



## Education Report: Options for slowing down requirements for 80 percent qualified teachers in teacher-led ECE

<b>To:</b>	Hon Jan Tinetti, Minister of Education		
<b>Cc:</b>	Hon Kelvin Davis, Associate Minister of Education Jo Luxton, Parliamentary Under-Secretary to the Minister of Education		
<b>Date:</b>	30 March 2023	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1307705
<b>Drafter:</b>	Dawn Leung-Wai	<b>DDI:</b>	9(2)(a)
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<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	No

### Purpose of Report

This report provides you with advice on options for slowing down the implementation of 80 percent qualified teachers in teacher-led early childhood education and care (ECE) centres to inform your response to the Prime Minister on your priorities for the education portfolio [METIS 1305580].

### Summary

1. In December 2022, Cabinet agreed to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to require service providers of teacher-led ECE centres to employ or engage 80 percent qualified teachers in two stages (i.e., 60% from 1 July 2024 and 80% from 1 July 2026) and to strengthen the person responsible role in teacher-led ECE centres and licensed hospital-based and home-based ECE services. Cabinet also agreed that the Ministry would undertake consultation on draft amendment regulations, prior to seeking final Cabinet approval to amend the Regulations [SWC-22-MIN-0232].
2. We are currently preparing to undertake consultation between 17 April – 21 May (or thereabouts) on the draft amendment regulations 9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED] We have not attached the draft consultation material to this report as we are currently working through the process for obtaining approval to publicly release the draft amendment regulations. Standard practice requires seeking approval from the

<sup>1</sup> These services include Māori and Pacific language services, and services in isolated and low socio-economic communities that are likely to face additional challenges complying with the requirement for 80 percent qualified teachers.

Attorney-General as the draft amendment regulations are subject to legal privilege. There is a risk that this may not be granted (particularly given the recent legal proceeding initiated by the Early Childhood Education Council in relation to pay parity) or that it may result in the consultation being delayed.

3. 9(2)(f)(iv) [REDACTED] we identified this as work that could be slowed down so as not to overwhelm the sector in the current environment. We indicated that we would provide you with further advice on options for doing this.
4. This paper provides you with three options:
  - Option 1 (Status quo): Continue as planned (subject to obtaining approval from the Attorney-General to publicly release the draft amendment regulations) and seek feedback through public consultation on the implementation date for requiring 60 and 80 percent qualified teachers in teacher-led ECE centres
  - Option 2: Defer regulatory change until the next term of government, and undertake further work to determine the best way to implement the requirement for 80 percent qualified teachers so that it is more manageable for the sector in the context of wider changes, including the implementation of pay parity and changes to funding settings
  - Option 3: Split out the proposals to strengthen the person responsible role with a view to finalising regulatory amendments as soon as practical and progress work on 80 percent qualified teachers as per Option 2 (recommended).
5. We have identified a number of risks with progressing Option 1 which make it our least preferred option. These include the likelihood of a strong negative reaction from the sector to the expected cost of the proposals (particularly as consultation is likely to overlap with consultation for pay parity), and feedback that we have not listened to concerns about the pace and cost of change, including the possible impact on the affordability of childcare. We note that while 64% of submitters on the September – October 2021 consultation supported the requirement for 80 percent qualified teachers in teacher-led ECE centres, there was not a majority of support for how it should be implemented. As such, there is a risk that the outcome of upcoming public consultation could mean that we need to revisit the original Cabinet decisions, which is essentially Option 2 or 3.
6. Option 2 provides an opportunity to review the approach to implementing the requirement for 80 percent qualified teachers in a way that is more manageable for the sector, including in the context of pay parity and changes to funding settings. However, there will be some in the sector that want 80 percent qualified teachers, regardless of the impact on service providers. Option 2 also does not provide a clear timeframe for amending the regulations to strengthen the person responsible role, which generally has a high level of support from the sector and will result in improved outcomes for children.
7. Option 3 provides an opportunity to progress the regulatory amendments to the person responsible role that are well supported, and also to respond to concerns about the pace and impact of the current changes on the sector and parents and whānau.
8. We will provide you with further advice on the next steps depending on which option you prefer.

