

Cabinet Paper material

Proactive release

Minister & portfolio Minister Hipkins, Education
Name of package Implementing Qualification Requirements for
Home-based Early Childhood Educators
Date considered 8 June 2021
Date of release

These documents have been proactively released:

**Cabinet Paper: Implementing Qualification Requirements for Home-based
Early Childhood Educators**

8 June 2021
Minister of Education

CAB-21-MIN-0206 Minute

8 June 2021
Cabinet Office

SWC-21-MIN-0081

2 June 2021
Cabinet Office

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.

The applicable withholding grounds under the Act are as follows:

- Section 9(2)(a) to protect the privacy of natural persons
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- Section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinion
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Proactively Released

In Confidence

Office of the Minister for Education

Chair, Social Wellbeing Committee

Implementing Qualification Requirements for Home-based Early Childhood Educators

Proposal

1. I seek Cabinet's agreement to issue drafting instructions and undertake a public consultation on regulatory changes that set qualification requirements for educators in home-based early childhood education (ECE) services. These changes would require amendments to the Education (Early Childhood Services) Regulations 2008.
2. Cabinet first considered these changes in January 2019 and agreed to the implementation of specific requirements in June 2020. Further implementation detail has since been developed, but drafting instructions have not yet been sought.

Relation to government priorities

3. This Cabinet paper contributes to the Child and Youth Wellbeing Strategy by helping to better support the quality of education and care, and the wellbeing of children.

Executive summary

4. In January 2019, Cabinet agreed to move towards a qualified home-based ECE workforce, with the phasing in of a requirement for educators in home-based services to hold a Level 4 or higher ECE qualification or equivalent [CBC-19-MIN-0002 refers]. These changes were first signalled and consulted on in 2018 as part of the Government's Review of Home-based ECE.
5. The setting of minimum qualification requirements for educators in home-based ECE services require amendments to the Education (Early Childhood Services) Regulations 2008 (the Regulations). The amendments to the Regulations I am proposing are as follows:
 - 5.1. Create a requirement for educators in home-based ECE services to hold a Level 4 or higher ECE qualification, a Level 3 ECE qualification completed prior to 1 January 2022, a Gazetted qualification, Te Ara Tuarua (the level 5 kōhanga reo qualification) or higher, or a primary teaching qualification, in order for the educator to be considered qualified.
 - 5.2. Create a requirement for these qualifications to be listed on the New Zealand Qualifications Framework, or recognised by the Teaching Council for the purposes of registration, or recognised by the Secretary by a Gazette notice.
 - 5.3. Create the ability for the Secretary for Education to recognise qualifications for home-based ECE services by Gazette notice, should

the new qualification requirements require a new ability to Gazette home-based qualifications.

- 5.4. Introduce requirements for unqualified educators to be training towards a required qualification for up to two years, or in an induction period of up to six months, from 1 January 2025.
 - 5.5. Introduce minimum percentages of qualified educators that will apply to home-based services, which will progressively increase over the next four years until 1 January 2025, after which all educators must be either qualified or in training or in induction.
 - 5.6. Set parameters around how the minimum percentages of qualified educators will apply, by establishing a week-by-week basis for their application and certain restrictions on which educators can count.
 - 5.7. Create a requirement for home-based services to maintain a list of educators and evidence of their qualifications for each licence, in order to ensure that services' compliance with the new home-based educator qualification requirements can be established.
6. I am seeking Cabinet's agreement to issue drafting instructions for these regulatory changes and to publicly consult on draft regulations. Once the draft regulations have been consulted on and redrafted as necessary, I will return to Cabinet for final decisions. I propose that Cabinet authorise me to make decisions on any matters of detail that may arise during the drafting process without reference back to Cabinet.
 7. I am not seeking further funding to implement these regulatory changes. Funding was provided through the Budget 2020 initiative, *Home-based ECE – Support for educators to become qualified*, to cover the cost of the transition. Cabinet considered this package of funding in June 2020 [SWC-20-MIN-0078 refers].

