

Cabinet Paper material

Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
Name of package Cabinet paper on proposals for tranche 2 of the Early Learning Regulatory Review
Date considered 12 December 2022
Date of release

On 7 December 2022, Cabinet agreed on proposals to regulate for 80% qualified and certificated teachers in teacher-led ECE, and strengthen the person responsible role in teacher-led ECE, and licensed hospital-based and home-based services. In this paper Cabinet also agreed for the Ministry of Education to publicly consult on proposals to strengthen the existing licensing and enforcement provisions, as well as on a new definition for 'locally based' for persons responsible in licensed home-based education and care services.

However, in April 2023, the Minister of Education agreed to slow down progress on the proposal to regulate for 80% qualified and certificated teachers in teacher-led ECE, so that this initiative can be implemented in a way that is more manageable for the sector given the other changes underway and the evolving challenges the sector is facing. On 31 May 2023, (in the following paper Cabinet paper: Proposed amendments for Tranche 2 of the Early Learning Regulatory Review) Cabinet agreed to rescind previous Cabinet decisions to regulate for 80% qualified and certificated teachers in teacher-led ECE, due to the reasons outlined above. Therefore, final proposals for regulating 80% qualified and certificated teachers in teacher-led ECE have been withheld under s9(2)(f)(iv) of the Official Information Act 1982 in this suite of papers, as they are still under active consideration.

Also on 31 May 2023, Cabinet agreed on proposals to strengthen the existing licensing and enforcement provisions, however they did not agree to final proposals to define 'locally based', which is needed to implement the requirement that persons responsible in licensed home-based education and care services be locally based. On 17 August 2023, (in the following paper Education (Early Childhood Services) Amendment Regulations (No 2) 2023) Cabinet noted that this requirement is not being progressed and will be revisited at a time when this requirement is more manageable for the sector. Therefore, as this is still under active consideration, final proposals for defining 'locally based' for persons responsible in licensed home-based education and care services have been withheld under s9(2)(f)(iv) of the Official Information Act 1982 in this suite of papers.

These documents have been proactively released:

Cabinet Paper: Cabinet paper on proposals for tranche 2 of the Early Learning Regulatory Review

Date considered: 12 December 2022

Author: Office of the Minister of Education

Briefing Note: Early Learning Regulatory Review Cabinet paper for lodging and talking points

Date considered: 25 November 2022

Author: Ministry of Education

Consultation discussion document – locally based for persons responsible in home-based services.

Date considered: 12 December 2022

Author: Ministry of Education

Consultation discussion document – additional tranche two proposals

Date considered: 12 December 2022

Author: Ministry of Education

Regulatory Impact Statement: Final proposals for 80 percent qualified teachers and person responsible regulations for early childhood education services

Date considered: 12 December 2022

Author: Ministry of Education

Interim Regulatory Impact Statement: Additional Tranche 2 issues – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures

Date considered: 12 December 2022

Author: Ministry of Education

Social Wellbeing Committee Minute: SWC-23-MIN-0232

Date considered: 7 December 2022

Author: Committee Secretary

Cabinet Minute: CAB-23-MIN-0398

Date considered: 12 December 2022

Author: Secretary of the Cabinet

Material redacted

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

The applicable withholding grounds under the Act are as follows:

Section 9(2)(a) to protect the privacy of natural persons

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

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister’s portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister for Education

Chair, Social Wellbeing Committee

Proposals for Tranche 2 of the Early Learning Regulatory Review

Proposal

1. I seek Cabinet agreement to issue drafting instructions and undertake public consultation for amendments to the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:
 - 1.1 9(2)(f)(iv) ;
and
 - 1.2 strengthen the person responsible role in teacher-led early childhood education and care centres, and licensed hospital-based and licensed home-based early childhood education and care services.
2. I also seek agreement to undertake consultation on policy proposals to define locally-based for the person responsible role in licensed home-based early childhood education and care services, and two additional amendments to the Regulations to strengthen licensing and enforcement provisions.

Relation to government priorities

3. This paper contributes to the Child and Youth Wellbeing Strategy by helping to lift the quality of education and care and wellbeing of children. Proposals to require 80 percent qualified teachers in teacher-led early childhood education and care centres contribute to the achievement of Action 3.1 in *He taonga te tamaiti: Every child a taonga – the Early Learning Action Plan 2019-2029* (ELAP) (i.e., regulate for 80 percent qualified teachers in teacher-led early childhood education and care centres in the medium-term, leading to regulation for 100 percent). This action is based on research showing that high quality settings, including teaching qualifications, can improve the quality of provision in ECE and outcomes for children¹.

Executive summary

4. In September 2021, Cabinet agreed to publicly consult on proposals for Tranche 2 of the Early Learning Regulatory Review (the Review), including:
 - 4.1 regulating for 80 percent qualified teachers in teacher-led early childhood education and care centres; and

¹ Kathy Sylva, "Quality in early childhood settings." In *Early Childhood Matters*, pp. 86-107. Routledge, 2010; Matthew Manning, Susanne Garvis, Christopher Fleming, and Gabriel TW Wong. "The relationship between teacher qualifications and the quality of the early childhood education and care environment." *Campbell Systematic Reviews* 13, no. 1 (2017): 1-82.

- 4.2 strengthening the person responsible requirement in teacher-led early childhood education and care centres, and licensed hospital-based and licensed home-based early childhood education and care services [CBC-21-MIN-0087 refers].
5. Public consultation was undertaken between September and October 2021. Feedback indicated clear support for the intent of the proposals. However, some service providers raised concerns about their ability to employ or engage 80 percent qualified teachers due to workforce supply and funding constraints. Māori immersion and bilingual services (including Ngā Puna Reo o Aotearoa), Pacific medium services, and isolated services face particular challenges recruiting suitably qualified teachers.
6. 9(2)(f)(iv)
7. The Associate Ministers of Education (Māori and Pacific) and I have also asked the Ministry of Education (the Ministry) for further advice on options to support puna reo (including Ngā Puna Reo o Aotearoa) and Pacific language services to comply with these new qualification requirements. I am seeking Cabinet authorisation for myself and the Associate Ministers of Education (Māori and Pacific) to jointly make further policy decisions if necessary without reference to Cabinet after receiving this advice, for the purpose of drafting regulations. I want to help ensure that parents and whānau can continue to access these services, as well as services in isolated and low socio-economic communities, while maintaining the policy intent to regulate for 80 percent qualified teachers. Cabinet approval will be sought for the final regulations.
8. I am now seeking approval to issue drafting instructions to the Parliamentary Counsel Office, and to publicly consult on the draft regulations, for changes to the Regulations to:
- 8.1 9(2)(f)(iv)
- 8.2 require persons responsible in teacher-led early childhood education and care centres, and licensed hospital-based, and licensed home-based education and care services to hold a Full (Category One or Two) practising certificate
- 8.3 clarify what is required of persons responsible in teacher-led early childhood education and care centres and licensed hospital-based

- education and care services, including that they must hold a current first aid qualification
- 8.4 specify that persons responsible in licensed home-based education and care services may only work across two service licences within each calendar month, and only one licence at a time, and increase the maximum licence size for licensed home-based education and care services from 80 to 100 children
 - 8.5 clarify what is required of persons responsible in licensed home-based education and care services, including that they be locally-based, take all reasonable steps to observe, support and provide guidance on curriculum delivery and keep records of these activities, and provide 'professional leadership and support'.
9. In addition, I am seeking agreement to publicly consult on a definition of 'locally-based' for persons responsible in licensed home-based education and care services, and two further proposed amendments to the Regulations, to:
 - 9.1 add conditions to provisional licences; and
 - 9.2 provide a definition of 'permanently cease to operate' for the purpose of cancellation of licences and to allow the Secretary for Education (the Secretary) to grant temporary service closures.
 10. I will report to Cabinet by July 2023 on the results of consultation on the definition of locally-based and the two additional proposed amendments, seeking approval to amend to the Regulations, if appropriate.
 11. Finally, I am seeking approval to invite the Parliamentary Counsel Office to simplify and improve the clarity and accessibility of the Regulations when drafting amendments agreed as a result of this paper.

