

Interim Regulatory Impact Statement: 80% qualified teachers and persons responsible

Coversheet

Purpose of Document

Decision sought:	This is an interim RIA with analysis produced for the purpose of informing stakeholders to be consulted on a government discussion document regarding regulatory changes for 80% qualified teachers and for person responsible for teacher-led centre-based services and hospital-based services.
Advising agencies:	Ministry of Education
Proposing Ministers:	Hon Chris Hipkins, Minister of Education
Date finalised:	13 August 2021

Problem Definition

80% qualified teachers in teacher-led centres and hospital-based services

In the Early Learning Action Plan (the Plan), the Government committed to regulating for 80% qualified teachers in teacher-led centres before regulating for 100% in the long term. The Plan notes that when regulating for 80% qualified teachers, inconsistencies between the regulatory and funding requirements would be addressed.

Under the Regulations 50% of required staff must hold an ECE teaching qualification. Conversely, under the ECE Funding Handbook, services receive higher funding rates if they use 80-100% ECE or primary qualified and certificated teachers to cover minimum adult:child ratio requirements on average over a four-month funding period.

The overarching problem is how to give effect to Objective 3.1 of the Plan and to regulate for 80% qualified teachers in teacher-led centres and hospital-based services. This is based on research which shows that structural factors such as teacher qualifications, can influence the quality of provision and improve children's learning outcomes.

Person responsible requirement

The person responsible requirement is a key aspect of the early learning regulatory system. In teacher-led centres, the requirement ensures an ECE or primary qualified and certificated teacher is always present to oversee children's day-to-day education, care and health and safety. In hospital-based services the requirement ensures an ECE qualified and certificated teacher is always present to oversee children's education,

ensure supervision of children in the activity room, and support children's health and safety.

The person responsible requirement links to the proposed 80% requirement because without it, there may be no guarantee that a qualified and certificated teacher is present whenever a service is open in teacher-led centres and hospital-based services.

Currently, the requirement for teacher-led centres and hospital-based services does not clearly articulate the roles and responsibilities for persons responsible, something which should be addressed. For example, it is unclear what it means for the person responsible to be responsible for children's education. Also, any qualified and certificated teacher can be a person responsible, which means graduate teachers and teachers returning to the profession can serve in the role.

Executive Summary

80% qualified teachers in teacher-led centres and hospital-based services

The Government is committed to regulating for 80% qualified teachers in teacher-led centres, this is expected to positively influence the quality of provision and improve children's learning outcomes. This represents a significant shift from the current regulated standard, as 50% of required staff need to hold an ECE teaching qualification. However, the government also offers funding incentives to encourage services to use 80% or more ECE and/or primary qualified certificated teachers to cover minimum adult:child ratios over a four-month funding period.

The Early Learning Action Plan also sets out that as part of this work, inconsistencies in regulations and funding rules would be addressed. For 80% qualified teachers, six different options were considered:

- **Option 1:** Enhanced status quo – services must engage or employ 80% qualified teachers (measured against minimum adult:child ratio requirements)
- **Option 1A:** Retaining a high percentage of ECE qualified teachers – services must engage or employ 80% qualified teachers (measured against minimum adult:child 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 adult:child ratio requirements, on average, over a four-month funding period
- **Option 3:** 80% in ratio at all times – services must use 80% qualified teachers to cover minimum adult:child ratio requirements whenever children are present.
- **Option 4:** Average over one month – services must use 80% qualified teachers to cover minimum adult:child ratio requirements, on average, over a one-month funding period

- **Option 5:** Ensuring ECE qualified teachers are always present – services must engage or employ 80% qualified teachers (measured against minimum adult:child ratio requirements). At all times children attend, 50% of teachers need to hold an ECE teaching qualification

Under each of the options, ECE and primary qualified teachers holding a practising certificate would count towards the 80% standard.

We will publicly consult on options 1A, 2 and 5 because they came out the strongest against the assessment criteria.

Potential positive impacts of the options

The options proposed are expected to increase the proportion of qualified teachers employed, engaged or used in teacher-led centres and hospital-based services. This is important because research shows that teaching qualifications, particularly ECE teaching qualifications, influence the quality of teacher-child interactions. This can lift children's learning outcomes in early literacy, math and science, as unqualified staff members may miss opportunities to scaffold learning, thinking and problem solving. Qualified teachers are best placed to facilitate children's learning as they have the skills to encourage independent thinking and problem solving.

Potential negative impacts of the options

Although the majority (96-97%) of services qualify for 80-99% and 100% certificated teacher funding rates, some services may find it difficult to reach a new 80% standard. Specifically, Māori and Pacific bilingual and immersion services, services that operate in a low-socio economic areas, isolated services and hospital-based services. There is a risk that regulating for 80% qualified teachers could affect the ability of these services to stay open in the long term. This could reduce parental choice, limit labour market participation and count pose a risk to language culture and identity for some population groups. We plan to seek feedback as part of consultation to understand what barriers these services face to help develop options to support these services.

Regulating for 80% qualified teachers may also reduce employment opportunities for unqualified teachers because a higher proportion of the workforce would be comprised of qualified teachers. This could have a negative impact on the employment of these teachers, particularly unqualified teachers in Pacific and Māori services that have culturally appropriate knowledge.

Person Responsible in teacher-led centre-based and hospital-based services

The person responsible requirement is a key aspect of the early learning regulatory system and links in closely with the 80% options because it ensures a qualified and certificated teacher is present whenever children attend. The current person responsible requirement for teacher-led centres and hospital-based services would benefit from some changes to clarify and strengthen the stated roles and responsibilities. This is important because the person responsible in teacher-led centres is tasked with children's day-to-day education, care and health and safety, and supervising children

and staff. Given these duties, there should be clear expectations of persons responsible, including the core components of their role, and the skills and experience required. This is also important for hospital-based services as the person responsible supervises children and teaching staff and is primarily responsible for children's education, ensuring supervision of children in the activity room, and supervising children and staff.

We intend to consult on four proposals:

Teacher-led centre-based services and hospital-based services

- **Proposal 1:** Requiring persons responsible in teacher-led centres and hospital-based services to hold a Category One or Two practising certificate

Teacher-led centre-based services

- **Proposal 2:** Clarifying the person responsible functions and what is meant by 'supervising children and staff'
- **Proposal 3:** Requiring persons responsible to hold a first aid qualification

Hospital-based services

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

Potential positive impacts of the options

The proposed changes to the person responsible role will ensure that teaching staff are supervised by teachers who are experienced and have the skills and knowledge to provide quality education and care. The proposals also provide better clarity about what the person responsible role involves. We expect these changes to support a minimum level of quality across service types. This would benefit children and teaching staff at the service.

Potential negative impacts of the options

The proposed changes could have an impact on the sustainability of some services, especially in areas where it is difficult to attract experienced, qualified teachers. This would lead to a cost to children and parents if they can no longer receive care.

Service providers will be responsible for costs associated with these changes. For example, services may need to pay for some persons responsible to undertake the first

aid qualification, and potentially allow for additional teacher release time, which could impact on their ability to access higher funding rates.¹

Individuals who have been acting as person responsible that do not hold a Category One or Two practising certificate may be affected by the changes as they may not be able to fill this role any longer, unless they changed certificate type.

Changes to the regulations may also require the Ministry to assist with services with understanding the role of person responsible, and/or create costs associated with implementing the changes.

Stakeholders and the general public views

These issues and proposals were initially tested with the Early Learning Regulatory Review Sector Advisory Group (Advisory Group) in June 2021, and we amended the options in response to their feedback.

We will consult the public on these options in September and October 2021. We intend to have targeted consultation for service providers, teachers and other groups who may be most affected by the proposed changes, such as Māori and Pacific bilingual and immersion services.

Options for 80% qualified teachers

There is broad agreement from stakeholders that there should be high quality settings in teacher-led centres and hospital-based services, as shown in consultation feedback for the draft Strategic Plan for Early Learning (2018-2019)

Person responsible proposals

We anticipate there will be general agreement that there should be a person responsible for children's day-to-day education and health and safety, particularly in teacher-led centres. However, there may be some divergence in what this should look like in practice e.g. whether these responsibilities should rest with the service provider, centre manager, head teacher, person responsible, or whether the person responsible duties should be shared between all certificated teachers at the service.

Limitations and Constraints on Analysis

Timeframe constraints

This is an interim RIA to support public consultation. At this stage, we will not be completing all the sections.

¹ 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.

There are no major timeframe constraints for the proposals set out in this RIA. The implementation timeframe for network planning (tranche two) is set for 1 August 2022 under the Education and Training Act 2020. However, the Act's timeframes do not apply to the 80% and person responsible proposals.

Public consultation

While we have not yet publicly consulted on these specific proposals, the options to regulate for 80% qualified teachers the action itself is based on Objective 3.1 of the Early Action Plan, which followed significant consultation with the sector. The options for regulating for 80% were also refined with the help of the Early Learning Regulatory Review Sector Advisory Group. We also discussed issues with the person responsible requirement with the Sector Advisory Group.

The options in this RIA will be tested by conducting public consultation in September 2021. The key limitation is that there is a six-week period for consultation, which may limit feedback on the options and proposals.

Scope constraints

80% qualified teachers

Action 3.1 of the Early Learning Action Plan limits the number of options set out in this RIA. This explicitly excludes regulating for a lower proportion of qualified teachers (e.g. 60 or 70%) as the 80% threshold number has been set.

The Action Plan also notes that when regulating for 80% qualified teachers, inconsistencies in the Regulations and funding rules would be addressed. This is one major reason why option 2 is being considered. It is also the key reason why we propose allowing both ECE and primary qualified and certificated teachers to count as qualified teachers towards the 80% target.

Person responsible proposals

There is one significant constraint on the person responsible proposals. Under section 17 of the Health and Safety at Work Act 2015, service providers in teacher-led centres are the 'person conducting a business or undertaking' (PCBU). The PCBU has the primary duty of care towards the health and safety of its workers and any other persons on its premises. This is also reflected in Regulation 46 of the Regulations. Hence, service providers are ultimately responsible for children's health and safety.

Conversely, under the Health and Safety at Work Act 2015, teachers and persons responsible are likely to be 'workers' with very basic responsibilities. Hence, persons responsible cannot be considered accountable for children's health and safety.

Evidence/Assumptions underpinning the impact analysis

80% qualified teachers

There is evidence that structural factors such as teacher qualifications, particularly ECE teaching qualifications, influence the quality of provision in early learning and by extension, children's outcomes.

Person responsible proposals

As above, there is evidence that structural factors have an impact on the quality of provision for children in early learning. However, the effectiveness of the specific role of a person responsible to meet the goals of protecting children's health and safety, and upholding the quality of education are not fully known.

Overall impact of these constraints

The overall impact of the above constraints is not expected to substantially impact on the integrity of the analysis outlined in this Interim Regulatory Impact Analysis (RIA).

Responsible Manager(s) (completed by relevant manager)

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Group Manager

Education System Policy

Ministry of Education

13 August 2021

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

Panel Assessment & Comment: The Regulatory Impact Analysis panel at the Ministry of Education has reviewed the Interim Regulatory Impact Statement and considered the associated discussion document and has confirmed that they will support effective consultation and the eventual development of a quality Regulatory Impact Statement.

Section 1: Diagnosing the policy problem

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

Overview of the Early Learning Regulatory system

1. Government regulation of early learning is intended to establish the parameters for the operation of the sector and to ensure minimum standards for children's health, safety, wellbeing and education are met.

2. All licensed early learning services in New Zealand are regulated by the three-tiered regulatory framework:
 - a. **First tier** – the Education and Training Act 2020 provides a high-level framework for licensing, certifying and funding of services, and it empowers regulations and criteria to be developed.
 - b. **Second tier** – This tier includes the Education (Early Childhood Services) Regulations 2008, which establish minimum standards, and the ECE Funding Handbook that sets some additional requirements.
 - c. **Third tier** – This tier includes the Licensing Criteria, used to assess compliance with the minimum standards set out in the Regulations, and the Curriculum framework.
3. The Education Review Office (ERO) also has a significant role in the sector, as the government agency that evaluates and reports on the education and care of children in ECE.

The Ministry's Review of the Early Learning Regulatory System

4. The proposals outlined in this RIA are part of tranche 2 of the review of the early learning regulatory system (the Review) that the Ministry of Education is currently undertaking. These options and proposals will be tested in consultation in September and October 2021.
5. The purpose of this Review is to ensure that the regulatory system for the early learning sector is clear and fit for purpose to support high quality educational outcomes and ensure children are learning in safe environments. The Review requires consideration be given to what is meant by high quality education in the early learning context. It also considers the Ministry's role as a steward of the system and as delegated authority from the Secretary for Education as regulator, alongside other agencies.
6. This Review is timely due to the significant changes in the sector since the current regulatory system was established in 2008. Over the last decade, both the number of children and the number of hours that children participate in ECE has increased rapidly. Children are also attending from younger ages and for longer hours.
7. The Review is being completed in three tranches to ensure that some high priority issues can be progressed in a timely fashion while allowing additional time for the matters that require further policy work and consultation.
 - a. **Tranche one** – The final regulations for tranche one were announced on 14 July 2021. The main aim of tranche one was to address some of the immediate gaps in our current system including those that pose a risk to children's health, safety, and wellbeing. Generally, these changes most

impact new early learning services, service providers that have a change in circumstance, and services that have compliance issues.

- b. **Tranche two** – The proposals in this RIA are part of tranche 2 proposals. The proposals in this RIA aim to:
- i. Regulate for 80% qualified teachers for teacher-led centres and hospital-based services.
 - ii. Strengthen the person responsible requirement for teacher-led centres and hospital-based services.

There are two other sets of proposals that are being consulted on in tranche two. These two sets of proposals are in separate RIAs. The aim of those proposals are to:

- iii. Implement the new network planning function under the Education and Training Act 2020: changes relating to licensed early childhood services and ngā kōhanga reo.
 - iv. Action changes from the Review of Home-based Early Childhood Education, including potential changes to the requirements and role of the home-based person responsible and the maximum licence size.
- c. **Tranche three** – These changes will cover the remaining matters that require significant further work to develop. This will likely involve a complete rewrite of the Education (Early Childhood Services) Regulations 2008 (the Regulations).

Status quo stability

80% qualified teachers

- 8. The Regulations and the ECE Funding Handbook encourage teacher-led centres and hospital-based services to use a high proportion of qualified staff. Currently, the Regulations require services to engage or employ at least 50% ECE qualified teachers while the Funding Handbook encourages services to use 80% or more certificated ECE and/or primary qualified teachers to cover minimum adult:child ratio requirements over each funding period (four months).
- 9. Over 96% of services qualify for 80-99% or 100% certificated teacher funding rates each funding period. Hospital-based services, bilingual and immersion services, isolated services and services in low socio-economic areas are more likely to not reach the 80% threshold.
- 10. Without regulatory change, the status quo appears unlikely to change.

Person responsible

11. The person responsible requirement is a longstanding part of the regulatory system, with the roles and responsibilities largely unchanged since 1990. However, now it is unclear what is expected of persons responsible compared to the service provider.

Previous government decisions, legislation, or Regulatory Impact Statements in this area

80% qualified teachers

12. Objective 3.1 of the Early Learning Action Plan 2019-2029 recommends regulating for 80% qualified teachers in teacher-led centres before regulating for 100% in the long term. This is based on research which shows the benefit of using a high proportion of qualified teachers in early learning.
13. In 2019, some options were considered to regulate for 80% and 100%. In comparison to the options outlined in this RIA, these options were substantially different in nature.

Person responsible

14. In late-2019, Cabinet agreed to allow primary qualified teachers to be persons responsible in teacher-led centres. This was to alleviate teacher supply pressures that the sector was facing. This was accompanied with a RIA.
15. The person responsible proposals outlined in this RIA have a different focus, namely to ensure that the person responsible role is clear and fit-for-purpose.

What is the policy problem or opportunity?

80% qualified teachers in teacher-led centres and hospital-based services

Nature, scope, and scale of the problem

16. In the Action Plan, the Government set an objective to regulate for 80% qualified teachers in teacher-led centres before regulating for 100% in the long term. The Plan also notes that inconsistencies in the Regulations and funding rules would be addressed as part of this work.
17. The key problem is to best give effect to the Government's commitment to regulate for 80% qualified teachers in teacher-led centres and hospital-based services. This is important because research shows that structural factors such as teacher qualifications, can influence the quality of provision and improve children's learning outcomes.

The Regulations

18. The qualification requirements for teacher-led centres and hospital-based services are set out in the Education (Early Childhood Services) Regulations 2008.
19. Under the current Regulations, 50% of required staff in teacher-led centres and hospital-based services must hold an ECE teaching qualification. In practice, this

means services must engage or employ 50% ECE qualified teachers. This is measured against minimum adult:child ratio requirements and the service's licence maximum (full or provisional licence) or number of enrolments (probationary licence).