## Recommended Actions

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The Ministry of Education recommends you:

- a. **note** this report provides you with advice on options for slowing down work to regulate for 80 percent qualified teachers in teacher-led ECE centres 9(2)(f)(iv)

**Noted**

- b. **note** there have been a number of shifts in the operating environment since the initial policy advice was consulted, including work on implementing pay parity, changes to funding settings, and workforce constraints that mean the sector may come under additional financial and operational stress if we continue with the current approach to implementing the requirement for 80 percent qualified teachers

**Noted**

- c. **agree** to slow the implementation of the requirement for 80 percent qualified teachers by either:

- Option 1 (Status quo): continuing as planned, subject to approval from the Attorney-General to publicly release the draft regulations, but explicitly seeking feedback on the dates for staging the implementation of 80 percent qualified teachers, as part of consultation (least preferred)

**Agree / Disagree**

- Option 2: deferring regulatory change until the next term of government and undertaking further work to determine the best way to implement 80 percent qualified teachers so that it is more manageable for the sector in the context of wider changes, including the implementation of pay parity, changes to funding settings and workforce constraints

**Agree / Disagree**

- Option 3: splitting out proposals to strengthen the person responsible role with a view to finalising regulatory amendments as soon as practical, and progressing work on 80 percent qualified teachers as per option 2 above (recommended)

**Agree / Disagree**

- d. **note** if you select option 1, we will seek approval from the Attorney-General to publicly release the draft regulations, and if this is not obtained or results in significant delays to consultation, we will provide you with further advice on how to progress

**Noted**

- e. **note** if you select option 2, we will provide you with material to communicate the shift in approach to Cabinet and the sector

**Noted**

- f. **note** if you select option 3, we will provide you with further advice on options for taking forward the proposals to strengthen the person responsible role, including what is possible in this term of government

**Noted**

- g. **agree** that this briefing is released after public consultation on all of the proposals and final Government decisions made, with any information that may need to be withheld done so in line with the provisions of the Official Information Act 1982

**Agree / Disagree**



John Brooker  
**General Manager**  
**Early Learning and System Policy**  
**Te Pou Kaupapahere | Policy**

Hon Jan Tinetti  
**Minister of Education**

30/03/2023

Proactively Released

## Background

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9. In December 2022, Cabinet agreed to amend the Regulations to regulate for 80 percent qualified teachers in teacher-led ECE centres and to strengthen the person responsible role in teacher-led ECE centres, licensed hospital-based ECE services, and licensed home-based ECE services. Cabinet also authorised you to issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to the amendments and to undertake public consultation on the draft amendment regulations [SWC-22-MIN-0232].
10. We are currently preparing to undertake public consultation between 17 April and 21 May 2023 (or thereabouts) on the draft regulations 9(2)(f)(iv) [redacted]. While the timing is tight, this will allow final Cabinet decisions to be made in August 2023 and the regulations to be gazetted by September 2023. To achieve this, we require approval from the Attorney-General to publicly release the draft legislation, which is standard practice when consulting on draft legislation as this constitutes a waiver of legal privilege. We have not attached the draft consultation material to this report as we are currently working through this process.
11. 9(2)(f)(iv) [redacted] we identified this as work that could be slowed down so as not to overwhelm the sector in the current environment, and we indicated that we would provide you with further advice on options for doing this. There is a sense that we are doing too much too fast and that the pace of change may overwhelm the sector. There is also a risk that the cumulative impact of these changes will lead to higher costs for service providers that will be passed on to parents and whānau through higher fees and make childcare less affordable.

## Comment

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### Reasons to consider slowing down the requirement for 80 percent qualified teachers

*The sector has changed since the proposals were first consulted*

12. Regulating for 80 percent qualified teachers is Action 3.1 of *He taonga te tamaiti | Every child a taonga: Early Learning Action Plan 2019-2029* (the ELAP). This action had good support from the sector when the ELAP was developed. However, the operating environment for service providers has changed significantly since then and the impact of COVID 19 on teacher supply and attendance levels is still being felt. More recently, the cost-of-living crisis, including growing costs for service providers and the rising cost of childcare has created further challenges for the sector.

*There was clear support for regulating for 80 percent qualified teachers but less clarity about how this could be achieved*

13. 64 percent of those that provided feedback via public consultation undertaken in September – October 2021 agreed that we should regulate for 80 percent qualified teachers. Of the three options we consulted on, the greatest proportion (46 percent) of submitters preferred the approach that was subsequently agreed by Cabinet<sup>2</sup> and the greatest proportion (46 percent) thought this would best support quality outcomes for children. However, at the time only 43 percent thought they would be able to comply

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<sup>2</sup> Cabinet has agreed that from 1 July 2024, service providers of teacher-led ECE centres must employ or engage 60% registered and certificated teachers with ECE and/or primary qualifications as measured against ratio requirements for the licence maximum, and 30 % registered and certificated teachers with ECE qualifications to cover minimum ratio requirements whenever children are present. These proportions increase to 80% and 50% respectively from 1 July 2026 [SWC-22-MIN-0232].

with this approach in the near future. Given the challenges the sector is facing, including ongoing workforce and funding pressures, it is unlikely that this percentage has increased and there is a risk that it may now be even lower. Consulting on the draft regulations is an opportunity to test this, although it also risks a negative reaction, particularly from those in the sector currently under financial stress.

