualified teachers*

- 19 Since 2019, the Early Childhood Council (the ECC) has lobbied to replace the person responsible requirement with a shared responsibility amongst qualified teachers. The main argument is that most staff working in teacher-led centres are qualified and certificated and would already consider themselves responsible for children's education and care and health and safety.
- 20 We do not recommend pursuing this proposal. Under the Health and Safety at Work Act 2015, teachers who are workers only have limited health and safety duties – they must ensure their own safety at work and that their acts and omissions do not adversely affect the health and safety of others. Hence, while teachers have a role in children's health and safety, it falls short of what we expect from persons responsible.
- 21 Recent discussions with the Sector Advisory Group and the focus group of teachers also suggest the sector values the person responsible role. Most Sector Advisory Group members indicated they consider the requirement helps protect children's health and safety and mitigates risk for service providers.
- 22 The ECC's proposal could impact on accountability and responsibility by spreading aspects of the role amongst qualified teaching staff.

*Other issues*

- 23 The Regulations and Licensing Criteria do not clearly articulate the person responsible roles and responsibilities. It is unclear what is meant by being "directly involved in and primarily responsible for, the day-to-day education and care, comfort, and health and safety" of children in the service. We suggest better defining what is meant by the education and health and safety functions in the Regulations. The health and safety function should also align with the Health and Safety at Work Act 2015.
- 24 In addition, despite the expectation that a person responsible will act to ensure children's health and safety, there is no explicit requirement in the principal Regulations for the person responsible to hold a current first aid qualification.<sup>3</sup> We consider this a gap that should be addressed.

**Hospital-based services**

*The current requirement*

- 25 In hospital-based services, the person responsible has primary responsibility for the education of children participating in the service, ensuring supervision of children in the activity room, and supporting the health and safety of children.

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<sup>3</sup> HS25 of the Licensing Criteria for centre-based ECE services requires at least one adult with a first aid qualification, registered nurse or a qualified ambulance driver/paramedic for every 25 children in attendance.

- 26 As with all other service types, the person responsible is also required to supervise attending children and adults providing education and care.
- 27 The person responsible in hospital-based services must hold an ECE teaching qualification and a practising certificate.

#### *Issues with the requirement*

- 28 Like teacher-led centres, there is limited guidance in the Regulations and Licensing Criteria about what it means for the person responsible to be primarily responsible for children's education. We suggest better explaining in the Regulations what is meant by this responsibility.
- 29 There are also inconsistent supervision requirements set out in the Regulations for persons responsible.
- Under regulation 3, the person responsible must **ensure supervision** of children in the activity room. This enables the person responsible to either supervise children in the activity room or delegate supervision to another adult at the service.
  - Regulation 44(1)(d) requires the person responsible to **supervise children and adults providing education and care**. This implies that the person responsible must supervise children and staff in all spaces, including the activity room, whenever children attend.

#### **Home-based services and the current requirement**

- 30 Home-based services are distinct to other service types. While the person responsible (or co-ordinator) in home-based services is responsible for children at the same ratio as teacher-led centres (i.e. 1:50), they also hold specific supervision or oversight responsibilities under Regulation 28. This is because the person responsible is not ordinarily present, as the educators in home-based services work individually with up to four children per home.

#### *Proposals arising out of the 2018 Review of Home-based ECE*

- 31 The Ministry previously consulted on a package of proposals intended to strengthen the role of the home-based person responsible or 'co-ordinator' as part of the 2018 Review of Home-based ECE [METIS 1137153 refers].
- 32 The proposals were to increase co-ordinator visits, require co-ordinators to have experience teaching adults, require consistent co-ordinator:educator relationships, and to provide more regular training or support for educators. The Ministry suggested proceeding with some of these proposals.
- 33 We did not recommend increasing the number of co-ordinator visits because it was not well-supported during consultation. In addition, the proposal requiring co-ordinators to have experience teaching adults was considered unachievable for many home-based services.
- 34 Following the Review, we recommended pursuing the following proposals:
- require more consistent educator:person responsible relationships;
  - require that persons responsible cannot act across multiple licences at the same time;
  - better articulate the role, for example, by requiring more training or support to be provided to educators by the person responsible; and,



- change the title of the person responsible (who is also referred to as the co-ordinator in the Regulations) to Visiting Teacher.