Background

8. Home-based ECE is a distinct, legislated ECE service type. Unlike centre-based services that make up the majority of the sector, home-based ECE is delivered by educators working alone with up to four children in their own home or in the children's homes. A home-based ECE service is made up of a network of private homes operated by a service provider. In 2020, 94% of the 6,246 home-based educators recorded as part of the ECE census were unqualified.
9. Home-based services can receive one of two funding rates. The first is the standard rate, which is the base rate for all services that meet the minimum requirements set in the Regulations. The second is a higher, quality rate with additional requirements. Since 1 January 2021, services on the quality rate must have certain percentages of qualified educators, with others in training or induction, or with credits towards a qualification.
10. Cabinet has also agreed to phase in new qualification requirements for educators in services on the standard rate, and to merge both rates into a single rate, which will have the same requirements from 1 January 2025 [SWC-20-MIN-0078

refers]. The changes relating to the standard rate, and the merging of both rates from 1 January 2025, require amendments to the Regulations.

Proposed changes to the Regulations

Qualifications required for educators in home-based services

11. The Regulations do not currently set any requirements for educators in home-based services to hold a qualification. In January 2019, Cabinet agreed to establish qualification requirements for home-based educators, with qualified educators being required to hold a Level 4 or higher ECE qualification, a 'grand-parented'¹ Level 3 qualification, or Te Ara Tuarua (the level 5 kōhanga reo qualification) or higher [CBC-19-MIN-0002 refers]. Cabinet agreed in June 2020 to extend recognition to primary teaching qualifications as well [SWC-20-MIN-0078 refers].
12. These qualification requirements agreed to by Cabinet require confirmation of some additional details. A level of assurance is needed to ensure that any programme of learning is quality assured and relevant to teaching in New Zealand. As such, the Level 4 and higher qualifications should be listed on the New Zealand Qualifications Framework or recognised by the Teaching Council for the purposes of registration, in the case of primary and ECE teaching qualifications. Overseas qualifications assessed by the New Zealand Qualifications Authority as acceptable will also be accepted.
13. For other acceptable qualifications not recognised by other bodies, the Secretary for Education could extend recognition to these through a Gazette notice prior to implementation.² The Regulations currently allow the Secretary to Gazette 'recognised qualifications' for any services that are not "teacher led services" for the purpose of adult:child ratios. Whether this mechanism can also be used to Gazette qualifications for the new educator qualification requirements will depend on what changes (if any) to 'recognised qualifications' are made in Schedule 1 and Regulation 44 of the Regulations.

Educators working towards a qualification

14. Cabinet agreed in June 2020 to allow up to 20% of educators in services on the higher, quality funding rate to be in training or induction from January 2021 [SWC-20-MIN-0078 refers]. The requirement that educators be in training or induction will eventually apply to all home-based services when there is one funding rate from 1 January 2025. The intent of this requirement was to incentivise educators to enrol in and complete a qualification, and to ensure that no proportion of home-based educators remain unqualified indefinitely.
15. Under the requirement for educators to be in training or in induction, educators would have six months for induction after they join a service, followed by a requirement for them to enrol in and complete a required qualification within two years. These requirements will require changes to the Regulations, to commence from 1 January 2025.

¹'Grand-parented' means a Level 3 ECE qualification completed prior to 1 January 2022.

² Note that additional Gazette notice may be required after implementation from 1 January 2022.

Requirements for services to have certain percentages of qualified educators

16. Currently, the Regulations specifically exclude home-based services from being required to have a certain percentage of qualified staff. In June 2020, Cabinet agreed to the phasing in of educator percentage requirements for all home-based services [SWC-20-MIN-0078 refers]. Unlike the requirements introduced in January 2021, these requirements apply to all home-based services including those on the standard funding rate.

Date requirement would be effective	Percentage of qualified educators in a service
1 January 2022	10%
1 January 2023	30%
1 January 2024	60%
1 January 2025	80% Full implementation

Table 1: Minimum percentages of qualified educators for home-based services

17. I propose that the percentage requirements should be assessed on a weekly (Monday-Sunday) basis to minimise day-to-day variability created by educators' hours of work and employment patterns. All educators a home-based service uses each week would therefore count. Where the application of a percentage results in a fraction, this would also be rounded up to the nearest whole number. This weekly approach takes into account the difficulty home-based services would have with more restrictive percentage requirements that would, for example, impose minimum hours for their educators.
18. There are risks that services may incorrectly calculate the weekly percentages through the 'double counting' of qualified educators within the licences of one service provider. In order to address this, educators should only count on the first licence of a service provider that they work for in each week-long (Monday-Sunday) period. I consider that this could limit the number of licences educators may be able to work on for a particular service provider in a single week. However, this restriction would apply to home-based service providers, and it does not directly restrict employment arrangements between services and educators.
19. I also propose that educators who are continuously absent for a period of more than a week should not count towards the percentages of educators. Educators who are continuously absent may be on holiday, sick, or yet to have children enrolled with them. However, for educators who plan to work on a probationary

licence³ when it is first applied for, there should be an exception that enables them to be counted when they are not yet working. Educators cannot be present and provide education and care when a probationary licence is first applied for and children are yet to be enrolled.