*Regulating for 80 percent qualified teachers will impose additional costs on the sector*

14. We know that regulating for 80 percent qualified teachers will pose additional costs on some service providers (i.e., through employing more highly qualified staff and ensuring ECE qualified staff are there when children are present). However, we have not been able to estimate the number of service providers that will be affected or the magnitude of these costs due to a lack of relevant data.
15. Ministry funding data indicates that most services should be well placed to meet the new regulatory standards as over 95 percent of services currently qualify for the higher funding rates linked to having 80 percent or more qualified teachers. However, funding data overestimates the ability of services to comply with the regulations due to the funding system's more flexible approach to measuring compliance. We also know from feedback on consultation and funding data that the requirements are likely to have a disproportionate impact on Māori and Pacific language services, services in isolated communities, and services in low socio-economic communities, who face greater challenges recruiting, employing and retaining suitably qualified staff.

*These costs are likely to be increased for services that choose to opt in to pay parity*

16. Feedback from consultation and previous analysis of the potential impact of regulating for 80 percent qualified teachers is unlikely to reflect the impact of implementing these requirements at the same time as implementing pay parity. The combination of these policy changes is likely to mean that the costs of implementing 80 percent will be even higher for services that opt in to pay parity. This is because services will not only need to employ a higher proportion of more qualified staff, but they will also need to pay these staff at higher rates. In addition, the 80 percent requirements mean that services will have less flexibility about how and when they choose to employ or engage qualified staff to manage their overall staffing costs.

*Progressing 80 percent at the same time as pay parity is likely to magnify sector concerns*

17. Consultation on pay parity is currently planned for around the same time as consultation on the exposure draft regulations for 80 percent qualified teachers, assuming approval to publicly release the draft regulations is granted by the Attorney-General. A number of service providers have already indicated that pay parity will result in additional costs to their service. It is possible that some service providers will view proposals to regulate for 80 percent qualified teachers and strengthen the person responsible requirements as adding further to these costs, including removing their flexibility to manage staffing costs. These concerns are likely to be heightened due to the recent legal proceedings initiated by the Early Childhood Council in relation to pay parity.

**Other factors to consider**

18. Proposals to strengthen the person responsible role are currently included in the exposure draft regulations to require 80 percent qualified teachers. Decisions to slow work on 80 percent qualified teachers will also have implications for this work. There was strong support for these proposals during public consultation in September-October 2021, with the exception of proposals to require the person responsible for licensed home-based services to be locally based. These proposals are also not expected to result in significant additional costs for the sector, although requiring the person responsible to have a Full (Category One or Two) teaching certificate will impose costs

on some services. Teachers that hold these certificates are more experienced and therefore may be more costly to employ.

### **Options for slowing down**

19. We have identified three options for slowing down the work to require 80 percent qualified teachers in teacher-led ECE centres.

#### *Option 1: Continue as planned and seek feedback on implementation dates (Status quo)*

20. Option 1 involves continuing with the current plan to undertake public consultation on the draft amendment regulations between 17 April – 21 May 2023 (or thereabouts). As part of our consultation, we would expressly seek the views of the sector on the dates agreed by Cabinet for compliance with the 60 percent (from 1 July 2024) and 80 percent (from 1 July 2026) requirements as reflected in the draft regulations.
21. This option is subject to obtaining approval from the Attorney-General to publicly release the draft amendment regulations. There is some risk that this approval may not be granted, particularly given the legal proceedings that have been initiated by the Early Childhood Council, or will take some time to obtain, resulting in public consultation being delayed. We will initiate the process of obtaining approval from the Attorney-General subject to your agreement to proceed with option 1.
22. Notwithstanding this, the main benefit of this option is that regulations to require 80 percent qualified teachers and to strengthen the person responsible role could be established within this term of government, although the timing will be extremely tight. This would support the achievement of Action 3.1 of the ELAP.
23. However, given the wider context outlined above, including work on pay parity and wider funding settings, we foresee a number of risks with Option 1, including:
- a strong negative reaction from the sector to the proposed approach to regulating for 80 percent qualified teachers, which is likely to be seen as imposing significant additional cost on the sector at a time when costs are already growing, attendance rates are falling, there are ongoing workforce and funding constraints, and many services are under stress
  - criticism that we are not hearing concerns about the rate of change in the sector and the impacts of this on the cost of service provision and how this may be passed on to parents and whānau in the form of increased fees
  - a lack of meaningful engagement on the 80 percent requirement through consultation due to the focus being on pay parity and/or consultation fatigue, meaning we do not get the feedback we need to finalise the regulations with confidence
  - a perception that we are not really interested in feedback on the implementation dates for the 60 and 80 percent requirements as these have already agreed by Cabinet and included in the draft regulations.
24. Overall, we think the risks associated with Option 1 outweigh the benefits. It is likely that if we pursue this option, the feedback we obtain from consultation will indicate the need to revisit the December 2022 Cabinet decisions for implementing 80 percent, which is either Option 2 or 3 below. However, in the process of reaching this point, Option 1 is likely to place significant strain on the relationship with the sector. Option 1 is our least preferred option.