Background

12. The Ministry is undertaking a three-stage review of the early learning regulatory system (the Review) [SWC-20-MIN-0116 refers]. The proposals in this paper are part of Tranche 2 of the Review, which is achieving key shifts in the regulatory system signalled in the ELAP and the Review of Home-based Early Childhood Education [CBC-19-MIN-0002 refers], including:
 - 12.1 regulating for 80 percent qualified teachers in teacher-led early childhood education and care centres; and
 - 12.2 strengthening the person responsible requirement in teacher-led early childhood education and care centres, and licensed hospital-based, and licensed home-based early childhood education and care services.
13. Cabinet agreed to publicly consult on options to implement these proposals on 6 September 2021 [CBC-21-MIN-0087 refers].

Consultation indicated clear support for the objectives of the proposals


14. Public consultation on these two proposals was undertaken between September and October 2021. A total of 218 survey responses and 34 written submissions

were received. A further 97 survey responses and seven written submissions were received on the survey for the home-based person responsible proposals. Focused consultation was undertaken with the licensed home-based sector, licensed hospital-based services, puna reo (including with Ngā Puna Reo o Aotearoa), and Pacific medium services.

15. Overall, there was clear support for the objectives of the proposals. However, some service providers raised concerns about their ability to meet the 80 percent qualification requirements due to tight teacher supply and funding constraints.
16. The availability of suitably qualified teachers was a particular concern for puna reo and Pacific medium service providers who noted they have additional requirements for teachers and services, such as language and cultural competencies. Isolated service providers also said they face difficulties recruiting qualified staff. Feedback from the Early Learning Regulatory Review Advisory Group included the need for a clear timeline to regulate for 80 percent qualified teachers, along with changes the sector can manage. They noted that one sweeping change that happens quickly would potentially damage the sector.

Proposals for 80 percent qualified teachers in teacher-led early childhood education and care centres

9(2)(f)(iv)




Impact of the proposals on the sector

20. 9(2)(f)(iv)

. There is a risk that some of these costs will be passed on to parents and whānau in the form of increased fees. There is also a risk that some services may close or reduce enrolments if they cannot meet the new requirements.

21. The overall impact on the sector of the proposals is difficult to estimate but is expected to be mitigated by the high number of services that already employ qualified teachers above the 80 percent threshold. In particular, funding data shows that over 95 percent of teacher-led early childhood education and care centres, kindergartens, and licensed hospital-based services qualify for the higher 80 percent or more qualified teachers funding rates. This indicates that most services should be well placed to meet the new regulatory standard.
22. However, the approach to measuring teaching qualification levels for funding eligibility (assessed over a period of four months with up to 80 discretionary hours currently) differs to the approach that will be used to measure compliance with the new regulatory standard (assessed at any point in time). In addition, wider analysis of the education workforce signals a tighter supply of suitably qualified, registered, and certificated teachers, and continued uncertainty about the impact of changed border settings and COVID-19. Tight teacher supply and funding constraints were identified as barriers to the sector implementing the proposals during public consultation, with 43 percent indicating their service could comply with the proposed approach to achieving 80 percent qualified teachers in the near future.

23. 9(2)(f)(iv)




24. Furthermore, I am seeking Cabinet approval to consult on the draft regulations. This will allow the proposed timeframes to be tested with the sector prior to the Regulations being finalised.

25. The Associate Ministers of Education (Māori and Pacific) and I have also asked the Ministry to provide further advice on qualification settings and associated funding settings to better support puna reo, including Ngā Puna Reo o Aotearoa, and Pacific language education and care services to meet the new requirements. Funding data and feedback from the earlier public consultation indicates that Māori and Pacific bilingual services will face particular challenges in meeting the 80 percent qualification requirements, including the shortage of registered and certificated teachers with te reo Māori or Pacific language skills. The Ministry is reviewing qualification requirements and associated funding settings for these services and working closely with them to better understand their unique needs. We expect to receive advice on the outcome of this engagement and preferred options in early 2023.

26. I want to ensure the requirement to employ or engage 80 percent qualified teachers does not unduly impact the provision of Māori and Pacific language services, and services in isolated and low socio-economic communities. I am seeking Cabinet authorisation for the Associate Ministers of Education (Māori and Pacific) and I to jointly make further policy decisions after receiving this advice if necessary, without reference to Cabinet, for the purpose of drafting regulations. This will help ensure children, parents and whānau can continue to access a diverse range of quality early learning services. This may include, for example, creating a temporary exemption for some services, or extending timeframes for compliance. Cabinet approval will be sought for the final regulations.

9(2)(f)(iv)



Proposals for strengthening person responsible requirements

32. The person responsible plays an important role in ensuring the quality of education and care provided in licensed early childhood services, including supervising and overseeing children, teachers, and other adults.
33. After carefully considering feedback from consultation [CBC-21-MIN-0087 refers], I am recommending a number of changes to strengthen the regulations concerning persons responsible.

Requiring persons responsible to hold a Full (Category One or Two) practising certificate

34. I seek Cabinet approval to amend the Regulations to require that the person responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services hold a Full (Category One or Two) practising certificate.
35. This regulatory change will ensure that teaching staff in centres, hospital-based services, and home-based services are supervised by fully certificated teachers with sufficient teaching experience, rather than the current settings which allow new graduates with limited experience to be persons responsible.
36. However, I recommend delaying the commencement of this requirement by six months relative to the other changes for person responsible. This will ensure that services have additional time to comply with this requirement, including isolated services that may be particularly impacted by tight teacher supply.

Clarifying the person responsible role in early childhood education and care centres

37. I seek Cabinet approval to amend the Regulations to clarify that person responsible roles in licensed teacher-led early childhood education and care centres are required to:
 - 37.1 supervise children in attendance and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff
 - 37.2 provide education and care to children in attendance and guidance to teaching staff
 - 37.3 ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching
 - 37.4 ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend.
38. These regulatory changes will clarify the functions and responsibilities that persons responsible must fulfil as part of their role. Clarifying that the person responsible must be actively involved with children and staff will make it clear that a teacher cannot fulfil the person responsible role when they are on break or doing tasks in other parts of the centre, such as the office or kitchen.