20. However, one student teacher studying towards an ECE teaching qualification can count as qualified if they are in their final year of study. This applies to both teacher-led centres and hospital-based services, regardless of their licence maximum.
21. We have also received some feedback that the current 50% standard is difficult to understand and would benefit from clarification. In particular, we have heard that it is 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 a service to be open without any ECE trained staff.

The ECE Funding Handbook

22. The ECE Funding Handbook encourages services to use a high proportion of certificated teachers to cover minimum adult:child ratio requirements. A certificated teacher holds an ECE or primary teaching qualification and a current practising certificate from the Teaching Council of Aotearoa New Zealand.
23. Services are eligible for higher rates if they use 80-99% or 100% certificated teachers to cover minimum adult:child ratio requirements on average over a four-month funding period. This is calculated based on total staff required to cover minimum adult:child ratio requirements.
24. In practice, this means services can fluctuate above and below 80% at various points during a four-month period and still qualify for higher funding rates. For example, services could qualify for 80-99% funding rates if they used 70% certificated teachers to cover minimum adult:child ratio requirements on one day and 90% on the next, provided it averages out to 80% or more over a funding period.
25. The Funding Handbook provides services with additional flexibility when they are unable to find a suitable reliever to cover a certificated teacher's absence. In these circumstances, an uncertificated staff member can count as a certificated teacher for up to 40 hours per funding period for funding purposes. However, unlike the Regulations, a student teacher in their final year of study does not count as a certificated teacher.

The key differences between the Regulations and Funding Handbook

26. The major difference between the Regulations and the Funding Handbook is that:
 - The Regulations **require** services to **engage or employ** at least **50% ECE qualified teachers** (against **minimum adult:child ratio requirements**).

- The Funding Handbook **encourages** services to **use 80%** or more **certificated ECE and/or primary teachers** to cover **minimum adult:child ratio requirements** across a funding period.

The Regulations Review Committee

27. The 50% requirement is also important because in 2020, the Regulations Review Committee considered it difficult to understand:
- a. how many staff are required to be on site at an ECE at any one time
 - b. what qualifications those staff are required to have; and
 - c. whether it is possible for an ECE centre to be open without any ECE trained staff.

Stakeholders and how they will be affected

28. The 80% options in this RIA aim to lift the proportion of qualified teachers engaged, employed or used in teacher-led centres and hospital-based services. The changes will impact the following groups:
- a. **Children, parents and whānau** – Research indicates that the quality of provision can be influenced by the proportion of qualified teachers used in a service. For example, better teaching practices and quality teacher-child interactions are often associated with teaching qualifications.
 - b. **Early learning service providers** – They would be impacted by the regulation changes and their interactions with Ministry officials (who have delegated authority from the Secretary for Education). For some services, regulating for 80% qualified teachers could impact on their ongoing sustainability and could put them at risk of closure. Funding data also indicates that Māori and Pacific bilingual and immersion services, isolated services and services in low socio-economic areas would be less able to comply with a new 80% standard compared to the rest of the sector.
 - c. **Teaching staff** – Unqualified teachers may be affected by the changes as some services may need to replace unqualified staff with ECE and/or primary qualified and certificated teachers. However, on the other hand, qualified staff are expected to benefit from this change since the importance of their qualification will be more explicitly recognised, and demand for qualified teachers will be high.
 - d. **The Ministry** – The Ministry needs to be able to assess the Regulations, including a possible 80% standard, effectively. This suggests most services most services will be able to comply with the new 80% standard.

Key affected population groups

29. Almost all services qualify for 80-99% or 100% certificated teacher funding rates, which suggests that many services would be able to meet a new 80% standard. In November 2020, services that did not qualify for 80-99% and 100% funding rates were much more likely to be:
- hospital-based services
 - services predominantly operating in a language other than English, particularly Māori and Pacific bilingual and immersion services
 - other services self-defined as Pacific
 - isolated services
 - services operating in low socio-economic areas.
30. Many of these services operate in communities that have not always been well served by the education system. It is important for these services to stay open for these communities and to enable parental choice and facilitate parents' labour market participation.
31. There is a risk that regulating for 80% qualified teachers could affect the ability of these services to stay open over time. For this reason, during consultation, we plan to seek feedback about what barriers these services face and how they can be supported to meet a possible 80% requirement.

Person responsible requirement in teacher-led centres and hospital-based services

Nature, scope, and scale of the problem

32. The person responsible links to the 80% options. Under the Regulations, every teacher-led centre and hospital-based services must have at least one person responsible present for every 50 children in attendance. Without the person responsible requirement, there may be no guarantee that a qualified teacher is present whenever a service is open.

Teacher-led centres

Experience

33. In teacher-led centres, the person responsible is directly involved in, and responsible for, the day-to-day education and care, comfort, and health and safety of children. They also supervise children and staff providing education and care.
34. They must hold an ECE or primary teaching qualification and a current practising certificate.

35. While the person responsible must be a qualified and certificated teacher, they do not need to be an experienced teacher. This means that graduate teachers or teachers without recent teaching experience can be persons responsible. This is problematic given the importance of the person responsible role.

Unclear responsibilities

36. The Regulations and Licensing Criteria also do not clearly articulate the person responsible roles and responsibilities. Specifically, 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.
37. This is particularly important for the health and safety function for persons responsible, as the service provider holds ultimate responsibility for children’s health and safety under the Regulations and the Health and Safety at Work Act 2015.
38. In addition, despite the expectation that a person responsible holds day-to-day responsibility for children’s health and safety, there is no explicit requirement in the Regulations for the person responsible to hold a current first aid qualification. This is problematic because the person responsible should have the skills, knowledge and ability to respond effectively to children following an incident.

Hospital-based services

39. 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. The person responsible is also required to supervise children and the adults providing education and care.
40. They must hold an ECE teaching qualification and a practising certificate.

Experience

41. While the person responsible must be a qualified and certificated teacher, they do not need to be an experienced teacher. Hence, graduate teachers or teachers without recent teaching experience can be persons responsible.

Unclear responsibilities

42. 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 day-to-day education.
43. There are inconsistent supervision requirements set out in the Regulations for persons responsible. Currently, 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. However, this conflicts with the supervision requirement, which requires persons

responsible to supervise children and adults providing education and care. This implies that the person responsible must supervise children and across the service, including the activity room, whenever children attend.

Stakeholders in this issue and how they will be affected

44. The person responsible proposals outlined in the RIA aim to clarify and strengthen the role of the person responsible in teacher-led centre-based and hospital-based services. The changes will affect the following groups:
- a. **Children** – Setting out clearer expectations for persons responsible may benefit the quality of provision, particularly in relation to the supervision of children and other teaching staff.
 - b. **Early learning service providers** – Clarifying the person responsible role would set clearer parameters about what is expected of the person responsible vis-à-vis the service provider.
 - c. **Teaching staff** – Teaching staff are affected by any changes as they are supervised by the person responsible.
 - d. **The Ministry** – The Regulations, including the person responsible roles and responsibilities need to be clear for the Ministry to assess.

What objectives are sought in relation to the policy problem?

80% qualified teachers

45. **Quality and lifting outcomes for children** – The proposed changes will help to improve minimum regulated standards as services would need to engage, employ or use a high proportion of qualified teachers, thereby improving the quality of children's education and care.

Person responsible

46. **Quality and strengthening regulations** – The current regulations surrounding the person responsible requirements are could be clearer about what is expected of persons responsible compared to the service provider in teacher-led centres and hospital-based services. The person responsible should also be experience and have the skills to perform their role and responsibilities adequately. Hence, the current requirement may not fulfil its policy intent of ensuring the education, care, comfort and health and safety of children in attendance. The proposed changes work to clarify and strengthen the role of 'person responsible' and therefore better fulfil the policy objective.

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

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

47. There are several guiding policy objectives that are central for the Regulatory Review and that all options are assessed against.
- a. **Impact on the quality of education and care for children.** The regulatory system was designed for children to receive a strong foundation for learning, positive well-being and life outcomes through quality standards.
 - b. **Impact on parents and whānau.** The changes have a positive impact on parents and whānau. This includes cost and maintaining the ability to access early childhood education.
 - c. **Impact on teaching workforce.** The changes have a positive impact on the teaching workforce. This includes job retention, accountability and working conditions.
 - d. **Impacts on services' sustainability and diversity of choice.** The Regulations need to be achievable so services can stay open and remain effective. This includes accounting for current teacher supply. This is particularly important for services that cater to diverse communities and communities traditionally not well served by the education system.
 - e. **The Ministry** – the Ministry has the capability to effectively and efficiently operate the regulatory regime with ongoing attention to improving outcomes for children. This includes ensuring that the new regulations are clear and understandable.

What scope will options be considered within?

80% qualified teachers

48. The key criteria above apply to all of the 80% options, particularly (a) impact on the quality of education and care for children and (d) impact on services' sustainability and diversity of choice.
49. We considered six different options for consultation on how to regulate for 80% qualified teachers in teacher-led centres and hospital-based services.

Option	Quality	Sustainability	Access/diversity of choice	Impact on the Ministry
Option 1: Enhanced status quo Services must engage or employ 80% ECE or primary qualified teachers with a practising certificate, as measured against minimum adult:child ratio requirements (e.g. 1:10 for over 2s in an all-day service licensed for 30 or more children) for a service's licence maximum (full licence) or number of enrolments (probationary licence).	This approach ensures each service has a strong base of <i>primary and/or ECE qualified teachers</i> to draw upon, which should lift or maintain quality.	This support services' ongoing sustainability, as it does not require services to use a high proportion of qualified teachers to be in contact with children at all times. Hence, services would not breach the standard following unexpected staff absences, provided they comply with the person responsible requirement.	Most services should be able to comply with this requirement, which should support parental choice. However, we consider a higher proportion of Māori and Pacific bilingual and immersion services, hospital-based services, and services in isolated and low socio-economic areas may be unable comply with this requirement.	The Ministry would assess compliance as we do now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review.
Option 1A: Retaining a high percentage of ECE qualified teachers Services must engage or employ 50% ECE qualified teachers with a practising certificate, as measured against minimum adult:child ratio requirements (e.g. 1:10 for over 2s in an all-day service licensed for 30 or	This approach guarantees each service engages or employs a high number of <i>ECE qualified teachers</i> , which should lift of maintain quality.	This should help support services' ongoing sustainability as it does not require services to use a high proportion of qualified teachers to be in contact with children at all times.	As such, it should continue to enable participation and facilitate parental choice. However, there remains a risk that without additional support, Māori and Pacific bilingual and immersion services and some services operating in isolated and disadvantaged areas might not comply with the new	The Ministry would assess compliance as we do now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review.

more children) for a service's licence maximum (full licence) or number of enrolments (probationary licence). Services must engage or employ an additional 30% ECE or primary qualified teachers with a practising certificate.			standards and may close over time.	
<p>Option 2: Match the Regulations with the funding rules</p> <p>Services must use 80% qualified and certificated teachers to cover minimum adult:child ratios across a four-month period. It also allows services to use discretionary hours for regulatory and funding purposes.</p>	<p>This approach ensures each service uses a high proportion of <i>primary and/or ECE qualified teachers to cover ratio requirements on average over a four-month period</i>. This standard is likely to boost quality for some services currently not receiving 80-99% or 100% certificated teacher funding rates.</p>	<p>This option would help manage services' sustainability because they would be able fluctuate above and below the 80% threshold at various points in time. This is beneficial for services that only operate at or just above 80%, as they can use a higher proportion of qualified teachers on some days to offset days where there are unexpected staff absences.</p>	<p>The major risk of this approach is that some services would not be able to comply with the requirement. Over time, this may lead to the premature exit of some services, particularly services operating in disadvantaged areas and Māori and Pacific bilingual and immersion services. There is a risk that this option could inhibit parents' labour force participation for these population groups or result in families using informal childcare arrangements, which are not subject to the same regulatory standards.</p>	<p>The Ministry would only be able to assess compliance with the standard retrospectively, following each four-monthly period. This introduces complexity in monitoring and delay in remediation, which does not necessarily support quality. Additionally, the use of discretionary hours dilutes the intention of regulating for 80% qualified teachers. This option would also be problematic for when the government regulates for 100% qualified teachers. This is because the funding rules are calculated based on minimum adult:child ratio requirements. When regulating for 100%, a service would not be able to</p>

				operate at 110% on one day and 90% on another.
<p>Option 3: 80% in ratio at all times</p> <p>Services must use 80% qualified and certificated teachers to cover minimum adult:child ratio requirements whenever children are present.</p>	<p>This option would improve the quality of provision in services more than the other options, as it guarantees that a high proportion of <i>primary and/or ECE qualified teachers</i> are always in contact with children.</p> <p>This option is likely to impact negatively on teachers' working conditions. For example, increased demand for teachers to be in contact with children may result in less non-contact time², which could affect teachers' wellbeing. Poor working conditions could also impact on services' ability to retain qualified teaching staff over an extended period.</p>	<p>Regulating to this standard may be unsustainable for many services without a substantial increase in teacher supply and funding. No safety mechanism would be available to services, as they would not be access discretionary hours to help meet the 80% threshold.</p>	<p>This option is more likely to limit choice and affect parents' labour force participation compared to the other options.</p> <p>This option is likely to have a disproportionate impact on the sustainability of Māori and Pacific bilingual and immersion services and services operating in isolated and disadvantaged areas. This is important because these population groups may stand to benefit most from high quality services. Without additional support, these services would likely breach the requirement. If they are reclassified to provisional and cannot subsequently operate</p>	<p>As this is an at 'all times' requirement, the Ministry can assess compliance at a point in time.</p>

² This is time not required in the regulations but that gives teachers time to carry out administrative activities and document children's learning for parents and whānau.

			at 80%, eventually their licence will be cancelled.	
<p>Option 4: Average over one month</p> <p>Services must use 80% qualified teachers to cover minimum adult:child ratio requirements across a one-month period rather than a four-month period</p>	<p>This approach ensures each service use a high proportion of <i>primary and/or ECE qualified teachers</i> on average during each month. This standard is likely to boost quality for some services currently not receiving 80-99% or 100% certificated teacher funding rates.</p>	<p>Regulating to this standard may be unsustainable for many services without a substantial increase in teacher supply and funding. While services can dip above and below 80% on any given day, they would not be able to access discretionary hours to help meet the 80% threshold.</p> <p>There would also be an extra compliance burden for services under this option, as they would need to submit a monthly data return showing the proportion of qualified teachers covering minimum adult:child ratio requirements to the Ministry.</p>	<p>This may lead to the premature exit of some services, particularly services operating in disadvantaged areas and Māori and Pacific bilingual and immersion services. Hence, there is a risk that this option could inhibit parents' labour force participation for these population groups or result in families using informal childcare arrangements, which are not subject to the same regulatory standards.</p>	<p>As with option 2, the Ministry would only be able to assess compliance with the standard retrospectively which would not support the Ministry as an effect and capable regulator. There would also be a delay in remediation, as the Ministry would need to process the data over a few months before issuing a provisional licence.</p> <p>This option would also be problematic for when the government regulates for 100% qualified teachers because it is calculated based on minimum adult:child ratios. When regulating for 100%, a service would not be able to operate at 110% on one day and 90% on another.</p>
<p>Option 5: Ensuring ECE qualified teachers are always present</p> <p>Services must use 50% ECE qualified and certificated</p>	<p>Like option 1A, this should lift quality for the sector because a high proportion of <i>ECE qualified teachers</i> would</p>	<p>There is a risk that without additional support, Māori and Pacific bilingual and immersion services and some services operating in isolated</p>	<p>This option is more likely to limit choice and affect parents' labour force participation compared to the other options.</p>	<p>As this is an 'all times' requirement it can be assessed for compliance at a point in time.</p>

<p>teachers to cover minimum adult:child ratio requirements whenever children are present.</p> <p>Services must also engage or employ 80% ECE or primary qualified teachers with a practising certificate, as measured against minimum adult:child ratio requirements</p>	<p>always be in contact with children.</p>	<p>and disadvantaged areas might not comply with the standards and may close over time.</p>	<p>This option is likely to have a disproportionate impact on the sustainability of Māori, Pacific, isolated and low socio-economic population groups. Without additional support, these services would likely breach the requirement.</p>	
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Person responsible

50. The most relevant criteria for the person responsible proposals are (a) impact on the quality of education and care for children and (d) (c) impact on teaching workforce, and (d) impact on services' sustainability and diversity of choice. What options are being considered?
51. We identified four different proposals to clarify and strengthen the person responsible requirements for teacher-led centres and hospital-based services.