- 35 During consultation, there was also support for increasing the maximum licence size for home-based services.
- 36 The Ministry developed detail to support the proposals above and has tested them with the re-established Home-based Sector Reform Advisory Group.

#### *Other issues with the current requirement*

- 37 Regulations 28(2) and 44(1)(d) outline that in home-based services, the person responsible has supervision or oversight duties in relation to children and educators. However, as the concept of supervision itself is not well-defined, services may take a narrow view of what supervision entails from the person responsible under the Regulations.
- 38 The home-based person responsible is also required to provide 'professional leadership' to educators as outlined in the Regulation's interpretation, but this not defined. As a result, persons responsible may only provide limited supervision or oversight, while providing no or minimal professional leadership to educators.

#### **Other matters**

- 39 The Education and Training Act 2020 outlines that anyone holding a "teaching position" must hold a current practising certificate. This includes persons responsible in teacher-led centres, hospital-based serviced and home-based services.
- 40 Under the Education (Registration of Early Childhood Services Teachers) Regulations 2004, the definition of "teaching position" set out in the Education and Training Act 2020 has been modified to mean persons responsible in teacher-led centre-based services, hospital-based services and home-based services. 9(2)(h)

- 41 9(2)(f)(iv)

### **Proposals to strengthen the person responsible requirement**

#### **Teacher-led centres, hospital-based services and home-based services**

*Proposal 1: Require the person responsible to hold a Category One or Two practising certificate*

- 42 We recommend requiring persons responsible in teacher-led centres, hospital-based services and home-based services to hold a Category One or Two practising certificate. This would ensure persons responsible have at least two years of recent teaching experience and would be expected to meet the Teaching Council's *Standards* | Ngā Paerewa.

- 43 This change would ensure that teaching staff are supervised by experienced teachers. This should help with lift pedagogy and improve child outcomes. It also enables graduate teachers and teachers recently returning to the profession to focus on teaching, without carrying extra responsibilities.
- 44 This may be particularly important for home-based services, where the person responsible oversees educators and has an explicit professional leadership role.
- 45 While this change should help ensure a minimum level of quality across these service types, we do not know how many qualified and certificated teachers in the sector hold a Category One or Two practising certificate. This could impact on the sustainability of some services, especially in areas where it is difficult to attract experienced qualified teachers.
- 46 Members of the Home-based Sector Reform Advisory Group also indicated that persons responsible should be experienced, but not necessarily limited to teachers with a Category One or Two practising certificate. For example, they considered a beginning teacher who has gained their teaching qualification while working as a home-based educator would be suitably qualified to undertake the person responsible role.

## Proposals relating to teacher-led centres

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### *Proposal 2: The person responsible must hold a first aid qualification*

- 47 We suggest consulting on requiring persons responsible in teacher-led centres to hold a first aid qualification.
- 48 This new requirement should help ensure persons responsible have the skills and knowledge to help children immediately following an incident. This would help prepare persons responsible to support children's health and safety.
- 49 While this proposal intends to safeguard children's health and safety, it could add compliance for some service providers.<sup>4</sup> They may need to pay for some persons responsible to undertake the qualification, and potentially allow for additional teacher release time, which could impact on their ability to access higher funding rates.

### *Proposal 3: Clarifying the person responsible functions, including the supervision requirement*

- 50 We recommend strengthening the existing person responsible requirement by clarifying that the current role also involves:
- providing education and care to children in attendance and guidance to teaching staff
  - ensuring all staff are aware of gazetted curriculum framework and how to use it in their teaching<sup>5</sup>
  - supervising children in attendance and staff providing education and care

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<sup>4</sup> We expect this would have a minimal impact on services. Before the Ministry required an adult to be present for every 25 children attending a centre (HS25 of the Licensing Criteria), the Ministry allocated approximately \$1.2 million for services to comply with the requirement, so we expect most staff would already hold a current first aid qualification.