Requiring the person responsible in teacher-led early childhood education and care centres to hold a first aid qualification

39. I recommend amending the Regulations to require the person responsible in teacher-led early childhood education and care centres to hold a current first aid qualification gained from a New Zealand Qualifications Authority (NZQA) accredited first aid training provider. The person responsible would be included in the current 1:25 adult to child ratio for first aid qualification requirements.
40. This regulatory change will help to ensure the person responsible has the necessary skills and training to fulfil their health and safety duties, including in situations where a child or adult is injured at the service.

Clarifying expectations of the person responsible role in licensed hospital-based education and care services

41. I seek Cabinet approval to amend the Regulations to clarify that person responsible roles in licensed hospital-based education and care services are required to:
- 41.1 supervise children and staff at the service, and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults
 - 41.2 ensure there is at least one adult present when children are in the activity room
 - 41.3 provide education and care to children in attendance and guidance to teaching staff
 - 41.4 ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching.
42. This regulatory change clarifies that the person responsible must ensure that children, staff and adults across the service are supervised at all times, even when they are located in different spaces. This reflects the reality that at any one time, children in licensed hospital-based services are likely to be based in different areas e.g., a separate room in a ward or the activity room.

Limiting person responsible to a single licence of a licensed home-based education and care service

43. I consulted on a proposal to limit the person responsible in licensed home-based education and care services to a single service licence in any calendar month. Feedback indicated that this proposal may be overly restrictive (e.g., it does not allow a person responsible to cover for another person responsible who is on holiday or sick leave). Therefore, I recommend amending the Regulations to specify that persons responsible in licensed home-based education and care services can only work across up to two service licences within each calendar month, and only one licence at any time.
44. This amendment will help to ensure greater continuity in the relationship between educators and children and the persons responsible. It will also minimise the unclear division of responsibility that can occur when the role is not licence specific. In addition, it will make it simpler to evidence that services are meeting the 1:50 person responsible to children ratio at all times, while creating some flexibility for the person responsible to cover the absence of another person responsible.
45. I also recommend progressing the proposal to increase the maximum licence size for home-based education and care services from 80 to 100 children. This will address the inconsistency between the 1:50 person responsible to child ratio requirement and the current maximum licence size of 80 children.

Requiring person responsible to be locally-based for licensed home-based services

46. Feedback from consultation indicated strong support for requiring persons responsible for licensed home-based education and care services to be locally-based in relation to the homes of the educators they supervise and support, and the children whose education, care, comfort, and health and safety they oversee. At present it is possible for a person responsible to be based in another part of the country and to travel extensively to visit educators and children. Consequently, persons responsible may not be immediately available to undertake their supervision and oversight functions. To prevent this practice and ensure that children and educators receive appropriate levels of supervision and oversight, I recommend that the Regulations be amended to require the person responsible for licensed home-based services be locally-based.

Providing a definition of 'locally-based' for home-based personal responsible

47. Of the two options consulted on, more submitters preferred a definition of 'locally-based' using the measure of reasonable travel time (i.e., up to four hours) over a definition based on the geographical boundaries of territorial authorities. However, many submitters considered that travelling four hours is too long to be considered locally-based and I agree.
48. After considering the results of consultation, it is my view that neither option will achieve the outcomes we want from this proposal, which is to lift the quality of supervision and oversight provided by persons responsible to educators and children in licensed home-based services. Therefore, I seek Cabinet agreement to consult the sector on an alternative definition of locally-based for the person responsible for licensed home-based services that better expresses the outcomes we want from this role and means the person responsible must:
- 48.1 either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible;
 - 48.2 are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children;
 - 48.3 are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service, and; and
 - 48.4 are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency.
49. Draft consultation material for this proposal is attached at Appendix 1. I will report back to Cabinet on the outcome of consultation and final proposals for amending the Regulations by July 2023.

Requiring person responsible in licensed home-based services to provide professional development to educators

50. I recommend that the Regulations be amended to clarify what is meant by 'professional leadership and support' to specify that a person responsible must provide professional development to educators on a regular basis and must keep records of any such discussion.
51. This relatively minor regulatory change will prevent situations where the person responsible only provides minimal professional leadership to educators, which would not support quality outcomes for educators or the children in their care.

Requiring person responsible in licensed home-based services to observe curriculum delivery

52. I propose to amend the Regulations to require that, in addition to observing each child in the home, the person responsible must take all reasonable steps to observe, support and provide guidance on the curriculum delivery in the home during their visits, and must keep records of these activities.
53. This will address any existing uncertainty by ensuring the Regulations clearly specify what persons responsible are already expected to do regarding providing guidance and support on the curriculum delivery in the home.

Improving the clarity and accessibility of the Regulations

54. The proposals set out in this paper are expected to require amendments to Regulations 3, 28 and 44, and Schedule 1 of the Regulations. These parts of the Regulations are becoming increasingly complex and difficult to navigate due to the cumulative impact of previous amendments. Therefore, I recommend that the Parliamentary Counsel Office be invited to identify opportunities for simplifying and improving the clarity and accessibility of the Regulations when drafting the amendments agreed as a result of this paper. This also responds to concerns raised by the Regulations Review Committee regarding the clarity of the Regulations.

Additional Tranche 2 proposals

55. As well as progressing the proposals outlined above, I intend to progress two further amendments to the Regulations as part of Tranche 2 of the Review as outlined below. These amendments have implications for licensing and enforcement practices and will help to ensure the Ministry can be an effective and responsive regulator. I am seeking Cabinet agreement to undertake public consultation on the two proposed amendments and will report back by July 2023 seeking agreement to regulatory change. Draft consultation material for the proposed amendments is attached at Appendix 2.

Adding conditions to provisional licences

56. The Regulations provide for the Secretary to reclassify a service provider's full or probationary licence as provisional if the service does not comply with the regulations or the conditions on their licence. Issuing a provisional licence is one of the main tools available to the Secretary to enforce compliance² and allows a

² Licences may also be suspended or cancelled subject to the Education and Training Act 2020 and the Regulations.

service to continue operating and children to continue attending while matters of non-compliance are addressed.

57. Services that have their licence reclassified as provisional must comply with any conditions specified on the provisional licence by a specified date(s). A provisional licence remains in force until the Secretary either revokes the provisional licence and returns a full or probationary licence or cancels the service provider's provisional licence.
58. The Regulations do not expressly allow the Secretary to add conditions to a provisional licence in situations where new matters of non-compliance are identified after the provisional licence has been issued. This may mean that the Secretary must wait until a service has returned to a full or probationary licence to formally respond to the new matters of non-compliance through issuing a new provisional licence with new conditions attached.
59. I am seeking Cabinet approval to undertake public consultation on a proposal to amend the Regulations to expressly allow the Secretary to add conditions to a provisional licence at their discretion, provided the Secretary considers this to be fair and appropriate. I am proposing that additional conditions must be met by a new deadline, but no longer than 12-months from when the licence was reclassified as provisional.
60. I am proposing that the use of this power be at the Secretary's discretion as there may be situations where the nature of non-compliance is such that adding conditions to the provisional licence is not the most appropriate enforcement response (e.g., where there is an undue or disproportionate impact on the children attending the service, parents and whānau, and/or service providers) or a suspension of the licence is required.
61. I expect this proposal to provide greater certainty regarding the Secretary's ability to add conditions to a provisional licence and help to ensure the Ministry can be an effective and responsive regulator. It will also support greater transparency for parents and whānau about a service provider's current state of regulatory compliance.