Proposal	Quality	Sustainability	Access, diversity and choice	Clarity
<p>Proposal 1: Require the person responsible to hold a Category One or Two practising certificate (teacher-led centres and hospital-based services)</p> <p>This proposal would require the person responsible to hold a Category One or Two practising certificate which is eligible to teachers with a minimum amount of experience who are expected to meet the Teaching Council's <i>Standards</i> <i>Ngā Paerewa</i>.</p>	<p>Teaching staff would be supervised by experienced teachers, which should lift pedagogy and improve child outcomes.</p>	<p>During consultation, we will ask whether services would be able to comply with this proposal. However, we anticipate that most services should be able to meet this standard if it was a new requirement.</p>	<p>Funding data indicates that Māori and Pacific bilingual and immersion services, isolated services and services in low socio-economic areas have fewer qualified and certificated teachers available to them. Hence, it may be more difficult for them to meet this standard if enacted, which could impact on access, diversity and choice for some important population groups.</p>	<p>This proposal is clear and should be easy to follow.</p>
<p>Proposal 2: Clarifying the person responsible functions, including the supervision requirement (teacher-led centres)</p> <p>This proposal clarifies that the person responsible is expected to:</p> <ul style="list-style-type: none"> - Provide education and care to children in attendance and guidance to teaching staff - Ensure all staff are aware of gazetted curriculum framework and how to use it in their teaching 	<p>This proposal should benefit children and teaching staff because it clarifies what is expected of persons responsible.</p> <p>The focus on ensuring risks and hazards are identified and addressed also reflects that the service provider and its officers are primarily responsible for children's health and safety, but that</p>	<p>This proposal would have a minimal impact on service providers.</p>	<p>This proposal would have a minimal impact on access, diversity and choice.</p>	<p>This proposal is clear and should be easy to follow. This marks an improvement on the current person responsible requirement as the roles and responsibilities are vague and hard to follow.</p>

<ul style="list-style-type: none"> - Supervise children in attendance and staff providing education and care - Ensure that health and safety risks and hazards are identified and appropriate steps are taken to address those risks or hazards when children attend - supervise children in attendance and staff providing education and care to them (even if located in separate spaces). 	<p>persons responsible have clear obligations when a service is open due their supervisory role.</p>			
<p>Proposal 3: The person responsible must hold a first aid qualification (teacher-led centres)</p> <p>This proposal would require the person responsible to hold a first aid qualification.</p>	<p>This new requirement should help ensure persons responsible have the skills and knowledge to help children immediately following an incident. This would help persons responsible better support children's health and safety.</p>	<p>This could add compliance costs for some service providers because not all persons responsible would have a first aid qualification.</p>	<p>This proposal would have a minimal impact on access, diversity and choice.</p>	<p>This proposal is clear and should be easy to follow.</p>
<p>Proposal 4: Clarifying what is meant by being responsible for children's education and the supervision requirement</p>	<p>Clearer expectation of persons responsible should ensure they are better placed to fulfil the core parts of their role, which could lift the</p>	<p>This proposal would have a minimal impact on services' sustainability.</p>	<p>This proposal would have a minimal impact on access, diversity and choice.</p>	<p>This proposal is clear and should be easy to follow. This marks an improvement on the current person responsible requirement as</p>

<p>This proposal clarifies that the person responsible is expected to:</p> <ul style="list-style-type: none"> - 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 - supervise children in attendance and staff providing education and care to them (even if located in separate spaces). 	<p>quality of provision and benefit children and staff in the service.</p>			<p>the roles and responsibilities are vague and hard to follow</p>
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Comparison of options

Outlined in the table below are identified options, criteria against which each option is assessed, preferred option, and stakeholder feedback on the preferred option.

The criteria for assessment have been outlined in section 3.1 above. The analysis on each of the options within the issue headings use the following key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Options	Assessment against objectives						Preferred options and stakeholder opinions
	Quality of provision to children	Impact on parents and whānau	Impact on teaching workforce	Impact on services	Impact on the Ministry	Overall assessment	
Regulating for 80% qualified teachers in teacher-led centre-based services							
Problem definition: The Government is committed to regulating for 80% qualified teachers in teacher-led centres and hospital-based services. This action is based on research which shows that structural factors such as teacher qualifications, can influence the quality of provision and improve children's learning outcomes.							
Option 1: Enhanced status quo. Services must engage or employ 80% qualified teachers (measured against minimum ratio requirements)	+	0	0	0	0	+1	Preferred options Options 1A, 2 and 5 are the preferred options which will be publicly consulted on. Stakeholder opinions We currently do not know wider stakeholder and public opinions on these proposals. This is will be consulted on, during the tranche 2 public consultation.
Option 1A: Retaining a high percentage of ECE qualified teachers. Services must engage or employ 80% qualified teachers (measured against minimum ratio requirements) with 50% of these teachers needing to hold an ECE teaching qualification	++	0	0	0	0	+2	
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	++	+	0	0	-	+2	
Option 3: 80% in ratio at all times. Services must use 80% qualified teachers to cover minimum ratio requirements whenever children are present.	+++	0	-	-	0	+1	
Option 4: Average over one month. Services must use 80% qualified teachers to cover minimum ratio requirements, on average, over a one-month funding period	++	-	0	-	-	-1	

Option 5: Ensuring ECE qualified teachers are always present. Services must engage or employ 80% qualified teachers (measured against minimum ratio requirements) while services are open. All times children attend, 50% of teachers need to be holding an ECE teaching qualification	++	0	0	0	0	+2	
Ensuring the person responsible is an experienced teacher (teacher-led centres and hospital-based services)							
Problem definition: While the person responsible must be a qualified and certificated teacher, they currently do not need be an experienced teacher. This is problematic given the importance of the person responsible role to ensure children are receiving quality education and care.							
Option 1: Status quo. Persons responsible only need to hold a recognised qualification and a current practising certificate, regardless of their level of experience.	0	0	0	0	0	0	Preferred option Option 2 is the preferred option preferred option, which will be publicly consulted on, since it addresses the current policy problem and is expected to lift the quality of provision to children. Stakeholder opinions We currently do not know stakeholders' opinions on this proposal. This is will be consulted on, along with the other proposals in this RIA during the tranche 2 public consultation.
Option 2: Person responsible must hold a Category One or Two practising certificate. This change would ensure that persons responsible are experienced teachers and are expected to meet the Teaching Council's <i>Standards</i> <i>Ngā Paerewa</i> .	+	0	+	-	+	+1	
Ensuring persons responsible have the skills and knowledge to help children immediately following an incident (teacher-led centres)							
Problem definition: Currently, persons responsible are not explicitly required to have health and safety training. This is problematic as persons responsible may be unable to fulfil their role of ensuring children are receiving quality care and responding to health or safety incidents that may arise.							
Option 1: Status quo. Persons responsible are not required to hold a first aid qualification	0	0	0	0	0	0	Preferred option Option 2 is the preferred option, which will be publicly consulted on, since it ensures the person responsible can respond to children's health and safety needs should they arise. Stakeholder opinions We currently do not know stakeholders' opinions on this proposal. This is will be consulted on,
Option 2: Ensuring first aid knowledge. Persons responsible must hold a first aid qualification.	++	0	0	0	0	+2	

							along with the other proposals in this RIA during the tranche 2 public consultation.
Person responsible function, including the supervision requirement (teacher-led centres)							
Problem definition: Currently, the functions and duties of the person responsible in teacher-led centres lack clarity. This may be detrimental to children and at the service since there may be variation in the quality of education and care that the person responsible upholds.							
Option 1: Status quo. The current functions and responsibilities are unclear.	0	0	0	0	0	0	Preferred option Option 2 is the preferred option, which will be publicly consulted on, since it supports the Ministry as a capable regulator, and is expected to lift the quality of care to children in teacher-led centre-based services. Stakeholder opinions We currently do not know stakeholders' opinions on this proposal. This is will be consulted on, along with the other proposals in this RIA during the tranche 2 public consultation.
Option 2: Clarify the person responsible functions, including the supervision requirement	+	0	0	0	+	+2	
Being responsible for children's education and the supervision requirement (hospital-based services)							
Problem definition: Currently, the functions and duties of the person responsible in hospital-based services lack clarity. This may be detrimental to children and at the service since there may be variation in the quality of education and care that the person responsible upholds.							
Option 1: Status quo. The current supervision requirements for persons responsible are unclear.	0	0	0	0	0	0	Preferred option Option 2 is the preferred option preferred option which will be publicly consulted on since it supports the Ministry as a capable regulator and it expected to lift the quality of care to children in hospital-based services. Stakeholder opinions We currently do not know stakeholders' opinions on this proposal. This is will be consulted on, along with the other proposals in this RIA during the tranche 2 public consultation.
Option 2: Clarify what is meant by being responsible for children's education and the supervision requirement	+	0	0	0	+	+2	

What are the marginal costs and benefits of the option?

Regulating for 80% qualified teachers in teacher-led centre-based services

52. We will consult on options 1A, 2 and 5 based on the analysis from the preceding sections. The tables below are a high level initial analysis of the costs and benefits of the options proposed. This will be developed further following consultation feedback.

Option 1A: Retaining a high percentage of ECE qualified teachers

Affected groups (identify)	Comment nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. 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 proposed option compared to taking no action			
Service providers	Ongoing costs to services for using qualified teachers.	Low	Medium
Regulator	Possibly some costs to Government to help support some services transition to new regulations.	Low	Low
Parents and whānau	Some services may need to increase fees for parents and whānau. However, if bilingual and immersion services close, parents may use English-medium services instead, which could pose a risk to language, culture and identity.	Low	Low
Total monetised costs			N/A
Non-monetised costs			Low-medium
Additional benefits of the preferred option compared to taking no action			
Service providers	May raise the reputation of these services.	Low	Low
Regulator	Guarantees each service would engage or employ a high number of ECE qualified teachers.	Low to medium	Medium
Children, parents and whānau	Higher quality services – there may be a higher proportion of qualified teachers in contact with children following this change.	Low	Medium
Total monetised benefits			N/A
Non-monetised benefits			Low to medium

Option 2: Match the Regulations with the funding rules

Affected groups (identify)	Comment nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. 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			
Service providers	Ongoing compliance costs to services to use qualified teachers. Some services will not be able to comply with this standard and close.	Low	Medium
Regulator	Possibly some costs to Government to help support some services transition to new regulations. Lag in assessing the standard – based on four months of data.	Low	Low
Children, parents and whānau	May reduce choice and participation for parents and whānau as some services may close over time if they cannot comply with the new regulations. If bilingual and immersion services close, parents may use English-medium services instead, which could pose a risk to language, culture and identify.	Low	Low
Total monetised costs	N/A		
Non-monetised costs	Low		
Additional benefits of the preferred option compared to taking no action			
Service providers	Increased clarity due to alignment between regulations and funding.	Medium	Medium
Regulator	Guarantees each service would use a high proportion of qualified teachers to cover ratio requirements.	Medium	High

Children, parents and whānau	Increased confidence for parents and whānau that children will generally be taught and cared for by qualified teachers.	Medium	Medium
Total monetised benefits	N/A		
Non-monetised benefits	Medium		

Option 5: Ensuring ECE qualified teachers are always present

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Service providers	Ongoing costs to services for using and engaging a high proportion of ECE and primary qualified teachers. Risks that services may not be able to comply with this standard.	Low	Low-medium
Regulators	Potentially costs to the Ministry to help services transition to new regulations.	Low	Low
Children, parents and whānau	Risk to parents since some services may close since they are unable to comply with the new regulations. If bilingual and immersion services close, parents may use English-medium services instead, which could pose a risk to language, culture and identify.	Low	Low
Total monetised costs	N/A		
Non-monetised costs	Low		

Additional benefits of the preferred option compared to taking no action			
Service providers	May raise the reputation of these services.	Low-medium	Low
Regulator	Guarantees each service would engage or employ a high number of ECE qualified teachers.	High	Medium-high
Children, parents and whānau	Increased confidence for parents and whānau that children will generally be taught and cared for by qualified teachers, with a high proportion of ECE qualified teachers	Medium	Medium
Total monetised benefits	N/A		
Non-monetised benefits	Medium		

Person responsible proposals

53. Based on the analysis in the preceding sections, the Government will consult on the following proposals relating to the person responsible requirement:

- a. **Proposal 1: Requiring persons responsible to hold a Category One or Two practising certificate**

Teacher-led centre-based services

- b. **Proposal 2: Clarifying the person responsible functions and what is meant by 'supervising children and staff'**

- c. **Proposal 3: Requiring persons responsible to hold a first aid qualification**

Hospital-based services

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

54. The table below is a high-level initial analysis of the costs and benefits of the proposals. They will be developed further following consultation feedback.

Summary table of costs and benefits of the preferred approach for persons responsible in teacher-led centres

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Service providers	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. We also do not know how many persons responsible do not hold a current first aid qualification.	Low	Low
Regulator	Costs to the Ministry to help services transition to new regulations.	Low	Low
Children, parents and whānau	Risk to parents since some services may close since they are unable to comply with the new regulations.	Low	Low
Total monetised costs	N/A		
Non-monetised costs	Low		
Additional benefits of the preferred option compared to taking no action			
Service providers	Clearer understanding of what is expected of persons responsible	Medium	Medium
Regulator	Guarantees that the person responsible is an experienced teacher with a first aid qualification.	Medium	Medium
Children, parents and whānau	Greater assurance for parents about the quality of education and care in the service.	Low	Low-medium
Total monetised benefits	N/A		
Non-monetised benefits	Medium		

Summary table of costs and benefits of the preferred approach for persons responsible in hospital-based services

Affected groups (identify)	Comment nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. 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			
Service providers	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.	Low	Low
Regulator	Costs to the Ministry to help services transition to new regulations.	Low	Low
Children, parents and whānau	No major costs to children, parents and whānau	Low	Low
Total monetised costs	N/A		
Non-monetised costs	Low		
Additional benefits of the preferred option compared to taking no action			
Service providers	Increased quality of persons responsible role across services.	Medium	Medium
Regulator	Guarantees that the person responsible is an experienced teacher	Medium	Medium
Children, parents and whānau	Greater assurance for parents about the quality of education and care in the service.	Low	Low-medium
Total monetised benefits	N/A		
Non-monetised benefits	Medium		

Section 3: Delivering an option

How will the new arrangements be implemented?

- 55. The Government has signalled that it intends to regulate for 80% qualified teachers in the medium term.
- 56. Implementation detail will be developed following consultation.

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

- 57. Implementation detail will be developed following consultation.

Interim Regulatory Impact Statement: Network Management in Early Learning

Coversheet

Purpose of Document

Decision sought:	This is an interim RIA with analysis produced for the purpose of informing stakeholders to be consulted on a government discussion document regarding regulatory changes required to give effect to the new network management approach. The final RIA will be completed after public consultation. Final decisions to proceed with a policy change are to be taken by Cabinet.
Advising agencies:	Ministry of Education
Proposing Ministers:	Minister of Education
Date finalised:	13 August 2021

Problem Definition

Sections 17 and 18 of the Education and Training Act 2020 provide a framework for the new network management regime for early learning. Applicants must demonstrate the new services entering the market meet the needs of the community and that they are suitable to deliver the type of service they are proposing. The commencement date of sections 17 and 18 was delayed by 2 years to reflect that the network management function is entirely new, so the Act and corresponding regulations need to provide for a clear and transparent process.

In undertaking detailed work to give effect to sections 17 and 18, the Ministry of Education (the Ministry) identified additional regulatory changes that are required to provide transparency and clarity and support the effective implementation of the network management approach. We have identified 11 issues below, which need to be addressed to provide clarity to the sector, ensure the design is fit for purpose and give effect to other parts of the Act (Te Tiriti o Waitangi obligations) before commencement of the network management provisions in the Act on 1 August 2022. These changes are the subject of this RIA.

Executive Summary

Following the commencement of the Act last year, the Ministry has been developing implementation plans for the network management provisions and we have identified areas that need to be amended/enhanced in order to fully realise the gains that were intended. These changes will involve changes to primary legislation (the Act) and regulations (a new set of regulations for network management).

We have outlined 11 proposals to support the introduction of the network management regime that will:

1. Clarify decision-making rights and processes to give effect to the intent of network management
 - National and Regional Statements
 - Allocating assessments of fit and proper and financial viability to the Secretary for Education
 - Honouring Te Tiriti o Waitangi obligations
 - Changes to fit and proper requirements
 - Specifying how financial position and licensing history are assessed
 - Adding requirement for the Minister to consider capability to deliver service and other relevant factors
2. Ensure that service providers move towards licensing in a timely manner after network approval
 - Changing period of network approval to up to 2 years and setting a high threshold for any extensions
 - Introducing conditions to network approval granted by the Minister
3. Ensure that administrative components of the network management function are fair and transparent.
 - Introducing a minimal network approval fee of \$500 to partially recover costs
 - Two separate ways for applicants to challenge decisions
 - Limited transitional provisions

Potential positive impacts of preferred options

More active management of the network is intended to help ensure all children have access to quality early learning settings and prevent unintended consequences of over-supply. The proposed settings will position proposed new services to provide quality early learning settings by checking they are capable, fit and proper, and have sufficient finances in place to establish a new service.