20. The consequences of non-compliance with the qualification requirements include the issuing of a provisional licence and, based on another proposed change to the Regulations, licence cancellation.⁴ Provisional licences are currently the key lever for ensuring compliance with the Regulations, which provide services with time to achieve compliance whilst continuing to receive funding. The Ministry may explore whether other, as yet undeveloped, regulatory sanctions could be used for qualifications breaches as part of its wider Early Learning Regulatory Review.

Requirement for services to maintain a list of educators and their qualifications

21. The Regulations do not set explicit requirements for home-based services to maintain and make available a list of educators and evidence of their qualifications. In practice, lists of educators and their qualifications are already compiled by home-based services to demonstrate entitlement to the quality funding rate.
22. Changes to the Regulations to require home-based services to maintain a list of educators and evidence of their qualifications would ensure that the Ministry can confirm services' compliance with the new home-based educator qualification requirements when necessary.

Legislative implications

23. Amendments to the Education (Early Childhood Services) Regulations 2008 are required to implement the proposed changes to the Regulations that are covered in this Cabinet paper. I am seeking agreement to return to Cabinet after draft regulations have been publicly consulted on and redrafted where necessary.
24. There may also be minor amendments to ECE Licensing Criteria to give effect to these changes to the qualification requirements for home-based educators. I intend to make decisions on any such changes without reference to Cabinet.

Financial implications

25. The Budget 2020 initiative, *Home-based ECE – Support for educators to become qualified*, provided \$36.150 million over four years. \$16.072 million was to cover the cost of the transition to a qualified workforce. The remainder covered fees assistance for educators, additional support for educators through visiting teachers, a 3.8% rate increase to the quality funding rate, and changes to Ministry IT systems. The proposals in this Cabinet paper were the basis for the Budget 2020 funding and I am not seeking additional funding.

Impact Analysis

Regulatory Impact Statement

³ Probationary licences are granted when ECE services are first licenced.

⁴ The Ministry has recently consulted on creating a cancellation pathway based on a service's provisional licence history, as part of Tranche One of the Early Learning Regulatory Review.

26. A Regulatory Impact Assessment was prepared and attached to the Cabinet paper submitted in January 2019 [CBC-19-MIN-0002], when the substantive policy decisions were made. The Regulatory Impact Assessment is available at: <https://treasury.govt.nz/publications/risa/review-home-based-early-childhood-education>.
27. In June 2020 Cabinet agreed to the gradual implementation of the qualification requirements [SWC-20-MIN-0078], which were exempt from the requirement to provide regulatory impact analysis on the basis of minor impacts. Treasury's Regulatory Strategy Team has determined that the regulatory impact analysis requirements have already been met, and that the proposals in this paper are exempt from the requirement of further analysis.

Population Implications

28. The proposed regulatory changes in this Cabinet paper have potential population implications which are summarised below. Full analyses of the potential population implications can be found in the previous Cabinet papers, which addressed changes arising from the 2018 Review of Home-based ECE.

Population group	How the proposal may affect this group
Women	<p>Most home-based educators are women and are not qualified in accordance with the proposed changes. While these changes will support professionalisation of women in the home-based ECE workforce, women who are educators may delay enrolling in and completing a qualification if they tend to work part-time, provide care in other settings and/or have other time commitments.</p> <p>The proposed six-month induction for educators once they join a service, coupled with the ability for educators to remain in training for up to two years, recognises that educators need time to consider enrolling in a qualification and complete it. Older women may opt not to enrol in and complete a qualification, however.</p> <p>For those that choose to pursue and gain a qualification, they are likely to have higher potential earnings. They may also progress subsequently into employment in other parts of the ECE sector, such centre-based ECE.</p>
Children	<p>The proposed changes are designed to increase the quality of home-based ECE services, in order to improve the quality of education and care that is delivered to children in those services.</p> <p>A qualification at Level 4 prepares educators to provide education and care in home-based ECE by, for example, better preparing graduates to work with children and by providing a formal and recognised basis for professional learning and development that educators can build on.</p>
Whānau and families	<p>As outlined in the full analyses of the population implications, some educators may decide not to undertake study towards a Level 4 qualification within the next 4 years and may choose to leave the home-based ECE sector. This may affect the availability of home-based ECE in some areas.</p> <p>In response to this, parents and whānau may have to find alternative ECE services, rely on informal care arrangements, or</p>