Defining 'permanently ceased to operate'

62. Regulation 32(2) requires the Secretary to cancel the licence of an early childhood service if satisfied that the service has 'permanently ceased to operate'. However, the Regulations do not define the term 'permanently ceased to operate' or provide a process for a service provider to request to the Secretary that they temporarily close their service with the intention of reopening in the near future. This makes it difficult for the Secretary to perform their duties under Regulation 32(2) effectively and with certainty.
63. I am seeking Cabinet approval to consult on a proposal to amend the Regulations to provide a definition for 'permanently ceased to operate' as:
 - 63.1 when the service provider has notified the Ministry that it has permanently ceased to operate; or

- 63.2 when the Ministry is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following criteria:
- 63.2.1 there being no children enrolled and/or attending the service; or
 - 63.2.2 there being no staff employed or engaged and working in the service; or
 - 63.2.3 the service provider has not claimed early childhood education funding.
64. I intend to consult on two options regarding the period of time that would need to pass with the criteria being met before a service would be deemed to have permanently ceased to operate (i.e., either three or six months).
65. I also intend to consult on a proposal to amend Regulations to explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period up to three months, with the possibility of an extension on request. This would be at the discretion of the Secretary and subject to an application from the service provider.
66. I expect these proposals to provide greater certainty and clarity around the exercise of the power to cancel licences in Regulation 32, including when the Secretary is required to cancel licences of services that are not operating. This would better support the management of the network of services by ensuring defunct licences are cancelled and space is made for the entry of new services.
67. These amendments would provide more certainty and transparency to the sector on the process and requirements for requesting to temporarily close their service. They would also strengthen the Ministry's ability to enforce the existing requirement in the Education and Training Act 2020 for early childhood education and care centres to notify the Ministry when they close.

Legislative implications

68. Amendments to the Education (Early Childhood Services) Regulations 2008 are required to implement the proposed changes covered in this Cabinet paper.

Financial implications

69. The financial implications for the Crown associated with this paper are expected to be minimal. Insofar as the recommendations may increase the proportion of certificated teachers across the sector, there may be some flow-on cost if some service providers move into higher funding bands as a result. However, as 95 percent of services already qualify for funding rates for levels of 80 percent qualified staff or more, this impact is expected to be low.

Impact Analysis

Regulatory Impact Statement

70. The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statement: Final proposals for 80 percent qualified teachers

and person responsible regulations for early childhood education services (Appendix 3). The panel considers that it meets the Quality Assurance criteria. A convincing case is made for the preferred options, including where the status quo is proposed. Evidence of the degree of stakeholder support for each of these options and views on the benefits and risks is provided. The Statement identifies the services and sectors where the proposed changes are more likely to be felt and more challenging, particular where workforce constraints are a potential barrier.

71. A separate discussion document, *Consultation on tranche two of the Early Learning Regulatory Review: Providing a definition of 'locally-based' for person responsible in licensed home-based education and care services* (Appendix 1) has been developed to consult stakeholders on additional options identified through the earlier consultation process. This discussion document will support effective consultation and subsequent impact assessment.
72. The Ministry of Education's Quality Assurance Panel has reviewed the Interim Regulatory Impact Statement "Additional Tranche 2 issues – adding conditions to provisional licences, defining 'permanently ceased to operate', and providing for temporary service closures" (Appendix 4). This Statement was required as the associated discussion document did not meet the effective consultation requirements because it is seeking feedback on preferred options. The panel considers that this interim statement meets the Quality Assurance criteria. It provides analysis of options not included in the discussion document and will, therefore, support effective consultation and subsequent impact analysis.

Climate Implications of Policy

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

Population Implications

74. The proposed regulatory changes in this Cabinet paper have potential population implications which are summarised below.

Population group	How the proposal may affect this group
Women	<p>Regulating for 80 percent qualified teachers should ensure there are ongoing employment opportunities for qualified teachers, the majority of whom are female. However, if this change is made, it may reduce demand for unqualified teachers. In addition, as Māori bilingual and immersion and Pacific language services are likely to find it harder to meet the new requirements, and these services generally employ Māori and Pacific women, it is likely that there will be a disproportionate impact on these women.</p> <p>The person responsible proposals would ensure graduate teachers and teachers recently returning to the profession</p>

Population group	How the proposal may affect this group
	<p>can focus on teaching with oversight from an experienced teacher.</p> <p>The home-based education and care service proposals would support increased professionalisation for persons responsible and educators, many of whom are women. However, these proposals could also add more responsibilities to women who have commitments outside of work.</p>
Children	<p>The 80 percent and person responsible proposals are intended to improve the quality of education and care in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services. The 80 percent options would lift minimum standards relating to qualified and certificated teachers in a service. This should improve children's learning outcomes. However, this proposal could affect services' ability to remain open if they have difficulty attracting and retaining qualified teachers. This is likely to be more pronounced for isolated services, immersion and bilingual services, services in low socio-economic communities, and hospital-based services. This would not support all children's participation in early learning.</p> <p>The person responsible proposals are intended to better support the supervision of teaching staff and oversight of children. This supports children's educational and care outcomes.</p> <p>In licensed home-based education and care services, the proposals are designed to support educators' learning and development, which could improve curriculum delivery and children's learning outcomes.</p>
Children with disabilities	<p>System-level information about disabled children in early learning and their experiences is currently limited to funding information. Thus, the effects that the proposals on this group of children are difficult to determine. Regulating for 80 percent qualified teachers in centres is likely to improve inclusive practice in these services.</p> <p>The Ministry provides specialist support through its Early Intervention Service, and at early learning services, teachers involved in early intervention meetings will be learning how to support children with disabilities. Increased levels of qualified teachers would help to support effective engagement with early intervention teams.</p>