National and Regional Statements provide guidance for applicants and prevent wasted effort if the application is unlikely to succeed. Smaller services who are unlikely to have resources to access data mapping services may benefit from the data offered by the Ministry to identify areas of under and oversupply. Network approval would also have an impact on the issue of future approvals for the same service type in that region.

The proposed network management settings relating to the Te Tiriti o Waitangi will give express recognition to the obligations of the Crown under Te Tiriti o Waitangi. Giving effect to these obligations will support Māori aspirations and recognise the importance of the Māori-Crown relationship.

The changes would also provide more transparency and clarity to the decision-making provisions in the Act, as well as specify requirements from applicants to inform effective network management decisions.

Potential negative impacts of preferred options

There may be a slight increase in ECE costs for parents if fewer new services open in areas of oversupply, creating less competition. For the applicants, the proposed changes may increase costs and time spent to comply with the more comprehensive application requirements.

The Secretary for Education is the regulator of the education system, who gives delegated authority to the Ministry of Education. The Ministry would also need to develop additional criteria to inform effective network management decisions and guidance material to support applicants.

The consultation process will test these assumptions and inform future regulatory impact analysis of impacts.

Limitations and Constraints on Analysis

There are certain limitations on consultation and testing the options identified:

- This is an interim RIA to support public consultation. At this stage, we will not be completing all the sections. The final RIA will be completed after public consultation.
- The implementation timeframe for network management is 1 August 2022. The timeframe constraint may limit consultation and stakeholder engagement as this would need to be condensed.
- We have yet to do public consultation on these proposals, so we have not tested the final options with stakeholders. These will be tested by conducting public consultation in September 2021.
- The options identified in this RIA need to fit in the overarching regime for network approval application and licensing of new service providers, which are provided for in existing legislation.

Responsible Manager

John Brooker



General Manager

Education System Policy

Ministry of Education

13 August 2021

Quality Assurance

Reviewing Agency:	Ministry of Education
Panel Assessment & Comment:	The Regulatory Impact Analysis panel at the Ministry of Education has reviewed the Interim Regulatory Impact Statement and considered the associated discussion document and has confirmed that these documents will support effective consultation and the eventual development of a quality Regulatory Impact Statement.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

Overview of the Early Learning Regulatory system

Government regulation of early learning is intended to establish the parameters for the operation of the sector and to ensure minimum standards for children's health, safety, wellbeing and education are met.

Licensed ECE is regulated by the three-tiered regulatory framework that applies to all licensed early learning services.

- a. **First tier** – the Education and Training Act 2020 provides a high-level framework for licensing, certifying and funding of services, and it empowers regulations and criteria to be developed.
- b. **Second tier** – This tier includes the Education (Early Childhood Services) Regulations 2008, which establish minimum standards, and the ECE Funding Handbook that sets some additional requirements.
- c. **Third tier** – This tier includes the Licensing Criteria, used to assess compliance with the minimum standards set out in the Regulations, and the Curriculum framework.

The Education Review Office (ERO) also has a significant role in the sector, as the government agency that evaluates and reports on the education and care of children in ECE.

The Ministry's Review of the Early Learning Regulatory System

The proposals outlined in this RIA are part of tranche 2 of the review of the early learning regulatory system (the Review) that the Ministry of Education is currently undertaking. The Review is being completed in three tranches to ensure that the high priority issues can be progressed in a timely fashion while allowing additional time for the matters that require further policy work and consultation.

The purpose of the Review is to ensure that the regulatory system for the early learning sector is clear and fit for purpose to support high quality educational outcomes. The Review also considers the Secretary for Education's role as both a steward of the system and a regulator.

This Review is timely due to the significant changes in the sector since the current regulatory system was established in 2008. Over the last decade, both the number of children and the number of hours that children participate in ECE has increased rapidly. Children are also attending from younger ages and for longer hours.

The Review is being completed in three tranches to ensure that some high priority issues can be progressed in a timely fashion while allowing additional time for the matters that require further policy work and consultation.

Tranche one – The final regulations for tranche one were announced on 14 July 2021. The main aim of tranche one was to address some of the immediate gaps in our current system including those that pose a risk to children's health, safety, and wellbeing. Generally, these changes most impact new early

learning services, service providers that have a change in circumstance, and services that have compliance issues.

Tranche two – The proposals in this RIA are part of tranche 2 proposals. The proposals in this RIA aim to:

- i. Implement the new network planning function under the Education and Training Act 2020: changes relating to licensed early childhood services and ngā kōhanga reo.

There are two other sets of proposals that are being consulted on in tranche two. These two sets of proposals are in separate RIAs. The aim of those proposals are to:

- ii. Action changes from the Review of Home-based Early Childhood Education, including potential changes to the requirements and role of the home-based person responsible and the maximum licence size.
- iii. Regulate for 80% qualified teachers for teacher-led centres and hospital-based services, and also strengthen the person responsible requirement for teacher-led centres and hospital-based services.
- d. **Tranche three** – These changes will cover the remaining matters that require significant further work to develop. This will likely involve a complete rewrite of the Education (Early Childhood Services) Regulations 2008 (the Regulations).

Education and Training Act 2020 (the Act)

In 2019, as part of *He taonga te tamaiti: Every child a taonga - the Early learning action plan* the Government set an Objective that early learning services become part of a planned and coherent education ecosystem that is supported, accountable and sustainable. One of the actions to support this objective is network management.

The Ministry had previously undertaken a regulatory impact assessment for the legislative changes, which gave rise to the network management provisions in the Act. This RIA focuses on the proposed issues we have identified to strengthen the regulatory framework and implementation for network management.

From 1 August 2022, sections 17 and 18 of the Act introduce a new requirement for providers seeking to establish a new ECE service to seek network approval before licensing. Applicants must demonstrate the new services entering the market meet the needs of the community and that they are suitable to deliver the type of service they are proposing.

Section 17 adds a preliminary stage to the licensing process for the services. This is intended to assess whether there is a need for a new early learning service in a particular area. Potential service providers would need to apply to the Minister of Education (the Minister) for approval to apply for a licence to operate any of the following:

- education and care, including kindergarten (59% of all services)
- home-based (8% of all services)
- hospital based and casual education and care (approximately 0.5% of all services)

The Minister could decline approval to apply for a licence on the basis of specified considerations. The purpose of this new stage is to enable planning of the overall network of early learning services, with a focus on ensuring that they reflect the needs of communities.

Section 18 of the Act requires the Minister to assess whether a person is fit and proper to be granted approval to apply for a licence under section 17. This is to assess whether the prospective service provider is fit to run an early learning service. Providers wishing to establish a new service will need to follow two steps, as set out in Table One.

Table One: new licensing process

Stage	Details	Status
1. Pre-application	A provider must meet the new network management requirements as set out in Sections 17 and 18 of the Education and Training Act 2020. Pre-application approval enables the service to apply for stage 2 below.	This is a new requirement
2. Licensing application	A provider must meet the requirements set out in the Education (Early Childhood Services) Regulations 2008.	This is a current requirement

What is the policy problem or opportunity?

Sections 17 and 18 of the Act introduce a requirement that any person wishing to apply for a licence to operate must first apply to the Minister of Education for approval. These sections of the Act set out the network management policy, which establishes the considerations that the Minister must take into account before granting approval and a requirement for the person approved to be 'fit and proper'.

The commencement date of sections 17 and 18 was delayed by 2 years to reflect that the network management function is entirely new, so the Act and corresponding regulations need to provide for a clear and transparent process.

In undertaking detailed work to give effect to sections 17 and 18, the Ministry of Education identified additional regulatory changes that are required to provide transparency and clarity and support the effective implementation of the network management approach.

The Act provides a framework for the network management regime and mandatory standards at a high level. We have identified 11 issues below (page 10), which need to be addressed to provide clarity, ensure the design is fit for purpose and give effect to other parts of the Act (Te Tiriti o Waitangi obligations) before commencement of sections 17 and 18 of the Act on 1 August 2022. Legislative changes to the Act would need to be included via an SOP in the Education and Training Amendment Bill (the Bill), which is currently awaiting Second Reading.

The enhancements support the introduction of the network management regime by:

1. Clarifying decision-making rights and processes to give effect to the intent of network management
2. Ensuring that service providers move towards licensing in a timely manner after network approval
3. Ensuring that administrative components of the network management function are fair and transparent

Summary of proposals

Changes to section 17: Ministerial approval required for licensing application	Changes to section 18: persons approved to apply for licence must be suitable	Changes to Regulations
Introducing national and regional policy statements	Allocating section 18 decisions to the Secretary for Education (fit and proper and financial viability assessments)	The process for assessing financial position and licensing history
Provisions that specify how network management honours Te Tiriti o Waitangi	Changes to fit and proper person assessment	Changes to fit and proper person to be mirrored in licensing regulations
Addition of requirement for the Minister to consider applicant's capability and any other relevant factors	Applicants who are dissatisfied with the Secretary's determination may appeal to the District Court against the decision.	Introducing network approval fees
Changing Network approval period to <u>up to</u> two years		
Introducing conditions on network approval and introducing the ability for the Minister to revoke an approval at any time if conditions are not complied with, there has been material change in circumstances, or information provided was materially incorrect or misleading		
Specifying circumstances for extension of network approval period		

Stakeholders and how they will be affected

The proposals outlined in this analysis aim to provide transparency and clarity as well as support the effective implementation of network management. The changes identified below are anticipated to affect the following groups:

- a. Children, parents and whānau
- b. Prospective network approval applicants as regulated parties
- c. Māori
- d. The Ministry

Children, parents and whānau

Positive impacts

More active management of the network is intended to help ensure all children have access to quality early learning settings and prevent unintended consequences of over-supply. The proposed settings will mean proposed new services are well positioned to provide quality early learning settings, by checking the provider is capable, fit and proper and has sufficient finances in place to establish a new service.

The proposed network management settings, particularly the National Statement, will identify where there is demand for new services. This will enable parents to access early learning for their children at the right times and provide opportunities for labour force participation, especially for women.

Negative impacts

There may be a slight increase in ECE costs for parents if it leads to fewer new services opening in areas of oversupply and less competition.

Prospective network approval applicants

Positive impacts

The National and Regional Statements would provide more guidance for applicants to prevent wasted effort and resources if the application is not likely to be successful. Smaller services who are unlikely to have resources to access data mapping services may benefit from the data offered by the Ministry to identify areas of under and oversupply. Network approval would also have an impact on the issue of future network approvals for the same service type in that region.

Negative impacts

The proposed changes would require applicants to provide more specific and additional information for the Minister and Secretary to make an effective decision for network approval. This may result in additional costs for applicants.

Māori

Positive impacts

The proposed network management settings relating to the Te Tiriti o Waitangi will give express recognition to the obligations of the Crown under Te Tiriti o Waitangi. Giving effect to these obligations will support Māori aspirations and recognise the importance of the Māori-Crown relationship. The changes aim to enable greater choice through supporting the provision of service types that are valued for families and whānau. This will strengthen the provision in te reo Māori to better support children's pathways for Māori medium schooling and kura.

Negative impacts

The network management proposals would require all new Māori early childhood services to go through an additional step before applying for licensing.

The Ministry

Positive impacts

The proposed changes would provide more transparency and clarity to the decision-making provisions in the Act, as well as specify requirements from applicants to inform effective network management decisions.

Negative impacts

The Ministry may need to assist applicants to understand the requirements and there would be costs associated with implementing the changes, including developing criteria/guidance to support decision-making and consulting with the sector, public and Māori.

The consultation process and discussion document will test these assumptions and inform the future regulatory impact analysis of impacts.

What objectives are sought in relation to the policy problem?

The overall objectives of the regulatory changes to the new network management approach are to ensure that:

- The legislative requirements in sections 17 and 18 of the Act are clear and transparent to the sector;
- Clear decision-making rights and processes are prescribed;
- Treaty of Waitangi obligations in the Act are given effect to; and
- The design of the process is fit-for-purpose and ensures the quality of services and management of oversupply to ensure network sustainability.

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

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

We have used the following criteria to assess the options:

- **Impact on the quality of education and care of children:** maintain the quality of education and care and put children's health, safety and wellbeing first
- **Reasonable costs to government and ease of implementation:** Costs and compliance faced by government are reasonable and able to be implemented
- **Reasonable costs for ECE providers:** Costs and compliance faced by providers are proportionate and involve limited or no duplication of effort
- **Te Tiriti o Waitangi:** Honours Te Tiriti o Waitangi and supports Māori Crown relationships
- **Clear and transparent:** Service providers know what to expect of the process and can easily interpret what is required
- **Fair and equitable:** Decisions for similar circumstances are treated equally and there is clear rationale where this is not the case

What options are being considered?

Options	Assessment against objectives							Preferred option
	Quality of education	Cost to government	Cost to providers	Te Tiriti o Waitangi	Clear and transparent	Fair and equitable	Overall assessment	
1. Clarifying decision-making rights and processes								
(a) Assessment of regional needs and demands								
<p>Problem definition:</p> <p>Section 17(2) of the Act requires that before granting approval to apply for licence to operate, the Minister “<i>must take into account the relevant attributes of the area to be served, including (without limitation) the demography of the area, the needs of the communities in the area, the needs of the children in the area, and the availability of services in the area with different offerings (for example, the provision of te reo Māori)</i>”.</p> <p>The Act is not transparent and clear about what is required to assess the regional needs and demands. The sector also needs certainty and clear guidance on how these criteria are assessed and what a prospective service provider needs to provide to meet the criteria. The lack of certainty may also result in wasted effort and resources from applicants if the application is not likely to be successful.</p> <p>The design of this function needs to give effect to the policy intent of this section, which is to ensure quality provision of new early childhood services across the regions and that the new services match the needs and aspirations of parents and whanau in the regions. This would require changes to the Act.</p>								
Status quo: section 17(2) of the Act	0	0	0	0	0	0	0	Preferred option: Option one –
The provision requires the Minister to take into account the relevant attributes of the area to be served, including (without limitation) the demography of the area, the needs of the communities in the area, the needs of the children in the area, and the availability of services in the area with different offerings (for example, the provision of te reo Māori)								The National and Regional statements would encourage establishment of particular services and avoid unnecessary effort by providers by outlining where there is currently oversupply and assist getting applications from services that are needed.

<p><i>Option one: Developing national and regional government statements to guide the establishment of new services</i></p> <p>National policy statements are used in other areas such as water, land transport and urban development. These statements make public the desired state to guide development. The National and Regional statements would outline strategic priorities for government, e.g. Maori or Pacific immersion services, identify areas of undersupply and areas where new services are not required by analysing multiple data sets, and provide additional information about legislative requirements, such as what information is required as part of application.</p> <p>The outline for a National Statement would focus on demographics of the communities to be served rather than specifying particular philosophies of services (eg Montessori) or ownership structures (eg community based). The regional statements would provide more refined information at regional level about community needs and under and oversupply.</p> <p>As part of an application, an applicant would be expected to outline how the service meets the national and regional statement. This would encourage establishment of particular services and avoid unnecessary waste of time and resources from providers if application is not likely to be successful.</p> <p>We will be consulting on the degree of sector and community input into these statements.</p>	+	+	+	+	+	+	+	6	<p>The statements would also reduce information asymmetry between smaller and larger providers. Feedback from the Advisory Group highlighted that larger providers subscribe to services such as Gapmaps to identify whether a proposition from a property developer was worth pursuing. Small services are unlikely to have the resources to access such data mapping services.</p> <p>The statements would also specify that new Māori immersion and iwi-led early learning services are a government priority.</p> <p>Although the statements may not capture demand at subregional level and they may not be updated quickly enough when circumstances change, they are one input into the pre-application process. Applicants can also demonstrate their own community need or provide more up to date analysis.</p>
(b) Decision making provisions									
<p>Problem Definition:</p> <p>The Act specifies that the Minister of Education makes decisions for pre-approving applications for licenses. This includes making the fit and proper assessment in section 18, as well as consideration of the assessments in section 17, which includes assessing regional needs, suitability of the applicant and the applicant's financial position and licensing history.</p> <p>The decisions made under section 17 are discretionary in nature, meaning that the decision-maker has the discretion whether to approve based on whether the applicant is suitable to operate the proposed service and whether the service meets regional needs. The decision maker may also be required to decide between</p>									

multiple applicants seeking to establish services in the same region, who may all meet the section 17 requirements. This requires policy judgment, which is appropriately made by the Minister.