<sup>5</sup> The curriculum standard currently includes the principles and strands of *Te Whāriki*. The Ministry is planning to gazette the goals and learning outcomes of *Te Whāriki* under the Early Learning Action Plan.

- ensuring that health and safety risks and hazards are identified and appropriate steps are taken to address those risks or hazards when children attend.<sup>6</sup>

51 This proposal also clarifies that persons responsible supervising children and staff can move between separate spaces and count towards ratio requirements when in contact with children.

*Table One: Clarifying the person responsible functions*

<b>Status quo – regs 3 &amp; 44(1)(d)</b>	<b>Proposal 3 (in addition to regs 3 &amp; 44(1)(d))</b>
<p>Person responsible means, - 1 or more persons nominated for the purpose by the service provider; being persons who are directly involved in, and primarily responsible for, the day-to-day education and care, comfort, and health and safety of the children</p> <p>At all times while children attend the service, – those children, and the adults providing education and care who supervise them, are supervised by a person responsible.</p>	<p>As the person responsible is directly involved in the day-to-day education and care, comfort, and health and safety of children, they are expected to:</p> <ul style="list-style-type: none"> <li>- provide education and care to children in attendance and guidance to teaching staff</li> <li>- ensure all staff are aware of the gazetted curriculum framework and how to use it in their teaching<sup>7</sup></li> <li>- ensure health and safety risks and hazards are identified and appropriate steps are taken to address those risks or hazards when children attend</li> <li>- supervise children in attendance and staff providing education and care to them (even if located in separate spaces)</li> <li>- counts towards regulated ratio requirements when in contact with children.</li> </ul>

52 The focus on identifying risks and hazards, and taking appropriate steps to address them, better reflects that the service provider and its officers are primarily responsible for children's health and safety, but that persons responsible have clear obligations when a service is open due to their daily presence and supervisory role.

53 We expect these changes would benefit children and teaching staff at the service because it has a more explicit focus on education, health and safety, and supervision. We consider this proposal would have a minimal impact on service providers. It would go some way to addressing some of the Regulations Review Committee's concerns.

<sup>6</sup> Under the Health and Safety at Work Act 2015, the person conducting a business or undertaking (i.e. the service provider) has the primary duty of care towards the health and safety of its workers and other persons (i.e. children in a service). Officers of the service provider have related duties. Workers, such as employees, have much more limited obligations. Persons responsible may or may not be involved in the governance of the service provider, and if only a worker, will not have significant influence or control over the management of the service. This change makes it clear that the person responsible, in their supervisory capacity, has a clear role to play in ensuring the health and safety of children, but they are not primarily responsible for addressing all health and safety risks or hazards.

<sup>7</sup> The curriculum standard currently includes the principles and strands of *Te Whāriki*. The Ministry is planning to gazette the goals and learning outcomes of *Te Whāriki* under the Early Learning Action Plan.

## Proposals relating to hospital-based services

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### *Proposal 4: Clarifying what is meant by being responsible for children's education and the supervision requirement*

- 54 This proposal would provide guidance on what it means for the person responsible to be responsible for children's education. This proposal likely formalises existing practice. They would be expected to:
- ensure all staff are aware of the gazetted curriculum framework and how to use it
  - provide education and care to children and guidance to teaching staff
  - ensure there is at least one adult present when children are in the activity room
  - supervise children and staff at the service, and adults in the activity room.
- 55 By inserting these duties into the requirement, the person responsible should be better placed to fulfil the education component of their role, which could lift the quality of provision and benefit children in the service.
- 56 This proposal also addresses the inconsistencies in the supervision requirements in hospital-based services.
- 57 Under this proposal, the person responsible would need to ensure at least one adult is **present** whenever children are in the **activity room**. This clarification more clearly distinguishes between the supervision requirement, set out in regulation 44(1)(d), and ensuring an adult is present whenever children are in the activity room.
- 58 This change also outlines that the person responsible supervises children and staff at all times, even when they are located in different spaces. This reflects the reality that at any one time, children in hospital-based services are likely to be based in different areas – separate rooms in a ward and the activity room. It needs to be clear that the person responsible supervises children and other staff located in separate spaces.
- 59 This change would also clarify that a person responsible would count towards adult:child ratios when they are supervising children and staff.