Population group	How the proposal may affect this group
	<p>Qualified teachers or those seeking qualifications (certification) are more likely to engage in a centre's professional learning and development (PLD). Regulating for 80 percent qualified teachers therefore enables more teachers to be better equipped to support disabled children through PLD. Qualified teachers are also eligible to undertake further specialist study, such as the Postgraduate Diploma in Specialist Teaching (Early Intervention), which focuses on equipping early childhood teachers with knowledge and skills to work with young children with disabilities and other learning support needs.</p> <p>The Ministry's SELO (Strengthening Early Learning Opportunities for children, whānau, families and communities) Programme 2 (SELO 2) delivers regionally allocated PLD to support early learning services to meet the national education and learning priorities (NELP), which includes supporting inclusive early learning environments. Qualified staff are more likely to engage in programmes like SELO 2, meaning that the regulation for 80 percent qualified teachers will likely support the number of teachers in early childhood education and care services who have had some form of training to support children with disabilities.</p> <p>The Teaching Council requires Initial Teacher Education (ITE) providers to prepare teachers to enter learning environments by ensuring that they are aware of inclusive practices. Regulating for 80 percent qualified teachers will ensure more adults working with disabled children are ITE trained and therefore are better prepared to support them.</p>
Māori	<p>Most Māori tamariki in licensed services are enrolled in teacher-led education and care centres (60% of enrolments). The 80 percent and person responsible proposals would lift minimum standards in these centres, which should benefit these children.</p> <p>Some Māori bilingual and immersion services³ may find it difficult to meet a new 80 percent qualified regulatory standard. Ministry funding data shows that these services have more difficulty qualifying for the 80-99% or 100% certificated teacher funding rates. From July 2020 – July 2021 (four funding periods), on average 22% of Māori bilingual and immersion education and care services received lower than the 80-99% funding band. In comparison, around 3-4% of all teacher-led centre-based services receive lower than the 80-99% certificated teacher</p>

³ A Māori bilingual service is where te reo Māori is used at least 51% of the time for teaching, whereas the threshold for a Māori immersion service is where te reo Māori is used at least 81% of the time.

Population group	How the proposal may affect this group
	<p>funding band each funding period. This suggests that regulating for 80 percent qualified teachers could affect the ability of these services to remain open, which would adversely affect Māori communities, particularly in relation to their aspirations for children's language, culture and identity.</p> <p>During public consultation Māori bilingual and immersion services signalled the need for additional support to address the specific challenges they face, including the possibility of alternative pathways for meeting the qualification requirements.</p> <p>This is supported by work that is currently underway to engage with Māori and Pacific services as part of reviewing qualification requirements and associated funding settings for these services. The approach is not intended to undermine the current ECE teaching qualification, but to acknowledge that Māori and Pacific language services require additional skills and competencies which are not recognised in the current regulatory and funding systems.</p> <p>Ka Hikitia sets out how the Ministry will work with education services to achieve system shifts in education and support Māori learners and their whānau, hapū and iwi to achieve excellent and equitable outcomes and provides an organising framework for the actions we will take. Te Tuakiritanga, one of the five outcome domains of the strategy, recognises that identity, language, and culture matter for Māori learners and was a particularly key consideration in the policy set out above.</p>
Pacific	<p>Most Pacific children in licensed services are enrolled in teacher-led early childhood education and care centres (69% of enrolments). The 80 percent and person responsible proposals would lift minimum standards in these centres, which should benefit children attending these services.</p> <p>Pacific bilingual and immersion services may find it difficult to meet a new 80 percent qualified regulatory standard. In November 2020, 13 Pacific bilingual and immersion services (17% of these services) did not qualify for 80-99% certificated teacher funding rates. This suggests that regulating for 80 percent qualified teachers could adversely affect Pacific communities, particularly in relation to their aspirations for children's language, culture and identity.</p> <p>A smaller proportion of Pacific children are in home-based services (16% of enrolments), with 9% of persons</p>

Population group	How the proposal may affect this group
	<p>responsible identifying as Pacific. Pacific home-based ECE services tend to be highly concentrated – with 89% of enrolled Pacific children and 93% of Pacific staff in the person responsible role located in the wider Auckland region. Restricting the person responsible to a particular area and/or licence could affect Pacific services, depending on how the proposals are implemented.</p> <p>The Teaching Council is also undertaking work to support pathways for Pacific bilingual and immersion education.</p> <p>As with Māori immersion services, the Ministry is engaging with Pacific language services and reviewing qualification requirements and associated funding settings for these services.</p>

Human rights

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

Te Tiriti o Waitangi Implications

76. Three options were consulted on for the proposal to regulate for 80 percent qualified teachers in teacher-led early childhood education and care centres. Respondents could participate through online survey or written submission. A separate information session was also held with puna reo, including Ngā Puna Reo o Aotearoa, where further issues and queries could be raised. Of the three options to regulate for 80 percent, option 3 (increasing to 80 percent by ensuring ECE qualified teachers are always present), received the most support and is being progressed through this paper. While this was the preferred option and would have long-term benefits that support a well-qualified, diverse, culturally competent and valued teacher workforce, it would likely have a significant impact on Māori immersion and bilingual services if they do not receive additional support.
77. The proposed requirement would apply to Māori immersion and bilingual education and care services, of which there are currently around 46. Some of these services have indicated that they may not be able to meet the new 80 percent requirements due to difficulties recruiting and retaining qualified and certificated teachers who are also fluent in te reo Māori. This could lead to the closure of these services due to non-compliance, which has implications from the perspective of equity and tino rangatiratanga principles, and the active protection of te reo Māori.
78. The Crown has a duty under Te Tiriti o Waitangi to actively protect and promote te reo Māori and tikanga Māori. Overall, the Ministry considers that these services are at greater risk of not meeting the new regulation than English medium services. There are also likely to be funding implications for these

services who are less likely to meet the 80-99 percent certificated teacher funding band.

79. To fulfil the Crown's duty of active protection, it is essential to develop education settings that take positive steps to ensure that Māori interests are protected. I have asked the Ministry to provide me with further advice on reviewing qualification settings for Māori immersion and bilingual education and care services, including recognition of cultural roles, and how funding settings might need to be adjusted to account for other roles or qualifications in these services. I am seeking authorisation for the Associate Ministers of Education (Māori and Pacific) and I to make further decisions after receiving this advice, for the purpose of drafting regulations, on provisions necessary to support the ongoing provision of quality early learning services for Māori, including Māori immersion and bilingual services.

Consultation

80. The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Social Development, Ministry of Health, Ministry of Justice, Office for Disability Issues, Whaikaha Ministry of Disabled People, Oranga Tamariki, Teaching Council of Aotearoa New Zealand, Education Review Office and the New Zealand Qualifications Authority have been consulted.

Communication

81. I intend to publicly announce decisions on this work at the beginning of the public consultation period for the two separate components of this paper, planned for January to February 2023 and April 2023. This will include targeted consultation with stakeholders from the ECE sector.

Proactive Release

82. I intend to proactively release this Cabinet paper subject to redaction as appropriate under the Official Information Act 1982, once both streams of public consultation have begun.