The fit and proper as well as financial viability assessments are components of assessing the suitability of the applicant and governance members. It is an administrative function, whereby the decision maker considers whether the applicant is fit and proper or not based on a set list of criteria in section 18. Due to the administrative nature of this type of assessment, it would generally result in a right of appeal that may be provided for in legislation, whereas this may not be appropriate for reviewing the Minister's policy judgment made under section 17.

There needs to be a clear distinction between the two functions, which is difficult when the Minister is the only decision-maker under both sections 17 and 18.

<i>Status quo: Minister of Education makes decisions for both sections 17 and 18 assessments</i>	0	0	0	0	0	0	0	<i>Preferred option: option one</i>
<p><i>Option one: Minister makes section 17 assessments and Secretary for Education makes section 18 assessments</i></p> <p>This option would introduce a decision-making framework in section 17 for the Minister to follow for the purpose of ensuring that the Minister's decision-making role is clear.</p> <p>The framework would make it clear that the Minister's decision is a high-level assessment, that it need not duplicate the Secretary's assessments, that the Minister may consider applications together or separately or in any particular order, and that the Minister would not be required to defer any decision only because another applicant has challenged any determination of the Secretary or a Ministerial network approval decision.</p> <p>The Secretary would make the fit and proper person assessment as part of section 18 and make a recommendation to the Minister about whether the criteria are met. The Secretary would also provide the Minister with advice about whether the proposed service is financially viable, as part of the broader assessment of the financial viability of applicant under section 17.</p> <p>This option would also involve moving the requirement to obtain Police vetting from section 17 into the fit and proper test in section 18, as this is also an administrative matter.</p>	0	+	0	0	+	+	+	<p>The fit and proper assessment in section 18 is an administrative matter – the applicant either meets or does not meet the tests in section 18. In contrast, the tests in section 17, which require an assessment of community need and the offerings in the area.</p> <p>Given the tests in section 18 are an administrative matter, it is appropriate that this responsibility is shifted to the Secretary for Education. This shift will signal a clear difference between the discretionary policy components of the network decisions made by the Minister in section 17, and the administrative thresholds assessed by the Secretary as administrator of the system.</p>

(c) Honouring Te Tiriti o Waitangi								
<p>Problem definition:</p> <p>The Government has an enduring focus on improving education outcomes for Māori learners and giving effect to Te Tiriti o Waitangi and its principles. The Act reflects this. Section 4(d) states that the purpose of the Act is “to establish and regulate an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships.”</p> <p>Under section 17(2)(a), before granting approval to apply for a licence, the Minister must take into account the availability of services in the area with different offerings, for example, the provision of te reo Māori. However, this is unlikely to cover all the Crown’s Te Tiriti responsibilities under the Act. As part of designing the new network management provisions we need to consider how the policy will give effect to Te Tiriti o Waitangi. Specific Te Tiriti obligations are a recent addition to the Act so this will be one of the first times the government will consider how it should apply to the design and implementation of a new education function.</p>								
<p><i>Status quo: section 17(2)(a)</i></p> <p>Before granting approval to apply for a licence, the Minister must take into account the availability of services in the area with different offerings, for example, the provision of te reo Māori.</p>	0	0	0	0	0	0	0	<p><i>Preferred option: option one</i></p> <p>The status quo sets out the intent of the Act, which includes any decisions to take into account the availability of services in the area with different offerings. However, this does not provide direct reference to honouring the Te Tiriti.</p>
<p><i>Option one: prioritise new Māori immersion services and iwi-led early learning services and prioritise views of local iwi and hapū in preapplication assessment</i></p> <p>This option would ensure that dedicated resource is set aside for analysing and assessing the network of services supporting te reo Māori pathways in early learning (as part of the network management function that was funded as part of Budget 2021).</p> <p>This option would specify new Māori immersion and iwi-led early learning services as a government priority in the National statement. The National Statement would also set a broad definition of early learning services that gives effect to the Crown’s Te Tiriti responsibilities, such as Te Kōhanga</p>	+	+	0	+	+	+	+	<p>Option one significantly improves upon the status quo, as it makes it clear what the Ministry intends to do to give effect to honouring Te Tiriti o Waitangi.</p> <p>This option would directly contribute to the goals set out in the Maihi Karauna, the Crown’s Strategy for Māori Language Revitalisation, and support Tau Mai Te Reo, the Māori Language in Education Strategy for all learners, by encouraging the establishment of services that support more learners to learn te reo Māori.</p>

<p>Reo and Māori immersion services and other services governed and managed by iwi, hapū or Māori organisations.</p> <p>This option would also consider how the interests of Māori should be factored into the decision-making process relating to individual applications for network approval. Where an application for approval engages Tiriti rights or interests, for example those under a Tiriti settlement, or the interests of Māori in a particular community, it would be necessary that such decisions are properly informed by these considerations.</p> <p>These matters do not need express reference in the Act but may be referred to in the national or regional statements, or in regulations created to support the process for obtaining network approval, if appropriate.</p>								<p>Option two involves higher threshold for the establishment of new early learning services that does not currently apply to schools or tertiary providers. It may also put significant compliance costs on Maori communities to engage with every application for network approval.</p>
<p><i>Option two: all new applications should require consultation with Māori</i></p> <p>This option would require all new applications to consult with Māori including how te reo Māori, tikanga and local mātauranga will be incorporated. This would be dealt with via a mechanism that is focused on the education system as a whole.</p>	+	-	-	+	+	+	+	2
(d) Assessing financial position and licensing history								
<p>Problem definition:</p> <p>The Act has introduced two new provisions relating to financial position and licensing history. The purpose of these provisions is to assess the suitability of an applicant to establish a new service. An applicant that has insufficient funding and resources, and/or a poor licensing history is unlikely to be appropriate to establish and operate a ECE service. These issues may affect the longevity and quality of the proposed service.</p> <p>Currently the Act does not stipulate the requirements for satisfying these areas of assessment. Without a prescribed process to effectively assess the financial position and licensing history of the applicants, it would create uncertainty and lack of transparency for prospective applicants regarding what is required and how decisions are made. Lack of clarity over what is required to satisfy this criterion may lead to unnecessary effort or collection of irrelevant material</p>								
<p><i>Status quo: section 17(2)(c) and (d)</i></p> <p>These provisions require the Minister to take into account the applicant's financial position and licensing history when granting network approval.</p>	0	0	0	0	0	0	0	<p><i>Preferred option: option one</i></p> <p>This option makes it clear to prospective applicants what kind of documents and information they need to prepare and provide. The ability to impose</p>

<p><i>Option one: specify in regulations the type of information required</i></p> <p>Financial position This option requires the Minister to consider the Secretary's determination on whether the applicant is financially viable. The applicant would need to provide financial information that demonstrates the applicant has either sufficient finances to establish the service and/or a business plan to show how sufficient finances will be attained. Financial information could include an annual report, a business plan identifying how the service will be funded, and/or statements from appropriate financial institutions or licensed financial advice providers. The Secretary for Education would review these in detail as part of the section 18 assessment for financial viability.</p> <p>At the network approval stage, it may be unreasonable to expect all services to have sufficient funding, particularly community-based services that may be relying on some aspect of government funding, fundraising efforts and/or donations. If an applicant does not have sufficient finances at the preapplication stage, we propose to use conditions to require an applicant to provide regularly updates on financial progress. Large providers with significant capital will likely find this particular requirement easy to satisfy.</p> <p>Licensing history This option requires applicant to submit a list of all services connected with the applicant and every person involved in the governance of the proposed service. The Minister would then determine suitability by assessing this list of services against information held by the Ministry.</p>	+	+	+	0	+	+	+5	<p>conditions on the applicants if they do not have sufficient funding at the network approval stage makes it fairer and more flexible for the applicants in the beginning stages.</p> <p>This option would also encourage applicants to apply for network approval once they have a funding plan, rather than waiting to have funds in place.</p> <p>This option makes it clear to the prospective applicants what is assessed for licensing history and what information to provide.</p> <p>However, if the applicant does not provide this information the Secretary would have a limited means of determining which services the applicant has been associated with, largely based on any publicly available records, as the Ministry does not currently collect information about governors and directors of services.</p>
<p>Problem Definition: The fit and proper assessment of the applicant is covered in section 18 of the Act. This section was drafted in a manner that might cause confusion. In section 17(2)(b), it requires the suitability of the applicant and every person involved in the governance of the proposed service to be assessed, which includes whether the person is fit and proper. However, in section 18 it is not clear in this section that the fit and proper assessment applies to both the applicant and the other people involved in the governance.</p>								

Section 18(1)(a) is restricted to convictions for offences involving harm to children, violence and fraud. Other potentially relevant offences are not clearly captured, such as some offences that prevent a person working as a children's worker in an early childhood service and convictions under the Health and Safety at Work Act or Education and Training Act. This section also only applies to convictions against individuals, but it is also possible than an applicant or governance member has been associated with an organisation that has been convicted of a relevant offence. These convictions may also be relevant for the assessment of whether the person is fit and proper for the purposes of establishing a quality service.

<i>Status quo: section 17 of the Act</i>	0	0	0	0	0	0	0	<i>Preferred option: option one</i>
<p><i>Option one:</i></p> <p>Amend sections 17 and 18 to require that the fit and proper test:</p> <ul style="list-style-type: none"> Is assessed by the Secretary for Education rather than the Minister of Education applies to the applicant and every person involved in the governance of the proposed service broadening section 18(1)(a) to apply to any convictions relevant to providing an early learning service introducing a new sub-section in section 18 to capture any relevant convictions of an organisation that the applicant or governance members have been associated with. <p>The final fit and proper test would be mirrored in the licensing regulations so that the requirements are consistent.</p>	+	+	+	0	+	+	+	<p>This option ensures that it is clear that the fit and proper test applies to the applicant and to every person involved in the governance. This recognises that people involved in the governance of the new service have significant influence over the quality and operation of the service.</p> <p>Expanding the convictions ensures that we capture any convictions that may be relevant to them providing an early learning service. This would better assess whether the people operating the new service are fit and proper and would allow the Secretary to make a more accurate recommendation to the Minister.</p>

(e) Capability to establish proposed early learning service and other relevant factors

Problem Definition:

There are no requirements in section 17 for the applicant to have the capability to establish the proposed service. It is important that the applicant knowledge of the regulatory framework for early learning services. It is also important the applicant has the relevant experience and skill to establish the proposed service. This is especially relevant in cases where the applicant seeks to establish a specialised type of service, such as a Māori immersion service, which requires specific skills and knowledge. If the applicant cannot show evidence that they are capable of establishing a quality service, this would be contrary to the intent of the network management regime.

Section 17 also does not allow the Minister to consider other relevant factors as part of the assessments. As the Minister's decision on whether to pre-approve an application is discretionary and requires policy judgments, the Minister should be able to request additional information and consider other factors if necessary. This would also help the Minister to distinguish between strong applicants in the same area. Any changes would require amendment of section 17.

<i>Status quo: no capability requirement to establish proposed service</i>	0	0	0	0	0	0	0	<i>Preferred option: option one</i>
<p><i>Option one: establish new requirement in section 17 requiring capability to establish proposed service</i></p> <p>This new section would cover matters such as understanding the regulatory framework for early learning services and specific expertise to deliver the type of service the applicant is proposing to offer. For example, some evidence that the applicant has the capability to establish a Māori immersion service. An applicant would demonstrate capability by including information and capability relevant to the specific service type being proposed.</p> <p>This would also clarify the ability for the Minister to consider any other relevant factors, not just seek additional information, and, where necessary, enabling the Minister to require information from a third party.</p>	+	+	0	+	+	+	+ 5	<p>Requiring applicants to show evidence of capability to deliver the proposed service would help to ensure the establishment of a quality service or have the specialised knowledge that is required to establish a particular type of service.</p> <p>The ability of the Minister to consider other factors is good practice for the avoidance of doubt and more clearly signals that a network approval decision is a discretionary power of the Minister.</p>
2. Ensuring that service providers move towards licensing after network approval in a timely manner								
(a) Expiry of pre-application approval								
<p>Problem definition</p> <p>Section 17(6) requires that every preapplication approval expires 2 years after the date on which it is given. Applicants may not need two years to establish a new service, but there is no flexibility for the Minister to set a shorter timeframe. If an applicant can establish a service in less than 2 years, and/or the timing of establishment of any service is a key factor in any particular decision, then there is no need for the preapplication to be issued for the full 2 years.</p> <p>A 2-year network approval period would be unnecessarily long for some preapplication approvals. Applicants may delay applying for licensing when it is beneficial for the applicant to take longer doing so. Network approvals may 'crowd out' other potential applicants as it is unlikely that another preapplication approval would be granted at the same time in the same location for a similar service. Any changes to the network approval period require amending section 17.</p>								
<i>Status quo: All preapplication approvals expire after exactly 2 years</i>	0	0	0	0	0	0	0	<i>Preferred option: option two</i>
<i>Option one: The Minister can set any preapplication approval expiry date based on the circumstances of the applicant</i>	0	+	0	0	0	+	+ 2	<p>Applicants would know they cannot take longer than 2 years unless there are genuinely exceptional circumstances. This influences applicants to get established more quickly, supporting a better, more-responsive network. It is also fairer as it mitigates</p>
<i>Option two: The Minister can set any preapplication approval expiry date but it must be no more than 2 years after the approval date.</i>	0	+	0	0	0	+	+ 3	

								the risk of applicants crowding out other potential applicants.
(b) Extensions on pre-application period								
<p>Problem Definition: Section 17(6) allows the Minister to, on application before the expiry, extend the expiry date if they think fit to do so in the circumstances. There is a lack of transparency about the circumstances under which an extension would be considered. This would create ambiguity and uncertainty for pre-approved and prospective applicants.</p> <p>The current provision does not reflect that a two-year preapproval period is a significant amount of time. If the provider does not move towards applying for licensing during this period, there would be delay in establishing a service in a community where a need for services have been identified. The delay would also impact other prospective providers looking at establishing in the same area, as it is unlikely the Minister would approve multiple applications for the same service type at the same location. Any changes would require amending section 17.</p>								
<i>Status quo:</i> Extensions granted on an ad hoc basis, fully at the Minister's discretion with no guidance provided	0	0	0	0	0	0	0	<i>Preferred option: option two</i>
<i>Option one:</i> Extensions at the Minister's discretion with clear guidance and a low threshold for all extensions	+	+	+	0	+	+	+	Providing clear guidance on the circumstances when extensions will be granted gives confidence to applicants. Establishing high threshold for all extensions would reduce the number of applicants seeking extensions. This reduces cost to applicants and government.
<i>Option two:</i> Extensions at the Minister's discretion with clear guidance and a high threshold for all extensions	+	+	+	0	+	+	+	
<p>We recommend that extensions only be permitted where:</p> <ul style="list-style-type: none"> The area was subject to a natural disaster For new builds, the building is nearly complete, but there is unavoidable delay beyond the applicant's control There are other exceptional circumstances beyond the applicant's control (e.g. significant vandalism to the building or site). 								<p>This option also establishes that the timeframe given by the Minister is firm and not easily extended. This limit incentivises applicants to establish their service quickly. Option two is therefore preferred to option one.</p>
(c) Setting conditions on approved pre-applications								
<p>Problem Definition: Current provisions in the Act do not expressly allow conditions to be placed on any network approvals. This means that there is no mechanism to require providers to move towards licensing after network approval. There is also no mechanism to revoke approvals if there is a material change in circumstances or the information upon which an approval was based proves materially incorrect or misleading.</p>								

As with setting threshold for granting extensions, if there is no ability to set conditions, there is no guarantee that a service would be established after two years and/or no guarantee that the service established would not be significantly different to the one that received network approval. This would also impact other prospective providers who may be able to establish a desired service in that area but is prevented from doing so as another provider has already been given the network approval. Any changes would require amending section 17.

<i>Status quo: no conditions on network approval</i>	0	0	0	0	0	0	0	<i>Preferred option: option one</i>
<p><i>Option one: introduce conditions on all approved pre-applications</i></p> <p>This option would allow Minister to impose conditions of approval. The conditions would outline the expectations on the provider to move towards licensing. The Minister would also be able to revoke approvals if there is material change or the information upon which an approval was based proves materially incorrect or misleading.</p> <p>The conditions would specify matters that the pre-application approval has relied on such as the service type that has been pre-approved, the address (if known), as well as the requirement to provide regular updates to the Ministry on progress and notify any significant changes in circumstances. Conditions would only be set when they are able to be clearly defined and monitored.</p> <p>Introducing conditions, the ability to amend conditions, and a power to cancel a pre-application based on not meeting the conditions will require legislative change and would need to be included via an SOP in the Bill.</p>	+	+	+	0	+	+	+	<p>This option would ensure that after applicants receive network approval, they are all obligated to move towards licensing and ensures that the final service established aligns with the needs of the community and children and therefore ensures quality of end product. The ability to revoke an applicant's network approval is also fairer for other service providers seeking to establish a similar service as one that has already received network approval.</p> <p>Option two is not preferable as it would only apply to a small group of applicants and does not aim to increase the quality of the service established.</p>
<p><i>Option two: impose conditions only on applicants that do not have sufficient funding at the pre-application stage</i></p> <p>This would involve requiring regular updates from applicants on financial progress.</p>	0	+	+	0	+	+	+	

3. Administrative components are fair and transparent

(a) Right to challenge decisions

Problem Definition:

A general principle outlined in the Legislation Design and Advisory Committee's Legislation Guidance is that: "Where a public body makes a decision affecting a person's rights or interest, that person should generally be able to have the decision reviewed in some way."