## Proposals relating to home-based services

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- 60 As part of the home-based review, we consulted on changing the title of person responsible to 'Visiting Teacher'. We suggest confirming that we plan to change the person responsible title to 'Visiting Teacher' for home-based services. This proposal was well-supported during consultation in 2018, but Cabinet did not explicitly agree to it following the Review (METIS 1137153 and CBC-19-MIN-0002 refers).

### **Strengthening oversight from the home-based person responsible**

- 61 We have prepared two proposals to strengthen the supervision/oversight provided by persons responsible in home-based services. Both proposals would limit the location or scope for the person responsible role.

### *Proposal 5: Requiring the person responsible to be 'locally based'*

- 62 This proposal strengthens the existing supervision or oversight function by requiring the person responsible to be 'locally based'.

- 63 While the requirement to be 'locally based' could be similar to the requirement for the service provider contact person to 'reside locally',<sup>8</sup> there are some important differences. The primary reason the contact person is required to reside locally is to respond promptly to the Secretary (i.e. the Ministry) on licensing issues, but there is no such requirement for the person responsible. Instead, the person responsible has supervisory or oversight duties centred on educators and children.
- 64 As the person responsible role centres on these distinct duties, they could be required to reside near the homes that education and care is taking place in. We consider an appropriate starting point for consultation would be for the person responsible to reside in the same territorial authority or territorial authorities as the homes in the service.<sup>9</sup> Where a service has homes across up to two territorial authorities, the person responsible could be required to reside in either.
- 65 Alternatively, the person responsible could be required to live within 'reasonable travel time' of the homes, which could be defined as within up to four hours to cater to harder to access areas. If you agree to this proposal, we suggest consulting on the exact time or distance that may be appropriate. The Home-based Sector Reform Advisory Group generally supported both proposals, although they already tend to rely on a locally based person responsible.

*Proposal 6: Requiring the person responsible to be limited to a single service's licence, with an increased maximum licence size*

- 66 Under this proposal we would strengthen oversight or supervision from the person responsible through some restrictions on the licences they can work on, following issues raised in the Home-based Review. By restricting them from regularly working on multiple licences, including simultaneously, we expect to ensure greater continuity between educators and persons responsible. We also expect to minimise the unclear division of responsibility that could occur when the role is not licence specific.
- 67 In practice, any restriction would apply over a certain period so as to not unreasonably restrict rostering of the person responsible. The Ministry considers requiring the person responsible to be rostered on a single licence of a single service provider for no less than a month is an appropriate starting point for consultation, based on requirements to visit educators fortnightly and observe children monthly in regulation 28(2). If services had a demonstrated need to change the person responsible earlier, they could use a backup person who can also only be rostered to work on that licence.
- 68 Since this change restricts how freely services can change the person responsible and those children they are responsible for, we also propose increasing the maximum licence size from 80 to 100 children at any one time with two persons responsible. This option would enable services to expand in size to a limited extent, should restrictions on what licences the person responsible can work on reduce the numbers of children they regularly or practically supervise.
- 69 This increase in the maximum licence size would also address the inconsistency between the 1:50 person responsible to child ratio and the current maximum licence

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<sup>8</sup> The requirement for a local 'contact person' is the only geographical requirement under the current Regulations. The Ministry has interpreted this to mean they must reside within a single Ministry of Education Area that it services.

<sup>9</sup> Territorial authorities, as listed in Part 2 of Schedule 2 of the Local Government Act 2002, capture cities and districts with some degree of specificity.

size of 80 children. This is an inconsistency the Regulations introduced,<sup>10</sup> which causes services with licence sizes of more than 50 children to need higher staffing by default (i.e. a ratio higher than 1:50). This was not the original intention behind the 1:50 requirement and only affects home-based services.