Recommendations


The Minister of Education recommends that the Committee:

1. **note** that the proposals in this paper are part of Tranche 2 of the Government's Review of the Early Learning Regulatory System [SWC-20-MIN-0116 refers];
2. **note** that in September 2021, Cabinet agreed to publicly consult on key regulatory proposals for Tranche 2, including:
 - 2.1. regulating for 80 percent qualified teachers in teacher-led early childhood education and care centres; and
 - 2.2. strengthening the person responsible requirement in teacher-led early childhood education and care centres, and licensed hospital-based and licensed home-based early childhood education and care services [CBC-21-MIN-0087 refers];

3. **note** that feedback from consultation indicated clear support for the objectives of the proposals but that some services are concerned about current workforce and funding constraints, particularly Māori immersion and bilingual services (including Ngā Puna Reo o Aotearoa), Pacific medium services, and isolated services;

Regulating for 80 percent qualified teachers

9(2)(f)(iv)



10. **authorise** the Minister of Education and Associate Ministers of Education (Māori and Pacific) to make further policy decisions if necessary, without reference to Cabinet, for the purpose of drafting regulations, subject to these decision being consistent with the policy intent of this paper to ensure children, parents and whānau can continue to access a diverse range of quality early learning services, including Māori and Pacific language services, and services in isolated and low socio-economic communities,

Strengthening the Person Responsible Requirement

11. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services to hold a Full (Category One or Two) practising certificate;
12. **agree** to delay the commencement of the requirement in recommendation 9 for 6 months after the commencement of other regulatory changes for person responsible agreed in this paper;
13. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in teacher-led early childhood education and care centres to:
- 13.1. supervise children in attendance and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff;
 - 13.2. provide education and care to children in attendance and guidance to teaching staff;
 - 13.3. ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching; and
 - 13.4. ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend;
14. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in teacher-led early childhood education and care centres to hold an accredited first aid qualification and that they be included in the current 1:25 ratio for first aid qualification requirements;

15. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in licensed hospital-based education and care services to:
 - 15.1. supervise children and staff at the service and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults;
 - 15.2. ensure there is at least one adult present when children are in the activity room;
 - 15.3. provide education and care to children and guidance to teaching staff; and
 - 15.4. ensure all staff are implementing the gazetted curriculum framework and know how to use it;
16. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require that the person responsible in licensed home-based education and care services only work across up to two licences within each calendar month, and only one licence at any one time;
17. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to increase the maximum licence size for licensed home-based education and care services from 80 to 100 children;
18. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require that the person responsible for licensed home-based education and care services be locally-based;
19. **agree** that the Ministry of Education undertake further consultation on a definition of 'locally-based' for person responsible in licensed home-based education and care services, which is that they must:
 - 19.1. either reside, or have a permanent place of business from which they conduct their daily responsibilities, in the same local area as the educator(s) for which they are responsible;
 - 19.2. be in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the education and care, comfort, and health and safety of the children;
 - 19.3. be able to be contacted by the educator(s) for whom they are responsible, at all times those educators are providing education and care during the operating hours of the licensed early childhood service; and
 - 19.4. be able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency;
20. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require the person responsible in licensed home-based education and care services to take all reasonable steps to observe, support and provide guidance on the curriculum delivery in the home during their visits and to keep records of these activities;

21. **agree** to amend the Education (Early Childhood Services) Regulations 2008 to require the person responsible in licensed home-based education and care services to provide professional development to educators on a regular basis and to keep records of any such discussion;

Approval to draft and consult on changes to the Regulations

22. **invite** the Minister of Education to issue drafting instructions for legislation to give effect to the above proposals;
23. **agree** that the Parliamentary Counsel Office be invited to identify opportunities for simplifying and improving the clarity and accessibility of the relevant parts of the Education (Early Childhood Services) Regulations 2008 when drafting the amendments agreed as a result of this paper;
24. **authorise** the Minister of Education to make any minor and technical decisions that may arise during the drafting process without further reference to Cabinet, provided the decisions are consistent with the decisions in this paper;
25. **note** that the recommendations with drafting implications are subject to Parliamentary Counsel's discretion as to how best to express these in legislation;
26. **authorise** the Ministry of Education to undertake consultation on the draft regulations;

Approval to undertake consultation on additional Tranche 2 proposals

27. **agree** that the Ministry of Education undertake public consultation on proposals to amend the Education (Early Childhood Services) Regulations 2008 to expressly allow the Secretary for Education to add conditions to provisional licences;
28. **agree** that the Ministry of Education undertake public consultation on proposals to amend the Education (Early Childhood Services) Regulations 2008 to provide a definition of 'permanently ceased to operate' and a process for temporary service closures;
29. **authorise** the Minister of Education to release the following discussion documents for public consultation subject to any minor editorial, formatting and layout changes required:
- 29.1. Consultation document – Providing a definition of 'locally-based' for person responsible in licensed home-based education and care services (Appendix 1); and
- 29.2. Consultation document – Adding conditions to provisional licences, defining 'permanently ceased to operate', and providing for temporary closures (Appendix 2);
30. **invite** the Minister of Education to report to Cabinet by July 2023 with further proposals for regulatory change arising from results of public consultation outlined above.

Authorised for lodgement

Hon Chris Hipkins

Proactively Released

Appendix 1 [Providing a definition of 'locally-based' for person responsible in licensed home-based education and care services]

Publicly available at the following link:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fconversation-live-storage-assets3bucket-jsvm6zoesodc.s3.ap-southeast-2.amazonaws.com%2Fpublic%2FEarly-learning-regulatory-review%2FConsultation-discussion-document-Locally-based-for-persons-responsible-in-home-based-services.docx&wdOrigin=BROWSELINK>

Publicly available at the following link:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fconversation-live-storage-us-east-2.amazonaws.com%2Fpublic%2FEarly-learning-regulatory-review%2FConsultation-discussion-document-Additional-tranche-2-proposals.docx&wdOrigin=BROWSELINK>

Publicly available at the following link:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fconversation-live-storage-us-east-2.amazonaws.com%2Fpublic%2FEarly-learning-regulatory-review%2FConsultation-discussion-document-Additional-tranche-2-proposals.docx&wdOrigin=BROWSELINK>

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<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fconversation-live-storage-us-east-2.amazonaws.com%2Fpublic%2FEarly-learning-regulatory-review%2FConsultation-discussion-document-Additional-tranche-2-proposals.docx&wdOrigin=BROWSELINK>

Appendix 3: [Regulatory Impact Statement: Final proposals for 80 percent qualified teachers and person responsible regulations for early childhood education services]

Proactively Released

Appendix 4: [Interim Regulatory Impact Statement: Additional Tranche 2 issues – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures]

Proactively Released



Briefing Note: Early Learning Regulatory Review Cabinet paper for lodging and talking points

To:	Hon Chris Hipkins, Minister of Education		
Date:	25 November 2022	Priority:	High
Security Level:	In Confidence	METIS No:	1300499
Drafter:	9(2)(a) [REDACTED]	DDI:	9(2)(f)(iv) [REDACTED]
Key Contact:	Paul Scholey	DDI:	[REDACTED]
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper provides you with a Cabinet paper, with appendices, that sets out proposals for Tranche 2 of the Early Learning Regulatory Review updated to reflect agency feedback. The Cabinet paper must be lodged on 1 December 2022 for consideration by the Social Wellbeing Committee (SWC) on 7 December 2022.

This paper also provides talking points for SWC on 7 December 2022.