As part of designing a new function that will regulate the early learning network, we need to consider what review or appeal rights an applicant should have in respect of network management approval decisions, if any. As mentioned above, decisions made under section 17 are discretionary in nature, whereas decisions made under section 18 are administrative, therefore different mechanisms for challenging decisions may be required. Changes to section 17 or 18 are required if applicants are given right of appeal of the Minister or Secretary's decisions.

Challenging section 17 decisions

Preferred option: status quo

Status quo: Judicial review of decision in High Court

The right to judicial review of the Minister's decision in the High Court exists independently of any statutory appeal rights. The right to judicial review is affirmed by section 27(2) of the New Zealand Bill of Rights Act 1990. Circumstances must be compelling to limit the right of judicial review. The process is set out in the Judicial Review Procedure Act 2016. This right of review does not need to be specified in the Act.

The Court's role is to make sure that the decision-maker acted within their legal powers and followed the process that the law requires, not to examine the merits of the decision.

The most appropriate review option for section 17 is a right to judicial review of the decision in the High Court, which exists independently of any statutory appeal rights.

As the Minister's decision would be discretionary, it is appropriate that for a judicial review, the judge would not be looking at whether the Minister's decision is right but rather whether he/she followed the correct legal process.

A judicial review has the following benefits:

- it is already provided for in law
- it can be quicker than the District Court process and therefore a decision is more timely
- it provides a framework for considering the lawfulness of a decision (including the process followed) without reconsidering the merits of the decision, so is better suited to Ministerial decisions that are discretionary or involve policy.
- A High Court judge can overturn a Minister's decision if he/she considers the Minister was mistaken about the facts or

Option one: General appeal to the District Court

This option would require legislative change to section 17 and would allow the applicants to appeal to the District Court on the merits of the decision.

This is consistent with licensing regulations that include a right of appeal to the District Court against a decision of the Secretary. However, the District Court should not be asked to second guess the Minister's policy judgment.

Option two: General appeal to the High Court

This option would require legislative change to section 17 and would allow the applicants to appeal to the High Court. An appeal to the High Court on

the merits of the decision is less suitable for a Ministerial decision that is discretionary and based on policy judgment.								the law, took into account irrelevant factors or did not follow the rules of natural justice.
<p><i>Option three: Appeal to the High Court on a question of law</i></p> <p>Similar to option 2 but constrains the jurisdiction of the High Court to consider particular matters only. This type of appeal does not generally offer any greater rights than are available through judicial review.</p>	0	0	0	0	+	-	0	
<p><i>Option four: Establishment of a separate appeal or review authority</i></p> <p>This option requires legislative change to section 17 and may be effective where the matter may require specific technical expertise. There are high administrative costs to establish such a committee and it is unlikely that a large number of applicants would seek an appeal.</p>	0	--	0	0	+	0	-1	
Challenging section 18 decisions								<i>Preferred option: option one</i>
<i>Status quo: judicial review as for section 17 decisions</i>	0	0	0	0	0	0	0	A right of appeal to the District Court is consistent with licensing regulations that include a right of appeal to the District Court.
<p><i>Option one: two-step process for reviewing the fit and proper as well as financial viability assessments conducted by the Secretary</i></p> <p>Stage 1: Before the Secretary for Education makes any adverse decision, the Secretary would first issue a notice of intention to make such a decision and invite a response from the applicant. This would not be a matter set out in the legislation, but it would be set out in the regulations created to serve the network management application process.</p> <p>This process would require the Secretary to provide an applicant with the opportunity to respond to the proposed reasons for concluding that any applicant or governance member was not fit and proper, or the proposed early childhood service was not considered financially viable. This will also give the applicant an opportunity to remove a particular person from a governance role if that person prevents the applicant from otherwise being considered fit and proper.</p>	0	+	+	0	+	+	4	<p>In contrast to the Minister's decision in section 17, the Secretary for Education would make administrative assessments based on the fit and proper and financial viability thresholds. This type of decisions would generally result in a right of appeal and it would be unusual to not provide this.</p> <p>The two-step process would reduce the occurrence of appeals, which would decrease the costs for government and applicants.</p>

Stage 2: The applicant would have a right of appeal to the District Court similar to the right of appeal against decisions of the Secretary under the Education (Early Childhood Services) Regulations 2008 that apply to the licensing process. This right would be set out in section 18.								
(b) Network approval fees								
<i>Status quo: no fee</i>	0	0	0	0	0	0	0	<i>Preferred option: option two</i>
<i>Option one: charging full cost recovery fee</i> Section 636 of the Education and Training Act allows regulations to be made to govern licence application approval procedures, which include any fees and charges for applications. The Guidelines for Setting Charges in the Public Sector 2017 also provides that private goods should be funded by their users or beneficiaries. Any fees charged will be specified in regulation.	0	+	--	0	+	+	+	Charging a minimal fee recognises that there is both public and private benefit in new services being established. This option would ensure that applicants incur responsibility in establishing a service and hopefully deter some providers from submitting 'holding' applications intended to block others from entering the market. A full cost recovery model would be difficult to implement for a newly introduced provision where there is no guarantee of a licence and therefore government funding. Full cost recovery would also be inconsistent with our current licensing fee that is not full cost recovery given it was set in 2008.
<i>Option two: charging minimal fee of \$500 for pre-applications to partially recover costs</i> Pre-approval applications for early learning services have both public and private benefits. The public will benefit from the higher quality of services and providers will also benefit from the approvals preventing future pre-applications in the same area. Charging a minimal fee recognises that there is both public and private benefit in new services being established.	0	+	-	0	+	+	+	
(c) Transitional provisions								
Problem Definition: There are no transitional provisions in the Act for services that are in the process of setting up a service and apply for a licence prior to the commencement date of sections 17 and 18 of the Act but have yet to become licensed. This creates uncertainty for applicants that have not yet been fully assessed by the Ministry before commencement date of the network management provisions, regarding how their applications will be assessed.								
<i>Status quo – no transitional provisions</i>	0	0	0	0	0	0	0	<i>Preferred option: option one</i>

<p><i>Option one: Providing transitional provisions for services that have applied for a licence prior to 1 August 2022</i></p> <p>This option provides transitional provisions for services that have applied for a licence prior to 1 August 2022 and have met all the information requirements but who have not yet been fully assessed by the Ministry. The regime would be applied to providers that have undertaken significant works and faced significant costs prior to 1 August 2022 but are not yet ready to be licensed. We cannot quantify how many services this may apply to.</p>	0	-	+	0	+	+	+	2	<p>Limiting the transitional provisions ensures that there is certainty for the providers that apply for licensing prior to 1 August 2022, but also encourages quick establishment and provides for a much simpler system to implement for the Ministry and the sector.</p> <p>This option is also fair as providers have already had over two year's notice of this provision, therefore it is reasonable to expect them to be prepared to comply with new provisions upon commencement date of new provisions.</p>
<p><i>Option two: providing transitional provisions for services that have undertaken significant works before 1 August 2022</i></p> <p>This option would enable transitional provisions to be applied to providers that have undertaken significant works and faced significant costs prior to 1 August 2022 but have not yet applied for licensing.</p>	0	-	++	0	+	-	+	1	

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Stage 1 Cost Recovery Impact Statement

Introducing a Minimal Fee for Network Approval Applications

Status quo

Section 636 of the Education and Training Act enables regulations to be made to specify any fees and charges for application approval procedures. The network approval fee is a new fee and must be specified in regulations.

Policy Rationale: Why a user charge? And what type is most appropriate?

We have proposed a user charge because:

- The Ministry of Education will incur significant administrative costs in administering the new network management approach.
- There is legislative ability to set fees for this phase (section 636 of the Act)
- New applicants to network management will derive a private benefit of network approval. The benefits are ability to gain licensing and therefore access to significant government funding and approval may convey exclusive rights (ie prevent other applicants from establishing in the area).

We have proposed a part charge as there are both public and private benefits in new ECE services being established. Public benefits include access to early childhood education to support labour market participation and provision of education to the 0-5 population.

A full cost recovery fee would not be appropriate in this case and may be overly burdensome for applicants, as receiving pre-application approval does not guarantee licensing, as it is a separate process. This means that government funding is not guaranteed either. Full cost recovery would also be inconsistent with our current licensing fee, which is also not full cost recovery as it was set in 2008.

We propose to charge a minimal fee for applications for network management. The pre-application fees will be paid by the applicant, who may be a person or entity that intends to govern and operate the new ECE service.

High level cost recovery model (the level of the proposed fee and its cost components)

We will be publicly consulting on charging a minimal network approval fee of around \$500 (plus GST). This is not intended to cover expenses that the Ministry of Education and Minister of Education will incur in reviewing the pre-applications. The main purpose of the fee is to recognise the administrative costs faced by government in administering network management and provide some deterrence from applicants from submitting 'holding' applications intended to block others from entering the market. It is unlikely the Minister would approve multiple applications for the same service type at the same location.

The level of the fee determined is based on the non-refundable fee charged for licensing applications, which is set at \$2,817.50 (including GST). This amount is made up of the cost of the staff involved

(estimated 25+ hours per licence), travel, accommodation and office overheads. The issue of a licence entitles a service provider to receive government funding.

We propose that a fee of around \$500 is appropriate given network management is expected to require less staff time to review and that the issue of network management approval does not entitle an applicant to receive government funding.

What are the marginal costs and benefits of the options?

1. Clarifying decision-making rights and processes

National and Regional Statements

Affected parties	Comment:	Impact	Evidence certainty
Additional costs of proposed approach compared to taking no action			
Regulated parties	As part of network approval application, applicants would be expected to outline how the service meets the national and regional statements. It is unlikely we will have capacity to provide demand and supply data suburb by suburb within regional statements. This means that applicants will still need to undertake some data analysis or gather information on community need to understand and demonstrate demand for their potential service.	Medium	Low
Regulators	The Ministry would need to develop the national and regional statements, which include statements of government priorities. These usually require public consultation with affected parties before finalisation. Significant data analysis is also required to identify areas of undersupply and oversupply (including population projections and existing services). There are also ongoing costs to ensure the statements remain up-to-date and relevant.	Medium	Low
Wider government	No impact	N/A	Low
Other parties	There may be increased costs for parents as there will be less services opening in areas of oversupply and less competition.	Low	Low
Non-monetised costs		Medium	Low
Expected benefits of proposed approach compared to taking no action			
Regulated parties	The statements would provide more guidance for prospective applicants and they would not need to waste effort and resources if the application is not likely to be successful.	Medium	Low

	Smaller services who are unlikely to have resources to access data mapping services may benefit from the data offered by the Ministry to identify areas of under and oversupply.		
Regulators	The statements would make assessment of the regional needs more consistent and objective.	Medium	Low
Wider government	N/A	N/A	Low
Other parties	Increased provision of ECE services that align with the needs of the community and children in the region.	Medium	Low
Non-monetised benefits		Medium	Low

Honouring Te Tiriti o Waitangi

Affected parties	Comment:	Impact	Evidence certainty
Additional costs of proposed approach compared to taking no action			
Regulated parties	For applicants seeking to establish a new Māori immersion or iwi-led service would need to consider how their proposed service aligns with the National and Regional Statements.	Low	Low
Regulators	There would be costs associated with analysing current provision of te reo Māori pathways in early learning and identifying where potential gaps are located, as well as consulting on how interests of Māori are factored into the decision-making process. There are also cost with identifying the situations where it would be appropriate to prioritise Māori interests, e.g., where the area for development is subject to a Tiriti settlement.	Medium	Low
Wider government	N/A	Low	Low
Other parties	There would be costs on Māori to engage in this process, both in consultations and cross overs with Tiriti claims.	Medium	Low
Non-monetised costs		<i>Medium</i>	Low

Expected benefits of proposed approach compared to taking no action			
Regulated parties	This option provides clarity and assurance for services that are looking to establish new Māori immersion and iwi-led early learning services that these would be prioritised by the Minister in his decision making.	Low	Low
Regulators	This option creates a clear plan of how the Ministry would fulfil the Crown's Te Tiriti responsibilities and ensures that the Ministry is seen to be transparent and fair.	Medium	Low

Wider government	This option would directly contribute to the goals set out in the Maihi Karauna, the Crown's Strategy for Māori Language Revitalisation and support Tau Mai Te Reo, the Māori Language in Education Strategy for all learners, by encouraging the establishment of services that support more learners to learn te reo Māori.	High	Medium
Other parties	Government's commitment to Te Tiriti has been found to make a difference to the cultural responsiveness of settings for Māori children and whanau. Māori children do better when their education values and reflects their identity, culture and language.	High	Medium
Non-monetised benefits		Medium	Low

Assessing financial position and licensing history

Affected parties	Comment:	Impact	Evidence certainty
Additional costs of proposed approach compared to taking no action			
Regulated parties	Applicants may need to supply additional documents and information to enable assessment. There may be some reluctance to share certain financial information with the Ministry.	Medium	Low
Regulators	For applicants that do not have sufficient funding at pre-application stage, the Ministry needs to determine what conditions to set on network approval to ensure that they have sufficient funding before the licensing stage. This may involve requiring regular updates from the applicants.	Low	Low
Wider government	N/A	N/A	Low
Other parties	N/A	N/A	Low
Non-monetised costs		Low/medium	Low

Expected benefits of proposed approach compared to taking no action			
Regulated parties	More clarity and transparency to services on the types of document and information needed for assessment. This option provides more leniency to applicants who do not have sufficient funding at the preapplication stage.	Low	Low
Regulators	This option ensures that applicants know what information they need to prepare, which enables decision making to be more objective and consistent.	Medium	Low
Wider government	N/A	N/A	Low

Other parties	Ensuring that financial position and licensing history are well assessed enhances the quality of applicants and the service that would be established.	Medium	Low
Non-monetised benefits		Medium	Low

Changes to the fit and proper test (section 18)

Affected parties	Comment:	Impact	Evidence certainty
Additional costs of proposed approach compared to taking no action			
Regulated parties	Some impact on services to provide additional information for every person involved in the governance of the proposed service, including all convictions relevant to providing early learning service and consideration of other services that the applicant or governance members have been associated with.	Low/medium	Low
Regulators	Some costs associated with assessing more information for more people involved in governance. The Ministry would also need to develop guidance/criteria around what relevant convictions would include.	Low	Low
Wider government	N/A	N/A	Low
Other parties	N/A	N/A	Low
Non-monetised costs		Low/medium	Low

Expected benefits of proposed approach compared to taking no action			
Regulated parties	Consistent fit and proper test in both the Act and licensing regulations would increase clarity for applicants regarding the requirements at both steps of the process.	Low	Low
Regulators	This option reduces gaps in the fit and proper test and more comprehensively assesses whether an applicant and other members of the governance are suitable to run a new service.	Medium	Low
Wider government	N/A	N/A	Low
Other parties	Parents and children would also benefit from more comprehensive screening of the people involved in governance of new services, as it improves the health and safety of children.	Medium	Low
Non-monetised benefits		Medium	Low

Capability to establish new service and other relevant factors (section 17)

Affected parties	Comment:	Impact	Evidence certainty
Additional costs of proposed approach compared to taking no action			
Regulated parties	Applicants would need to demonstrate in the preapplication that they have the capability to establish a quality service and provide evidence of specific expertise to deliver the type of service that applicant is proposing to offer. Applicants would also need to provide additional information for the Minister to consider any other relevant factors if requested. It may be more difficult for new players to provide this sort of evidence.	Low	Low
Regulators	The Ministry may need to develop a set of criteria for the applicant to demonstrate specific expertise in delivering the type of service proposed. For example, what kind of expertise is required to establish a Māori immersion service.	Low	Low
Wider government		N/A	Low
Other parties	Some costs for third parties to provide information about applicant's proposed service if requested by the Minister.	Low	Low
Non-monetised costs		Low	Low

Expected benefits of proposed approach compared to taking no action			
Regulated parties		N/A	Low
Regulators	More comprehensively assesses the capability of an applicant to establish a particular type of service.	Medium	Low
Wider government		N/A	Low
Other parties	More assurance to parents and children that people setting up new services have the expertise of running that type of service.	Medium	Low
Non-monetised benefits		Medium	Low