- 70 While the rationale for the licence size increase is to enable some flexibility alongside the restrictions, there may be risks in the new network planning process if this were to advantage existing services over new ones. It may also impact on the data collection for network planning. At this time, we do not know how much additional risk this proposal may pose, as home-based services already operate at various levels below their own licence maximums, and any service type can apply for an increase to any level at, or below, the maximum which applies to that service type.
- 71 Overall, members of the Home-based Sector Reform Advisory Group also supported this proposal. However, some members indicated that limiting a person responsible to a single licence would interfere with rostering where services rotate the role amongst individuals based on their strengths (e.g. providing professional leadership).

### **Strengthening professional leadership for the home-based person responsible**

- 72 We have prepared two proposals aimed at strengthening the professional leadership of persons responsible in home-based services. The proposals give greater weight to what providing professional leadership means, which is not defined in the Regulations. Members of the Home-based Sector Reform Advisory Group generally supported these proposals.

#### *Proposal 7: Requiring the person responsible to support educators' professional development when contacting and visiting them*

- 73 This proposal strengthens professional leadership by requiring the person responsible to support educators' professional learning and development in the course of working with them. This requirement gives an explicit purpose to the provision of professional leadership already required of persons responsible, by linking it to the requirement to 'contact and visit each educator in the service' under regulation 28(2). Sharing resources, details on conversations or visits, and documented development plans could also demonstrate support for educators' professional development.

#### *Proposal 8: Requiring the person responsible during home visits to guide and observe the curriculum delivery*

- 74 This proposal strengthens professional leadership by linking it to the in-home visits required of the person responsible under regulation 28(2). During these visits, the person responsible would guide and observe educators' curriculum delivery when children are present, in line with the curriculum framework.
- 75 Currently, the Regulations do not provide any direction on the purpose of in-home visits and what it means for the person responsible to 'take steps to observe the children receiving education and care each month'. We consider this proposal would enhance children's education and care by linking the existing requirement to the curriculum delivery.

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<sup>10</sup> The inconsistency was introduced when home-based services' 80-child maximum licence size was carried over from the Education (Home-Based Care) Order 1992 to the Education (Early Childhood Services) Regulations 2008, which introduced the 1:50 person responsible to child ratio for services.

## Regulating for 80% qualified teachers

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76 On 2 June 2021, you agreed to consult on four options to regulate for 80% qualified teachers as part of tranche two of the Review [METIS 1253466 refers]:

- **Option 1: Enhanced status quo.** Services must employ 80% qualified teachers (measured against minimum ratio requirements)
- **Option 1A: Retaining a high percentage of ECE qualified teachers.** Services must employ 80% qualified teachers (measured against minimum ratio requirements) with 50% of these teachers needing to hold an ECE teaching qualification
- **Option 2: Match the Regulations with the funding rules.** Services must use 80% qualified teachers to cover minimum ratio requirements, on average, over a four-month funding period<sup>11</sup>
- **Option 3: 80% in ratio at all times.** Services must use 80% qualified teachers to cover minimum ratio requirements whenever children are present.

77 The options were measured against the following assessment criteria:

- maintaining or improving the quality of provision and shaping positive outcomes for children
- ensuring services' sustainability
- supporting diverse provision
- regulatory standards that can be monitored effectively.

78 At the time, we noted that we intended to test these options with the Sector Advisory Group to identify possible risks and whether other options should be explored. Based on the Sector Advisory Group's feedback, we added 'teacher supply' to our assessment criteria, as they were concerned there are insufficient teachers available to help services reach a new 80% threshold.

79 They also recommended allowing student teachers in their final year of study towards an ECE teaching qualification to count towards the 80% requirement. However, this would dilute the intent of the 80% requirement as not all staff counting towards the requirement would be qualified. If you consult on this proposal, we suggest allowing a maximum of one student teacher to count as qualified for every 50 children. Smaller services (with under 50 children) could use one student teacher towards the 80% count. We do not recommend adding this to the consultation as it complicates the options and makes them harder to engage with.