Population group	How the proposal may affect this group
	in the most extreme cases, leave the workforce to care for their child. This might impact on employment levels for women in the labour market who are unable to secure childcare.
Children with disabilities	The Ministry lacks data on how many disabled children attend home-based ECE services, so has not assessed the effects the proposed regulations may have on this group of children.
Māori	Te Ara Tuarua (the level 5 kōhanga reo qualification) is being recognised as meeting the requirement for a Level 4 or higher ECE qualification. Those with the Level 7 Tohu Whakapakari diploma can also work as home-based educators. The Budget 2020 initiative, <i>Home-based ECE – Support for educators to become qualified</i> , allocated funding for fees assistance for educators studying towards a Level 4 ECE qualification, including for those educators that are not otherwise eligible for fees free. This should assist as a pathway for Māori home-based educators, but the assistance it is not targeted.
Pacific	Some areas have high concentrations of Pacific home-based ECE services. As such, the proposed changes will impact on these service providers if a recognised Level 4 qualification is not available in some Pacific languages. The Tertiary Education Commission have been working together to assist Tertiary Education Organisations (TEOs) to develop programmes leading to a recognised Level 4 qualification in languages other than English, including Pacific languages. The Ministry made funding available for this work as part of Budget 2019. Translation of course content into Samoan and Tongan is in the early stages of development, although completion for these languages by mid-June is being worked towards. This work is ongoing.
Migrant communities	Home-based ECE can be a good option for children and families from migrant communities. At home-based ECE services, educators can provide education and care to children in their home language, which may not be possible in centre-based ECE services, where for most children and educators, English is their first language. However, some educators working with children in migrant communities may be unable to enrol in and complete a recognised Level 4 qualification due to the English language skills that are required. As outlined above, the Tertiary Education Commission have been working to assist Tertiary Education Organisations (TEOs) to develop programmes leading to a recognised Level 4 qualification in other languages, including Mandarin and Korean. This work is ongoing.

Human rights

29. There are no human rights implications arising from the proposals that are outlined in this Cabinet paper.

Consultation

30. The Treasury, Department of the Prime Minister and Cabinet, Ministry of Social Development, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, New Zealand Qualifications Authority, Oranga Tamariki, and the Education Review Office have been consulted on this paper.

Communication

31. I intend to publicly announce decisions on this work at the beginning of the 6-week public consultation planned for between August – September 2021. This will include targeted consultation with stakeholders from home-based ECE sector. I also intend to proactively release this Cabinet paper and other key documents. Any information that may have to be withheld will be done so in line with the provisions of the Official Information Act 1982.
32. I am seeking agreement to return to Cabinet once the draft regulations have been publicly consulted on, and redrafted where necessary. Should Cabinet agree to this approach, the Ministry of Education intends to consult on the draft regulations from August – September 2021, prior to implementation from 1 January 2022.

Recommendations

33. The Minister of Education recommends that the Committee:
1. **note** further implementation detail was required to support the new qualification requirements for educators in home-based services [CBC-19-MIN-0002 refers];
 2. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to require educators in home-based services to hold a Level 4 or higher ECE qualification, a Level 3 ECE qualification completed prior to 1 January 2022, a specific Gazetted qualification, Te Ara Tuarua (the level 5 kōhanga reo qualification) or higher, or a primary teaching qualification, in order for the educator to be considered as qualified;
 3. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to require educators in home-based services to hold a qualification also listed on the New Zealand Qualifications Framework, or recognised by the Teaching Council for the purposes of registration, or recognised by the Secretary by a Gazette notice;
 4. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to allow the Secretary for Education to recognise qualifications for home-based ECE services by Gazette notice, should the new qualification requirements require a new ability to Gazette qualifications;
 5. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to require unqualified educators to be training towards a required qualification for up to 2 years, or in an induction period of up to 6 months, from 1 January 2025;
 6. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to insert these minimum percentages of qualified educators to apply

to home-based services: 1 January 2022 – 10% of educators to be qualified; 1 January 2023 – 30% of educators to be qualified; 1 January 2024 – 60% of educators to be qualified; 1 January 2025 – 80% of educators to be qualified;

7. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to specify that the percentages apply on a week-by-week (i.e. Monday to Sunday) basis, and can only include educators that provide education and care to children each week, except for when a probationary licence is first applied for;
8. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to specify that educators can only count towards the percentages on the first licence of a service provider that they work on in each week-long (Monday to Sunday) period;
9. **agree** that the Education (Early Childhood Services) Regulations 2008 be amended to require home-based service providers to maintain a list of educators and evidence of their qualifications for each licence;
10. **invite** the Minister of Education to issue drafting instructions for legislation to give effect to these proposals;
11. **note** that the recommendations with drafting implications are subject to Parliamentary Counsel's discretion as to how best to express these in legislation;
12. **authorise** the Minister of Education to make decisions on any matters of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the decisions in the paper;
13. **note** that the Ministry of Education intends to undertake a 6-week public consultation on the draft regulations between August – September 2021;
14. **authorise** the Minister of Education to approve the release of any public consultation material reflecting the above decisions.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Social Wellbeing Committee: Period Ended 4 June 2021

On 8 June 2021, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 4 June 2021:

SWC-21-MIN-0081 **Implementing Qualification Requirements for Home-based Early Childhood Educators** CONFIRMED
Portfolio: Education

Out of scope

Out of scope

Michael Webster
Secretary of the Cabinet

Proactively Released



Cabinet Social Wellbeing Committee

Minute of Decision

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Implementing Qualification Requirements for Home-based Early Childhood Educators

Portfolio Education

On 2 June 2021, the Cabinet Social Wellbeing Committee:

- 1 **noted** that in January 2019, the Cabinet Business Committee agreed to move towards a qualified home-based Early Childhood Education (ECE) workforce and that the Ministry of Education undertake further work to support the new qualification requirements [CBC-19-MIN-0002];
- 2 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to require that, to be considered qualified, educators in home-based services must hold:
 - 2.1 a Level 4 or higher ECE qualification; or
 - 2.2 a Level 3 ECE qualification completed prior to 1 January 2022; or
 - 2.3 a specific Gazetted qualification; or
 - 2.4 Te Ara Tuarua (the level 5 kōhanga reo qualification) or higher; or
 - 2.5 a primary teaching qualification;
- 3 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to require educators in home-based services to hold a qualification also listed on the New Zealand Qualifications Framework, or recognised by the Teaching Council for the purposes of registration, or recognised by the Secretary for Education by a Gazette notice;
- 4 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to allow the Secretary for Education to recognise qualifications for home-based ECE services by Gazette notice, should the new qualification requirements require a new ability to Gazette qualifications;
- 5 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to require unqualified educators to be training towards a required qualification for up to 2 years, or in an induction period of up to 6 months, from 1 January 2025;

- 6 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to insert the below minimum percentages of qualified educators to apply to home-based services:
- 6.1 1 January 2022 – 10 percent of educators to be qualified;
- 6.2 1 January 2023 – 30 percent of educators to be qualified;
- 6.3 1 January 2024 – 60 percent of educators to be qualified;
- 6.4 1 January 2025 – 80 percent of educators to be qualified;
- 7 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to specify that the above percentages apply on a week-by-week (i.e. Monday to Sunday) basis, and can only include educators that provide education and care to children each week, except for when a probationary licence is first applied for;
- 8 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to specify that educators can only count towards the percentages in paragraph 6 above on the first licence of a service provider that they work on in each week-long (Monday to Sunday) period;
- 9 **agreed** that the Education (Early Childhood Services) Regulations 2008 be amended to require home-based service providers to maintain a list of educators and evidence of their qualifications for each licence;
- 10 **invited** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;
- 11 **noted** that the Parliamentary Counsel has discretion as to how best to express the above proposals in legislation;
- 12 **authorised** the Minister of Education to make any minor and technical decisions that may arise during the drafting process, provided the decisions are consistent with the above decisions;
- 13 **noted** that the Ministry of Education intends to undertake a 6-week public consultation on the draft regulations between August and September 2021;
- 14 **authorised** the Minister of Education to approve the release of any public consultation material reflecting the above decisions.

Rachel Clarke
Committee Secretary

Present:

Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Kris Faafoi
Hon Jan Tinetti
Hon Priyanca Radhakrishnan

Officials present from:

Officials Committee for SWC