2. Ensuring applicants move towards licensing in a timely manner after network approval

Expiry date of network approvals (section 17)

Additional costs of proposed approach compared to taking no action			
Regulated parties	Preapproval application may be granted for less than 2 years. Applicants may have to move to establishment more quickly, which may be more costly.	Low	Low

Regulators	Assessing and setting timeframes may involve more work for the Ministry. Applicants with shorter timeframes are more likely to request an extension, creating more work for the Ministry.	Low	Low
Wider government	N/A	N/A	Low
Other parties	N/A	N/A	Low
Non-monetised costs		Low	Low

Expected benefits of proposed approach compared to taking no action

Regulated parties	Shorter timeframes mitigate risk of unfair crowding out of other potential applicants.	Low	Low
Regulators	Flexibility in setting timeframes better enables regulators to manage the network in a time-sensitive way.	Low	Low
Wider government	N/A	N/A	Low
Other parties	Shorter timeframes may lead to faster establishment of services. This benefits children who may otherwise have missed out on education and whānau who may now be more enabled to work.	Medium	Low
Non-monetised benefits		Medium	Low

Granting extensions (section 17)

Additional costs of proposed approach compared to taking no action

Regulated parties	A high extension threshold after 2 years means to mitigate the risk of exceeding the expiry date, applicants may have to move to establishment more quickly, which may be more costly. If they meet the criteria for seeking extensions, they would need to dedicate time to make an extension application.	Low	Low
Regulators	Some impact on the Ministry to establish a set of criteria with high threshold to effectively assess whether extensions should be granted and for how long.	Low	Low
Wider government		N/A	Low
Other parties		N/A	Low
Non-monetised costs		Low	Low

Expected benefits of proposed approach compared to taking no action

Regulated parties	Clear guidance on what extensions will be granted provides certainty to applicants, enabling better decision-making. A clear, firm time limit mitigates risk of unfair crowding out of other potential applicants.	Medium	Low
Regulators	Clear guidance may reduce the number of extension applications that are very unlikely to be accepted, reducing administrative burden.	Low	Low
Wider government	N/A	N/A	Low
Other parties	A clear, firm time limit mitigates risk of unfair crowding out of other potential applicants. Applicants having better information may lead to establishment of ECE services more quickly. This would benefit children, whānau and communities, especially in areas where there is low supply of available ECE services.	Medium	Low
Non-monetised benefits		Medium	Low

Introducing conditions on network approval (section 17)

Additional costs of proposed approach compared to taking no action

Regulated parties	Minor impact on applicants. Applicants may need to provide updates to the Ministry on a regular basis as part of fulfilling a condition on the network approval.	Low	Low
Regulators	This option would create a burden on the Ministry to ensure that applicants comply with the conditions of their network approval and recommend to Minister for the network approval to be cancelled if conditions are not complied with.	Low	Low
Wider government		N/A	Low
Other parties		N/A	Low
Non-monetised costs		Low	Low

Expected benefits of proposed approach compared to taking no action

Regulated parties		N/A	Low
Regulators	The Ministry can more effectively manage the network and ensure that pre-approved applicants move towards licensing. The mechanism to cancel a network approval would also incentivise applicants to actively move towards licensing and reduce unnecessary delays. This would also	Medium	Low

	ensure that the location and type of established service aligns with what was initially approved.		
Wider government		N/A	Low
Other parties	Where a network approved applicant is not progressing towards licensing, their network approval may be cancelled, which would allow new applicants looking to establish in that area to apply for approval.	Medium	Low
Non-monetised benefits		Medium	Low

3. Administrative functions are fair and transparent

Right to challenge decisions under section 18

Additional costs of proposed approach compared to taking no action

Regulated parties	The applicants would be required to pay court fees for filing an application if they wish to appeal to District Court regarding the Secretary's judgment on the fit and proper and financial viability assessments.	Low	Low
Regulators	There will be administrative costs associated with providing information/evidence to the District Court.	Low	Low
Wider government	This option would have some impact on the District court, as there will be an increase in cases. It is uncertain how many applicants would appeal.	Low	Low
Other parties		N/A	Low
Non-monetised costs		Low	Low

Expected benefits of proposed approach compared to taking no action

Regulated parties	This option provides the applicants with a chance to respond to the Secretary before she makes any adverse decisions. This would allow the applicant to try to rectify any issues.	Medium	Low
Regulators	The chance for applicants to rectify any issues should reduce the number of applicants that would appeal the Secretary's decision.	Medium	Low
Wider government		N/A	Low
Other parties		N/A	Low
Non-monetised benefits		Medium	Low

Introducing fee for network approval application (regulations)

Additional costs of proposed approach compared to taking no action			
Regulated parties	Applicants will be charged a \$500 minimal fee for network approval. This is a new fee that is additional to the licensing application fee.	Low/medium	Low
Regulators		N/A	Low
Wider government		N/A	Low
Other parties		N/A	Low
Non-monetised costs		Low/medium	Low

Expected benefits of proposed approach compared to taking no action			
Regulated parties		N/A	Low
Regulators	Charging a minimal fee would offset some of the Ministry's costs of reviewing applications. Charging a fee would also ensure that applicants are more invested in the outcome and submit higher quality preapplications.	Medium	Low
Wider government		N/A	Low
Other parties		N/A	Low
Non-monetised benefits		Medium	Low

Limited Transitional Provisions

Additional costs of proposed approach compared to taking no action			
Regulated parties	Applicants who will be ready to apply for license before 1 August 2022 may try to apply earlier to ensure that they are covered by the transitional provisions.	Low	Low
Regulators	The Ministry may need to notify applicants that apply for licensing close to 1 August 2022 whether they meet all the information requirements and whether they would be covered by the transitional provisions.	Low	Low
Wider government		N/A	Low
Other parties		N/A	Low
Non-monetised costs		Low	Low

Expected benefits of proposed approach compared to taking no action

Regulated parties	This option gives assurance to the applicants that apply before 1 August 2022 that as long as they meet all the information requirements they would be covered by the transitional provisions.	Low	Low
Regulators	Limited transitional provisions would encourage quick establishment and provide for a much simpler system to implement for the Ministry.	Medium	Low
Wider government		N/A	Low
Other parties		N/A	Low
Non-monetised benefits		Low/Medium	Low

Section 3: Delivering an option

TBC

Interim Regulatory Impact Statement: Home-based Person Responsible

Coversheet

Purpose of Document

Decision sought:	This is an interim RIA with analysis produced for the purpose of informing stakeholders to be consulted on a government discussion document regarding regulatory changes for persons responsible for home-based services.
Advising agencies:	Ministry of Education
Proposing Ministers:	Hon Chris Hipkins, Minister of Education
Date finalised:	13 August 2021

Problem Definition

Every type of licensed early childhood education (ECE) service requires a 'person responsible' under the Education (Early Childhood Services) Regulations 2008 (the Regulations). The person responsible is primarily responsible for supervising children and the adults that provide education and care to them, though other requirements differ to an extent by service type.

For licensed home-based ECE services, the supervisory and support role of the person responsible is unclear because they are not ordinarily present in the home or required to provide supervision or support to educators in an explicit way under the Regulations. This is problematic because persons responsible may only provide limited supervision or oversight, and no or minimal professional leadership to the educators in the service. These issues were also identified in the Government's [Review of Home-based ECE](#) in 2018.

Executive Summary

Home-based ECE fulfils a unique role in the ECE sector. Unlike centre-based services, it is delivered in private homes by typically unqualified educators¹ working with one to four children in their or the children's home. A registered and certificated ECE teacher, called the 'person responsible' or coordinator, visits the homes to support these educators and oversee the education and care of the children.

Five different proposals, which can be implemented altogether or in part, were identified to clarify and strengthen the role of the home-based person responsible:

¹ In 2020 94% of the 6,246 home-based educators recorded as part of the ECE census were unqualified.

- **Proposal 1: Requiring persons responsible to hold a Category One or Two practising certificate.** This would ensure persons responsible have at least two years of recent teaching experience and be expected to meet the Teaching Council's Standards | Ngā Paerewa.
- **Proposal 2: Requiring the person responsible to be 'locally-based'.** This would ensure the person responsible resides near the homes that education and care is taking place in.
- **Proposal 3: Requiring the person responsible to be limited to a single service's licence, with an increased maximum licence.** This proposal would restrict the person responsible from regularly working on multiple licences, including simultaneously.
- **Proposal 4: Requiring the person responsible to support educators' professional development when contacting and visiting them.** This proposal would require the person responsible to support educators' professional learning and development in the course of working with them.
- **Proposal 5: Requiring the person responsible during home visits to guide and observe the curriculum delivery.** During in-home visits, the person responsible would guide and observe educators' curriculum delivery when children are present, in line with the curriculum framework.

For further context, Proposal 1 is also intended to apply to teacher-led centre-based and hospital-based services, as outlined in a separate Interim Regulatory Impact Statement.

Potential positive impacts of the options

The proposed changes to the person responsible role should benefit children, since there would be a more explicit focus on their development and on providing consistent supervision. Changes to the practising certificate requirements for the person responsible will also ensure that the quality of oversight and professional leadership they provide is of a high standard. Parents and whānau would have greater assurance that their children are receiving quality education and care.

Clarifying the role of the person responsible will also help mitigate key risks for the role in home-based services, where the division of responsibility, supervision and support elements of the role can be unclear. Home-based early learning service workers that act as the person responsible will have stronger support and clarification of the role. Educators would also have improved development and support for the educator role from the person responsible.

The changes would also support the Secretary as the regulator, delegated to the Ministry, as the changes would provide more oversight to ensure greater assurance that children in home-based ECE are receiving quality education and care.

Potential negative impacts of the options

There may be a cost to children and parents if they can no longer receive care, due to a service being unable to find an appropriately qualified person responsible to supervise educators due to teacher supply issues.

Home-based service providers will be responsible for costs associated with these changes. This may have an impact on sustainability for some smaller or rural services compared with the status quo.

Current individuals who have been acting as person responsible that do not hold a Category One or Two practising certificate may be affected by the changes as they may not be able to fill this role any longer, unless they changed certificate type. Those who also may have acted across multiple licences or areas, providing little or no professional support to educators, would no longer be able to do so and they and services would have reduced flexibility.

Changes to the regulations may require the Ministry to assist with services with understanding the role of person responsible, and/or create costs associated with implementing the changes.

Stakeholder and the general public views

The previous consultation on the [Review of Home-based ECE](#) in 2018 gives us initial idea on sector views. We will consult the public on these options in September and October 2021.

Limitations and Constraints on Analysis

Timeframe constraints

This is an interim RIA to support public consultation. At this stage, we will not be completing all the sections.

The consultation timeframe for this work is tied to Tranche 2 of the Early Learning Regulatory Review, which principally includes changes to network planning that need to be in place by 1 August 2022. However, there is more time to implement the changes in this RIA compared to network planning, and initial stakeholder engagement has already begun through the Ministry's Home-based Sector Reform Advisory Group.

Evidence/Assumptions underpinning the impact analysis

Research strongly suggests that the benefits of ECE depend on the quality of the service, although the impact of quality components on child outcomes is not necessarily uniform or well understood. There is little research that specifically considers quality factors in education and care delivered in a home setting.

Overall impact of these constraints

The overall impact of the above constraints is not expected to substantially impact on the integrity of the analysis outlined in this Interim Regulatory Impact Analysis (RIA).

Responsible Manager(s) (completed by relevant manager)

John Brooker



General Manager

Education System Policy

Ministry of Education

13 August 2021

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

Panel Assessment & Comment: The Regulatory Impact Analysis panel at the Ministry of Education has reviewed the Interim Regulatory Impact Statement and considered the associated discussion document and has confirmed that they will support effective consultation and the eventual development of a quality Regulatory Impact Statement.

Section 1: Diagnosing the policy problem

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

Overview of the Early Learning Regulatory system

1. Government regulation of early learning is intended to establish the parameters for the operation of the sector and to ensure minimum standards for children's health, safety, wellbeing and education are met.
2. All licensed early learning services in New Zealand are regulated by the three-tiered regulatory framework:
 - a. **First tier** – the Education and Training Act 2020 provides a high-level framework for licensing, certifying and funding of services, and it empowers regulations and criteria to be developed.

- b. **Second tier** – This tier includes the Education (Early Childhood Services) Regulations 2008, which establish minimum standards, and the ECE Funding Handbook that sets some additional requirements.
 - c. **Third tier** – This tier includes the Licensing Criteria, used to assess compliance with the minimum standards set out in the Regulations, and the Curriculum framework.
- 3. The Education Review Office (ERO) also has a significant role in the sector, as the government agency that evaluates and reports on the education and care of children in ECE. Recent changes to the Education and Training Act now allow ERO to go into homes where home-based ECE is being delivered.

The Ministry's Review of the Early Learning Regulatory System

- 4. The proposals in this RIA are part of Tranche 2 of the Early Learning Regulatory Review (the Review) the Ministry of Education is currently undertaking. These options and proposals will be tested in consultation in September and October 2021.
- 5. The purpose of this Review is to ensure that the regulatory system for the early learning sector is clear and fit for purpose to support high quality educational outcomes. The Review requires consideration be given to what is meant by high quality education in the early learning context. It also considers the Ministry's role as both a steward of the system and a regulator, alongside other agencies.
- 6. This Review is timely due to the significant changes in the sector since the current regulatory system was established in 2008. Over the last decade, both the number of children and the number of hours that children participate in ECE has increased rapidly. Children are also attending from younger ages and for longer hours.
- 7. The Review is being completed in three tranches to ensure that some high priority issues can be progressed in a timely fashion while allowing additional time for the matters that require further policy work and consultation.
 - a. **Tranche one** – The final regulations for tranche one were announced on 14 July 2021. The main aim of tranche one was to address some of the immediate gaps in our current system including those that pose a risk to children's health, safety, and wellbeing. Generally, these changes most impact new early learning services, service providers that have a change in circumstance, and services that have compliance issues.
 - b. **Tranche two** – The proposals in this RIA are part of tranche 2 proposals. The proposals in this RIA aim to:
 - i. Action changes from the Review of Home-based Early Childhood Education, including potential changes to the requirements and role of the home-based person responsible and the maximum licence size.

There are two other sets of proposals that are being consulted on in tranche two. These two sets of proposals are in separate RIAs. The aim of those proposals are to:

- ii. Implement the new network planning function under the Education and Training Act 2020: changes relating to licensed early childhood services and ngā kōhanga reo.
 - iii. Regulate for 80% qualified teachers for teacher-led centres and hospital-based services, and also strengthen the person responsible requirement for teacher-led centres and hospital-based services.
- c. **Tranche three** – These changes will cover the remaining matters that require significant further work to develop. This will likely involve a complete rewrite of the Education (Early Childhood Services) Regulations 2008 (the Regulations).

Home-based ECE

8. Home-based ECE fulfils a unique role in the ECE sector. Unlike centre-based services, it is delivered in private homes by typically unqualified educators working with one to four children in their or the children's home. A registered and certificated ECE teacher, called the 'person responsible' or coordinator, visits the homes to support these educators and oversee the education and care of the children.
9. Due to the changes in sector and home-based ECE over the last decade, the Ministry previously undertook a [Review of Home-based ECE](#) (the Review) in 2018. As part of the Review, we previously consulted on a package of proposals to strengthen the role of the home-based person responsible or 'co-ordinator.'
10. The proposals to strengthen the role 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 only suggested proceeding with some of these proposals.
11. We did not recommend increasing the number of co-ordinator visits because this proposal 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.
12. 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 coordinator in the Regulations) to Visiting Teacher.
13. The Ministry has since developed further detail to support the proposals above and recently tested them with its re-established Home-based Sector Reform Advisory Group, including key stakeholders. Additionally, the Ministry has developed related proposals that also strengthen the role and tested those with the Group.
 14. At this point it has been some time since the original proposals were first consulted on, including for the purposes of this 2019 Regulatory Impact Analysis: [Review of Home-based Early Childhood Education: Proposals for change](#). At present the key proposal that has been taken forward is the move towards a qualified home-based ECE workforce,² but other proposals have not yet been progressed.
 15. There are risks that further delays to progressing proposals from the Review would continue to create uncertainty for the home-based ECE sector. This uncertainty is likely impacting on services business decisions, and may reduce commitment to proposals that were previously consulted on and supported.

What is the policy problem or opportunity?