Proactive release

- a **agree** that this briefing is released after public consultation on all the proposals in this paper are underway, 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
Group Manager
Te Puna Kaupapahere

Hon Chris Hipkins
Minister of Education

25/11/2022

__/__/__

Consultation with other agencies

- 1 On 28 October 2022, we provided you with a draft Cabinet paper seeking agreement to issue drafting instructions to the Parliamentary Council Office and to publicly consult on the draft regulations for regulatory changes to the 80 percent qualified teacher requirements at teacher-led early childhood education and care services, and person responsible requirements in teacher-led early childhood education and care services services, licensed hospital-based services, and licensed home-based services.
- 2 This Cabinet paper also sought agreement to publicly consult on a definition of 'locally-based' for persons responsible in licensed home-based education and care services, and two further proposed amendments to the Regulations, including to:
 - a add conditions to provisional licences; and
 - b provide a definition of 'permanently cease to operate' for the purpose of cancellation of licences and to allow the Secretary for Education to grant temporary service closures [METIS 1298560 refers].
- 3 We consulted with other government agencies from 16 November 2022 to 23 November 2022. Most agencies were supportive of the proposed regulatory changes in that they seek to improve the quality of care for children in ECE services. However, some agencies did raise concerns about the current proposals, resulting in changes to the Cabinet paper.

Summary of the key agency feedback and how we have responded to it

Impacts of the proposals on the sector

- 4 Five agencies (Department of Prime Minister and Cabinet, Ministry for Pacific Peoples, Public Service Commission, Ministry for Women, and Te Puni Kōkiri) expressed concerns about the potential risk we have identified that the proposal to regulate for 80% qualified teachers might lead to the closure of Māori and Pacific language services, as well as services in isolated and low socio-economic communities.
- 5 We noted in the draft Cabinet paper that in lifting the quality of education and care for children by regulating for 80 percent qualified teachers, there would be additional costs for services who currently employ lower levels of qualified teachers. In addition, we also note in the Cabinet paper that you, and the Associate Ministers of Education (Māori and Pacific) will be receiving further advice from us about qualification requirements and associated funding settings to better support puna reo, including Ngā Puna Reo o Aotearoa, and Pacific language education and care services to meet the new requirements.
- 6 Given the agency feedback, we have included an additional recommendation that seeks Cabinet authorisation for you, and the Associate Ministers of Education (Māori and Pacific) to make further decisions, if necessary, after receiving our advice referred to above, for the purpose of drafting regulations without further reference to Cabinet, while maintaining the policy intent to regulate for 80 percent qualified teachers. This is to ensure that parents and whānau can continue to access these services, as well as services in isolated and low socio-economic communities. This may include, for example, creating a temporary exemption for some services, or extending timeframes for compliance.
- 7 This recommendation will help to ensure appropriate measures can be taken so that the 80 percent qualified teacher requirement will not unduly impact the provision of Māori and Pacific language services, and services in isolated and low socio-economic communities.

Financial implications of the proposals

- 8 There was also feedback that regulating for 80% qualified teachers might lead to increased costs for centres who are funding their staff so that they become qualified and certificated, as well as increased costs for the Crown if some services move to a higher funding band.
- 9 As a result of the above feedback, we have made our assessment of the financial implications more explicit, by noting that costs to the Crown are expected to be minimal given 95 percent of services already qualify for funding rates for levels of 80 percent qualified staff or more.

Feedback on technical issues

- 10 The Teaching Council commented on its role in registration and certification of teachers and provided wording on the current requirements and how the registration and certification process works. We have reflected this feedback in the Cabinet paper.

Next Steps

- 11 The timeline for seeking Cabinet approval is outlined below.

Date	Activity
28 November 2022	Final Cabinet paper provided to Minister's Office for lodging
1 December 2022	Paper lodged
7 December 2022	SWC
12 December 2022	Cabinet

- 12 If we do not meet the above timeframes, there is a risk that Cabinet decisions will be delayed until February 2023, which will delay final Cabinet approval of the regulations and the date from which they can come into effect.

Annexes

Annex 1: s9(2)(g)(i)

Annex 2: Final Cabinet paper: Proposals for Tranche 2 of the Early Learning Regulatory Review

Appendices in Cabinet paper on proposals for Tranche 2 of the early Learning Regulatory Review

- Appendix 1: Consultation on tranche two of the Early Learning Regulatory Review – Providing a definition of 'locally based' for person responsible in licensed home-based education and care services
- Appendix 2: Consultation on additional proposals for tranche two of the Early Learning Regulatory Review – Adding conditions to provisional licences, defining 'permanently ceased to operate' and providing for temporary closures
- Appendix 3: Regulatory Impact Statement: Final proposals for 80 percent qualified teachers and person responsible regulations for early childhood education services

Appendix 4: Interim Regulatory Impact Statement: Additional tranche 2 issues – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures

Proactively Released

Regulatory Impact Statement: Final proposals for 80 percent qualified teachers and person responsible regulations for early childhood education services

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Coversheet

Purpose of Document

Decision sought:	This RIS supports final Cabinet decisions on proposals for regulating for 80 percent qualified teachers in teacher-led early childhood education and care (ECE) centres and strengthening person responsible requirements for teacher-led ECE centres, and licensed hospital-based and licensed home-based early childhood education and care (ECE) services.
Advising agencies:	Ministry of Education
Proposing Ministers:	Hon Chris Hipkins, Minister of Education
Date finalised:	24 November 2022

Problem Definition

The proposals outlined in this Regulatory Impact Statement (RIS) seek to improve the quality of early learning services for children by:

- a. requiring 80 percent qualified teachers in teacher-led early childhood education and care (ECE) centres; and
- b. strengthening the person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based early childhood education and care (ECE) services.

Requiring 80 percent qualified teachers in teacher-led ECE centres

The Education (Early Childhood Services) Regulations 2008 (the Regulations) currently require that 50 percent of staff in teacher-led ECE centres and licensed hospital-based ECE services must hold a recognised teaching qualification. However, the Regulations do not require that 50 percent ECE qualified teachers be maintained at all times throughout the day when children attend, or that 50 percent of the teachers that are in contact with children at any point during the day are ECE qualified teachers.

To lift the quality of education and care outcomes for all children, Action 3.1 in *He taonga te tamaiti | Every child a taonga – The Early Learning Action Plan 2019 – 2029* (the ELAP) sets out the Government's commitment to regulate for 80 percent qualified teachers in teacher-led ECE centres in the medium term, before regulating for 100 percent qualified teachers in the long term. Action 3.1 is based on evidence of a strong relationship between teaching qualifications and improved education and wellbeing outcomes for children.

One of the key problems that the proposals in this RIS seek to address is how to achieve Action 3.1 of the ELAP to regulate for 80 percent qualified teachers in teacher-led ECE centres in the medium term.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

The 'person responsible' is expected to play a key role in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services, including being responsible for supervising children and staff (and other adults) and being directly involved in and responsible for children's day-to-day education and care, comfort, and health and safety. A range of problems have been identified with the current regulatory requirements

for person responsible across all three service types, including that they are not clear or fit for purpose to safeguard children's best interests.

For example, the Regulations do not clearly articulate the roles and responsibilities of the person responsible for teacher-led ECE centres and licensed hospital-based ECE services. Furthermore, any qualified and certificated teacher may be a person responsible, including recently graduated teachers and teachers returning to the profession with no recent experience. The Regulations are also unclear about who is responsible for children's health and safety, and whether persons responsible can count towards minimum adult:child ratio requirements.