#### *Option 2: Defer regulatory change until the next term of government*

25. Option 2 involves deferring work to regulate for 80 percent qualified teachers and strengthening the person responsible role until the next term of government. During this

time, we would undertake further work to determine the best way to implement 80 percent qualified teachers in teacher-led ECE centres in a way that is more manageable for the sector in the context of wider changes, including the implementation of pay parity and changes to funding settings.

26. Reasons why this would need to be deferred until the next term of government include the need for greater clarity on the impact of pay parity and changes to funding settings to inform the development of alternative options for implementing the 80 percent requirement. Also, it would not be possible to undertake this work, consult the sector, and have regulations drafted and approved prior to the election.
27. The key benefits of Option 2 are that it will avoid overwhelming the sector with the rate of change and additional costs at a time when costs are already increasing, and they are facing workforce and funding constraints. It would provide time to revisit the options for implementing 80 percent qualified teachers to identify a way of achieving this goal that is more manageable and has higher levels of support from service providers. The interface with pay parity and the review of the funding system could also be addressed, including minimising any inconsistencies (e.g., approaches to measuring levels of qualified staff) and mitigating the risk that the policies conflict and/or create unintended consequences.
28. The main risk of Option 2 is that there will be delay in strengthening the person responsible role with no clear timeframe for when these amendments would be made. As noted above, there was strong support for these proposals during public consultation, with many considering them necessary for improving education and care outcomes for children, parents and their whānau.
29. There is also likely to be a negative reaction from those within the sector who are strongly supportive of regulating for 80 percent qualified teachers and less concerned about the potential impact on service providers.

*Option 3: Split out proposals for strengthening persons responsible*

30. Option 3 involves splitting out proposals to strengthen the person responsible role from the proposals to require 80 percent qualified teachers, with a view to finalising these regulatory changes as soon as practical. If further public consultation on the draft regulations was required, this would be undertaken after consultation on pay parity had been completed so as not to overwhelm the sector and provide the opportunity for genuine engagement. This may mean that the regulations could not be finalised within this term of government. Further work to determine the best way to implement 80 percent qualified teachers that is more manageable for the sector in the context of wider changes (including pay parity and funding settings) would then be undertaken as per Option 2.
31. The key benefits of this approach are that regulatory amendments to strengthen the person responsible role in teacher-led ECE centres, licensed hospital-based ECE services, and licensed home-based ECE services could be made in this term of government. With the exception of some proposals for licensed home-based services, there was a high level of support for these proposals in earlier consultation. The costs associated with implementing these proposals are not expected to be significant. An exception is the requirement for persons responsible to hold a full (Category One or Two) teaching certificate. This may result in some additional cost for some service providers, and this may be higher for services that opt in to pay parity.
32. This option also has the benefits of Option 2 as outlined in paragraph 26 above and provides an opportunity to determine a more manageable approach to implementing the requirement for 80 percent qualified teachers. Option 3 is our preferred option.
33. The main risks associated with Option 3, aside from those associated with not progressing the 80 percent requirement at this time, relate to the process that may be



required to revise the draft amendment regulations. We will provide you with further advice on this should you agree to this option.

## Next Steps

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34. If you prefer Option 1, we will continue to prepare for public consultation to be held from 17 April – 21 May 2023 (or as close to these dates as possible), including seeking approval from the Attorney General to publicly release the draft amendment regulations. We will also prepare communications material to respond to any reaction from the sector. We will report to you seeking approval to release this material within the next few weeks. If approval from the Attorney General is not obtained or results in significant delays to consultation, we will provide you with further advice on how to progress.
35. If you prefer Option 2, we will prepare material to communicate this change in approach to Cabinet and the sector.
36. If you prefer Option 3, we will provide you with further advice on options for taking forward the proposals to strengthen the person responsible role, including what would be possible in this term of government.