16. The person responsible requirement is a key aspect of the early learning regulatory system. In home-based ECE, the person responsible is primarily responsible for overseeing and supporting the provision of quality education and care. Yet how they are meant to do this under the Regulations is not clear, and there can be confusion as to the requirements that apply across all services and/or only to home-based ECE.
17. The lack of clarity is partly due to the nature of the role, since in home-based ECE the person responsible is not ordinarily required to be present in the home or in a given area, which limits the level of supervision they can provide. Also the Regulations are not clear or explicit on how they are meant to provide supervision, oversight, and support. Only Regulation 28(2) provides some clarity on the role of person responsible in the home-based context, through its contact and visiting requirements.
18. The result is that the expectations for the role are often open to interpretation, leading to inconsistent practice. For supervision and oversight, this is because the Regulations do not prevent the person responsible from working across licences or areas, where they may be assigned to a particular educator for only a short time. This makes it difficult for them to provide consistent supervision to the same educators and children, impacting on the development of meaningful relationships.

² Some details on these changes are available at: <https://conversation.education.govt.nz/conversations/review-of-home-based-early-childhood-education/five-year-transition-to-a-fully-qualified-home-based-workforce/qualification-requirements/>

19. For the support element of the role, the person responsible is required to provide professional leadership and support to the educators in the service. However, how or when they should provide professional leadership and support is not elaborated on in the Regulations. As a result, the person responsible may provide no or minimal professional leadership to educators day-to-day or in practice, impacting on theirs and the children's development.
20. Also related to their support role, the person responsible is not currently required to hold a Category One or Two Teaching Council practising certificate. This is the category of practising certificate that is for registered and certificated ECE teachers that generally have at least two years of recent teaching experience. This is problematic because it allows graduate teachers and those who have recently returned to the profession to hold the role and exercise its support functions.

Stakeholders and how they will be affected

21. The proposals in this Interim Regulatory Impact Analysis aim to clarify and strengthen the supervisory and support elements of the person responsible role in home-based ECE services. The changes are anticipated to affect the following groups:
 - a. Children, parents and whānau
 - b. Home-based early learning service providers
 - c. Home-based early learning service workers (i.e. educators, and the person responsible or coordinator)
 - d. The Ministry.

Children, parents and whānau

Positive impacts

22. The changes to the role should benefit children, since there would be a more explicit focus on providing consistent supervision and on their development. Changes to the practising certificate requirements for the person responsible will also ensure that the quality of oversight and professional leadership they provide is of a high standard.
23. Parents and whānau would have greater assurance that their children are receiving quality education and care.

Negative impacts

24. There may be a cost to children and parents if they can no longer receive care, due to a service being unable to find an appropriately qualified person responsible to supervise educators due to teacher supply issues.
25. We expect to gain a better understanding of these issues, particularly in relation to ongoing sustainability for services, as part of public consultation.

Home-based early learning service providers

Positive impacts

26. Clarifying the role of the 'person responsible' will likely mitigate key risks for the role in home-based services, where the division of responsibility, supervision and support elements of the role can be unclear.

Negative impacts

27. Home-based service providers will be responsible for costs associated with these changes. This may have an impact on sustainability for some smaller or rural services compared with the status quo.

Home-based early learning service workers

Positive impacts

28. Home-based early learning service workers that act as the person responsible will have stronger support and clarification of the role. Educators would also have improved development and support for the educator role from the person responsible.

Negative impacts

29. Current individuals who have been acting as person responsible that do not hold a Category One or Two practising certificate may be affected by the changes as they may not be able to fill this role any longer, unless they changed certificate type.
30. Those who also may have acted across multiple licences or areas, providing little or no professional support to educators, would no longer be able to do so and they and services would have reduced flexibility.

The impact on the Ministry

Positive impacts

31. The changes would provide more oversight to ensure greater assurance that children in home-based ECE are receiving quality education and care.

Negative impacts

32. Changes to the regulations may require the Ministry to assist with services with understanding the role of person responsible, and/or create costs associated with implementing the changes.

What objectives are sought in relation to the policy problem?

33. Listed in order, the objectives sought in relation to the policy problem relate to:

- a) **ECE teacher skills and related experience:** The home-based person responsible, as a registered and certificated ECE teacher, is typically the most qualified and experienced staff member. Research has shown the higher qualification levels of staff, the higher children score on measures of literacy and social and emotional development.³
- b) **quality of education and care:** quality adult-child interactions underpinned by qualified ECE teachers are a key marker of quality education and care. This is because quality interactions are more likely to involve qualified staff, and lead to positive educational outcomes, as well as better cognitive, social and emotional outcomes for children over time.⁴
- c) **educational outcomes for children:** participation in ECE has been shown to have long-term effects on educational attainment, and research supports the role of reduced ECE teacher turnover and consistency of care in child outcomes.⁵

34. In addition to these objectives, the current Regulations for the person responsible requirement in home-based services are unclear and worth clarifying. This is especially true given the Regulations Review Committee generally consider the Regulations unclear, and relates to the **Impact on the Ministry** criterion below.

³ Slot, P. L., Leseman, P. P. M., Verhagen, J., & Mulder, H. (2015). Associations between structural quality aspects and process quality in Dutch early childhood education and care settings. *Early Childhood Research Quarterly*. 33, 64–76.

⁴ Aunio, P., Heiskari, Van Luit, J. & Vuorio, J. (2015) The development of early numeracy skills in kindergarten in low-, average- and high-performance groups. *Journal of Early Childhood Research* vol 13 no 1.

⁵ Taguma, M., Litjens, I., & Makowiecki, K. (2012). *Quality Matters in Early Childhood Education and Care: Finland*. OECD Publishing. 2, rue Andre Pascal, F-75775 Paris Cedex 16, France.

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

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

35. The proposals in this Regulatory Impact Analysis are to be tested against the following criteria:
- a. **Impact on the quality of education and care for children.** The regulatory system protects the physical, emotional and cultural wellbeing of children and ensures that children in early learning services receive high quality education and care. This is a primary purpose of early learning services as set out in section 14 of the Education and Training Act 2020.
 - b. **Impact on parents and whānau.** The changes have a minimal negative impact on parents and whānau. This includes cost and maintaining the ability to access early childhood education.
 - c. **Impact on educators and persons responsible.** The changes have a minimal negative impact on the educator workforce. This includes job retention, accountability and working conditions.
 - d. **Impacts on services' sustainability and diversity of choice.** The Regulations need to be achievable so that services can comply and remain open. This includes accounting for current teacher supply and costs to services so that compliance is achievable. This is particularly important for services that cater to diverse communities and communities traditionally not well served by the education system.
 - e. **Impact on the Ministry.** The Secretary as the regulator, delegated to the Ministry, has the capability to effectively and efficiently operate the regulatory regime with ongoing attention to improving outcomes for children. This includes ensuring that new regulations are clear and understandable, so services know what the expectations are and how to comply.

What scope will options be considered within?

36. Five different proposals that aim to clarify and strengthen the person responsible requirements for home-based services are to be consulted on.

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

37. This proposal would require persons responsible to hold a Category One or Two practising certificate. This would ensure they generally have at least two years of recent teaching experience and can be expected to meet the *Teaching Council's Standards | Ngā Paerewa*.
38. **Quality of provision** – 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*. This change should help lift pedagogy and improve child outcomes.
39. **Sustainability and access/diversity of choice** – While this change should help ensure a minimum level of quality across these service types, we do not know how many qualified and certificated ECE teachers in home-based services 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.

Proposal 2: Requiring the person responsible to be 'locally-based'.

40. This proposal would ensure the person responsible is based near the homes that education and care is taking place in. We propose to consult on both a geographic requirement, linked to territorial authorities, or one based on a "reasonable travel time" between the homes in the service.
41. **Quality of provision** – the person responsible has supervisory or oversight duties centred on educators and children. We consider requiring the person responsible to be based near the homes that education and care is taking place in is an important part of fulfilling these duties, and responding in-person if necessary.

Proposal 3: Requiring the person responsible to be limited to a single service's licence, with an increased maximum licence.

42. This proposal would restrict the person responsible from regularly working on multiple licences. This option also provides some scope for services to expand in case any restrictions on what licences the person responsible can work on reduces their flexibility, and addresses a long-standing inconsistency between the 1:50 person responsible to child ratio and the current maximum licence size of 80 children. The inconsistency causes larger services to have a higher ratio by default.
43. **Impact on educators and persons responsible** – By restricting persons responsible 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 can occur when the role is not licence specific. However, this may restrict flexibility for some services with different models of operating (e.g. part-time persons responsible across multiple licences).

44. **Impact on the Ministry** – The increase in the maximum licence size addresses the inconsistency between the 1:50 person responsible to child ratio and the current maximum licence size of 80 children.⁶ This clarifies the Ministry's expectations and what is expected under the Regulations, through use of a maximum licence size for larger services that is compatible with the ratio.

Proposal 4: Requiring the person responsible to support educators' professional development when contacting and visiting them.

45. This proposal would require the person responsible to support educators' professional learning and development in the course of working with them. This requirement would give an explicit purpose to the provision of professional leadership already required, linked to when they visit and contact the educators in the service.
46. **Impact on educators** – This proposal strengthens professional leadership by requiring the person responsible to support educators' professional learning and development in the course of working with them. Sharing resources, details on conversations or visits, and documented development plans could demonstrate support for educators' professional development.
47. **Quality of provision** – We expect this proposal would enhance children's education and care by ensuring that educators have the necessary skills to provide high quality teaching and care. This would benefit the learning and development of our youngest learners.
48. **Impact on the Ministry** - This proposal makes our existing expectations clearer, and means compliance can be more easily established by the Ministry acting on behalf of the Secretary.

Proposal 5: Requiring the person responsible during home visits to guide and observe the curriculum delivery.

49. During in-home visits, the person responsible would guide and observe educators' curriculum delivery when children are present. This proposal strengthens the professional leadership they provide to educators, who have the greatest role in the education of the children, and benefit those children receiving education and care.

⁶ 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.

50. **Impact on educators** – 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.
51. **Quality of provision** – We consider this proposal would enhance children's education and care by linking the existing requirement to the curriculum delivery

Comparison of options

Outlined in the table below are identified options, criteria against which each option is assessed, preferred option, and stakeholder feedback on the preferred option.

The criteria for assessment have been outlined in section 3.1 above. The analysis on each of the options within the issue headings use the following key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Options	Assessment against objectives						Preferred options and stakeholder opinions
	Quality of provision for children	Impact on parents and whānau	Impact on educator workforce	Impact on services	Impact on the Ministry	Overall assessment	
Ensure that teaching staff are supervised by experienced teachers							
Problem definition: The person responsible is not currently required to hold a Category One or Two Teaching Council practising certificate. This is the category of practising certificate that is for registered and certificated ECE teachers that generally have at least two years of recent teaching experience. This is problematic because it allows graduate teachers and those who have recently returned to the profession to hold the person responsible role.							
<i>Option 1: Status quo.</i> Persons responsible only need to hold a recognised qualification and a current practising certificate, regardless of their level of experience.	0	0	0	0	0	0	Preferred option: option 2 This option addresses the current issues with the status quo. It is expected to lift the quality of provision for children, enable better engagement with parents and whānau, and better ensure the Ministry’s intent for the person responsible role. Stakeholder opinions Since 2019, the Early Childhood Council (the ECC) has lobbied to replace the person responsible requirement with a shared responsibility amongst qualified teachers. This proposal was specific to centre-based settings, however, and also conflicts with the other changes we propose to strengthen the supervisory elements of the home-based person responsible role. The Home-based Sector Reform Advisory Group also raised the issue that the proposal could limit the pathway into the role for anyone in training.
Option 2 Requiring a specific type of practising certificate. Require persons responsible in teacher-led centres and hospital-based services to hold a Category One or Two practising certificate. This would ensure that persons responsible have at least two years of recent teaching experience and would be expected to meet the Teaching Council’s <i>Standards</i> Ngā Paerewa.	+	+	-	-	+	+1	

Strengthen oversight and supervision from the person responsible (locally-based)						
Problem definition: The person responsible is not currently required to reside locally to the place they oversee. We consider this weakens the person responsible duty to oversee children's education and care as there is less ability to respond in-person if necessary.						
<i>Option 1: Status quo.</i> No requirement for persons responsible to locally reside to place of oversight.	0	0	0	0	0	0
<i>Option 2: Requiring the person responsible to be 'locally-based'.</i> This would ensure the person responsible resides near the homes that education and care is taking place in.	+	+	0	0	+	+3
Preferred option: option 2 This option would better ensure the duties of the person responsible are able to be fulfilled and is expected to lift the quality of provision to children and whānau. Stakeholder opinions The Home-based Sector Reform Advisory Group generally supported the proposal, although they already tend to rely on a locally based person responsible.						
Strengthen oversight and supervision from the person responsible (single licence)						
Problem definition: The person responsible is currently able to work on multiple service's licences at the same time. We consider this to be problematic as there may be less continuity between educators and persons responsible and may also result in an unclear division of responsibility that can occur when the role is not licence specific. There is also a problem of inconsistency between the 1:50 person responsible to child ratio and the current maximum licence size of 80 children.						
<i>Option 1: Status quo.</i> Currently no restriction on working on multiple service licences at the same time.	0	0	0	0	0	0
<i>Option 2: Require the person responsible to be limited to a single service's licence, with an increased maximum licence.</i> This proposal would restrict the person responsible from regularly working on multiple licences, including simultaneously.	+	+	-	-	+	+1
Preferred option: option 2 This option would strengthen the Ministry's intended role of the person responsible and help ensure that children and whānau receive the support and oversight from the person responsible. Stakeholder opinions 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).						

Strengthen professional leadership of person responsible (PLD)							
Problem definition: The person responsible role is currently unclear as to what the support they should be providing to educators. We consider this to be problematic since educators may not have the support to obtain the necessary skills to provide high quality teaching and care to children. This could be detrimental to children's learning and development.							
<i>Option 1 Status quo.</i> Currently unclear as to what persons responsible role is regarding supporting educators	0	0	0	0	0	0	Preferred option: option 2 This option supports the Ministry as delegated regulator as it clarifies the role of the person responsible. This would also have a positive impact on the educators that the person responsible is supporting lift the quality of provision that educators are providing to children and whānau. Stakeholder opinions We currently do not know stakeholders' opinions on this proposal. This is will be consulted on, along with the above proposals during the tranche 2 public consultation.
<i>Option 2: Requiring the person responsible to support educators' professional development when contacting and visiting them.</i> This proposal would require the person responsible to support educators' professional learning and development in the course of working with them.	+	+	+	-	+	+3	
Strengthen professional leadership of person responsible (curriculum)							
Problem definition: The regulations currently do not provide the 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 to be problematic as the person responsible may not currently observe the educators' curriculum delivery when children are present which could mean that children are not receiving quality education.							
<i>Option 1: Status quo.</i> 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'	0	0	0	0	0	0	Preferred option: option 2 This option is preferred as it addresses the current issues with the status quo. It is expected to better support educators role which will have a positive impact on children and their whānau. Stakeholder opinions We currently do not know stakeholders' opinions on this proposal. This is will be consulted on, along with the above proposals during the tranche 2 public consultation.
<i>Option 2: Requiring the person responsible during home visits to guide and observe the curriculum delivery.</i> During in-home visits, the person responsible would guide and observe educators' curriculum delivery when children are present, in line with the curriculum framework	+	+	+	-	+	+3	

What are the marginal costs and benefits of the option?

52. We are considering the following options.
- Requiring a Category One or Two practising certificate.
 - Requiring the person responsible to be 'locally-based'.
 - Require the person responsible to be limited to a single service's licence, with an increased maximum licence.
 - Requiring the person responsible to support educators' professional development when contacting and visiting them
 - Requiring the person responsible during home visits to guide and observe the curriculum delivery.
53. This package of changes is preferred because it is most likely to clarify and strengthen the role of the home-based person responsible and increase the quality of provision to children.

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	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.	Medium	Low
Regulators	Costs to the Ministry to help services transition to new regulations.	Medium	Low
Others (e.g. wider govt, consumers, etc.)	Risk to parents since some services may close since they are unable to comply with the new regulations.	Medium	Low
Total monetised costs	N/A		
Non-monetised costs	Medium		

Additional benefits of the preferred option compared to taking no action			
Regulated groups	Increased quality of persons responsible role across services	Medium	Low
Regulators	Guarantees that the person responsible is an experienced teacher with a clear outline of their role to support educators and children's learning.	High	Low
Others (e.g. wider govt, consumers, etc.)	Increased assurance for parents about their child's quality of care and education.	Medium	Low
Total monetised benefits	N/A		
Non-monetised benefits	Medium		

Section 3: Delivering an option

How will the new arrangements be implemented?

- 54. Implementation is likely to take place from mid-to-late 2022. This is because while the consultation timeframe for this work will occur alongside network planning, as part of Tranche 2 of the Early Learning Regulatory Review.
- 55. Implementation detail will be developed following consultation.

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

- 56. As above, implementation detail will be developed following consultation.