80 The Sector Advisory Group also recommended consulting on two alternative options, options 4 and 5 in the table below.

### Finalising options for consultation

81 We recommend consulting on three options to target sector feedback.

82 We advise only consulting on one of options 1 and 1A because they require services to employ 80% qualified teachers. Of the two, we recommend consulting on option 1A

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<sup>11</sup> Services would continue to have access to discretionary hours.

because it has a stronger focus on retaining ECE qualified teachers, who are better placed to deliver the curriculum.

- 83 We also suggest consulting on option 2 (matches the Regulations with the funding rules). This is likely to align with the sector's expectations following action 3.1 of the Early Learning Action Plan. This provides services with some flexibility to fluctuate above and below 80% at various times, but only allows the Ministry to assess compliance after a four-month funding period.
- 84 We recommend consulting on option 5, which regulates for 80% in the same manner as option 1A, but imposes a new 50% ECE qualified standard (measured at all times). The major advantage of this option is that it should lift quality for the sector and ensure there is ongoing demand for ECE qualified teachers. The 80% and 50% standards would be assessed when Ministry staff follow up complaints and referrals from ERO.
- 85 We do not recommend consulting on options 3 and 4. Option 3 is unlikely to be achievable for many services, while option 4 would add extra compliance for the sector. In addition, under option 4 the Ministry would only be able to assess compliance with the standard retrospectively, following a two to three-month period. This would not support the Ministry as an effective and capable regulator.

Option	Unit of calculation	Time period of calculation	Recommendation for consultation
Option 1: Enhanced status quo	$\frac{\text{Primary or ECE qualified staff employed by the service}}{\text{Total staff required to satisfy ratios (licence maximum)}} = 80\%$	Must be employed while service is open	Discard
Option 1A: Retaining a high percentage of ECE qualified teachers	$\frac{\text{ECE Qualified staff employed by the service}}{\text{Total staff required to satisfy ratios (licence maximum)}} = 50\%$	Must be employed while service is open	Recommend
	$\frac{\text{Primary or ECE qualified staff employed by the service}}{\text{Total staff required to satisfy ratios (licence maximum)}} = 30\%$		
Option 2: Match the Regulations to the funding rules	$\frac{\text{Primary or ECE qualified staff working with children}}{\text{Total staff required to meet ratios for children in attendance}} = 80\%$	Average across four months. Unqualified teachers can count as qualified for up to 40 hours per four months.	Recommend
Option 3: 80% in ratio at all times	$\frac{\text{Primary or ECE qualified staff working with children}}{\text{Total staff required to meet ratios for children in attendance}} = 80\%$	All times children attend	Discard
Option 4: Average over one month	$\frac{\text{Primary or ECE qualified staff working with children}}{\text{Total staff required to meet ratios for children in attendance}} = 80\%$	Average across one month.	Discard



Option 5: Ensuring ECE qualified teachers are always present	$\frac{\text{ECE Qualified staff working with children}}{\text{Total staff required to meet ratios for children in attendance}} = 50\%$	All times children attend	Recommend
	$\frac{\text{Primary or ECE qualified staff employed by the service}}{\text{Total staff required to satisfy ratios (licence maximum)}} = 80\%$	Must be employed while service is open	

## Next steps

- 86 The proposals in this paper are intended to be included in consultation material for tranche 2. We need decisions in time to confirm the content of the draft Cabinet paper seeking agreement to consultation, due to you on 2 August. The timeline is below.

Date	Stage
By 23 July	Provide feedback on this paper
2 August	Draft Cabinet paper seeking agreement to consultation on proposals relating to: network planning; regulating 80% qualified teachers; person responsible. Includes discussion documents
6 August	Feedback on draft Cabinet paper
10-17 August	Ministerial and departmental consultation
19 August	Lodge Cabinet paper
25 August	SWC
30 August	Cabinet
1 September	Consultation starts