The supervisory and support role of the person responsible in licensed home-based ECE services is particularly unclear. The Regulations are not explicit as to how the person responsible must provide supervision or support to educators and children when the person responsible is not ordinarily present in the home where care is provided. This means that, in practice, persons responsible may only provide very limited supervision or oversight, and no or minimal professional leadership to the educators in the service. These issues were identified in the Government's 2018 *Review of Home-based ECE*.

Executive Summary

These proposals are part of the Early Learning Regulatory Review

The Ministry is undertaking a three-stage review of the early learning regulatory system to ensure the system is clear and fit for purpose to support quality education and care outcomes for all children (the Review) [SWC-20-MIN-0116 refers]. The proposals in this RIS are part of Tranche 2 of the Review. They aim to achieve some key shifts in the regulatory system previously signalled in the *He taonga te tamaiti | Every child a taonga – The Early Learning Action Plan 2019 – 2029* (the ELAP) and the *Review of Home-based Early Childhood Education* [CBC-19-MIN-0002 refers], including:

1. regulating for 80 percent qualified teachers in teacher-led ECE centres; and
2. strengthening the person responsible requirement in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services.

The current regulatory standards need strengthening to ensure quality education and care outcomes for all children

Action 3.1 of the ELAP sets out the Government's intention to regulate for 80 percent qualified teachers in the medium term. The Regulations currently require teacher-led ECE centres and licensed hospital-based ECE services to employ or engage 50 percent qualified teachers. However, the Regulations do not require that 50 percent qualified ECE staff be maintained at all times throughout the day, or that 50 percent of the teachers that are in contact with children at any point during the day are ECE qualified teachers. This means the standard is set too low to ensure the desired level of quality education and care outcomes for children. Furthermore, inconsistencies between the requirements set out in the Regulations and the funding conditions as set out in the Early Childhood Education (ECE) Funding Handbook create uncertainty and confusion for parents and whānau and service providers.

The Regulations also require all licensed ECE centres and services to nominate qualified and certificated teacher(s) as 'person(s) responsible' for every 50 children in attendance. The person responsible plays an important role in ensuring quality of service provision. However, the Regulations provide insufficient detail or direction about the types of functions and responsibilities necessary to meet the person responsible requirements for

all three licensed service types meaning they are not fit for purpose to safeguard children's best interests.

Cabinet agreed to publicly consult on proposals to amend the Regulations in September 2021

In September 2021, Cabinet agreed to publicly consult on proposals to amend the Regulations to regulate for 80 percent qualified teachers and to strengthen person responsible requirements [CBC-21-MIN-0087 refers].

Public consultation was undertaken between September and October 2021. A total of 218 survey responses and 34 written submissions were received. A further 97 survey responses and seven written submissions were received on the survey for the home-based person responsible proposals. Focused consultation was undertaken with the licensed home-based sector, licensed hospital-based services, puna reo and Pacific medium services.

Consultation indicated clear support for the objectives of the proposals but raised concerns about workforce and funding constraints, and potential impacts on some key types of services

Overall, there was clear support for the objectives of the proposals. However, some service providers raised concerns about their ability to meet the 80 percent qualification requirements in the near future due to tight teacher supply and funding constraints relating to low funding rates or lack of funding.

The availability of suitably qualified teachers was a particular concern for puna reo and Pacific medium service providers who noted they have additional requirements for teachers and services, such as language and cultural competencies. Isolated service providers also said they face difficulties recruiting qualified staff. Feedback from the Early Learning Regulatory Review Advisory Group included the need for a clear timeline to regulate for 80 percent qualified teachers, along with changes the sector can manage. They noted that one sweeping change that happens quickly would potentially damage the sector, through loss of provision due to services reducing the number of enrolments or closures due non-compliance with the increased regulatory standards.

Submissions on the proposals to strengthen person proposals were largely supportive, with respondents noting they already implement some of proposals (e.g., requiring a first aid qualification). However, concerns were raised about the restrictiveness and practicality of some proposals, such as requiring persons responsible in licensed home-based ECE services to only work across one licence.

Feedback from consultation informed our assessment of the options against the policy objectives

The feedback provided through consultation was used alongside ECE funding data and data from the annual ECE census to assess the impact and costs and benefits of the proposals. The proposals were also assessed in terms of their ability to meet key policy objectives, including:

- a. **Quality provision** – changes to the Regulations are expected to result in improvements to the quality of ECE services provided to children, parents and whānau, and help ensure that all children receive quality education and care.
- b. **Affordability** – to maintain service affordability and participation in early learning, any additional costs to service providers, which may be passed on

to parents and whānau in the form of increased fees, must be justified and proportionate to the outcomes that will be achieved.

- c. **Strong and capable workforce** – changes to the Regulations should help support the development of a strong, sustainable, and capable teaching workforce, including through providing greater job security, improved role clarity, better working conditions, and strengthening the status of being a qualified ECE teacher.
- d. **Diverse provision** - any changes to the Regulations should ensure that parents and whānau can continue to access a choice of quality licensed ECE services that meet their needs and aspirations for their children. This is particularly important for services that cater to diverse communities and communities traditionally not well served by the education system, including Māori and Pacific bilingual and immersion services, services in lower-socioeconomic communities, and isolated services.
- e. **Effective monitoring and enforcement** – changes to the Regulations must be able to be monitored and enforced effectively, efficiently and in a timely manner including being clear and giving certainty to service providers, teachers, and parents and whānau.

Regulating for 80 percent will lift the quality of service provision for all children and impose additional costs on some service providers

Lifting the quality of education and care for all children by regulating for 80 percent qualified teachers and strengthening person responsible requirements will increase costs for services that are not already meeting these requirements (e.g., those that currently employ lower levels of qualified teachers or whose person responsible does not hold a category one or two practicing certificate). There is a risk that some of these costs will be passed on to parents and whānau in the form of increased fees. There is also a risk that some services may need to reduce the size of their licence or close if they cannot meet the new requirements.

The overall impact of the proposals on service providers is difficult to estimate due to a lack of appropriate data. However, funding data shows that over 95 percent of teacher-led ECE early centres and licensed hospital-based services already qualify for the higher 80 percent or more qualified teachers funding rates. This indicates that most services should be well placed to meet the new 80 percent qualification requirements. Key exceptions to this are likely to include 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, and services operating in low socio-economic areas.

However, caution is required when using funding data to understand potential impacts as the approach to measuring teaching qualification levels for funding eligibility (assessed over a period of four months with up to 80 discretionary hours currently) differs to the approach that is used to measure compliance with regulatory standards (assessed at any point in time). Wider analysis of the education workforce signals a tighter supply of suitably qualified, registered, and certificated teachers, and continued uncertainty about the impact of changed border settings and COVID-19. Tight teacher supply and funding constraints were also identified as barriers to the sector implementing the proposals during public consultation, with 43 percent indicating they thought their service could comply in the near future.

Nevertheless, the majority of proposals are expected to have a positive impact on the quality of services provided and lift education and care outcomes for all children that

attend, and their parents and whānau. A number of the proposals will also help to strengthen and build the capability of the teaching workforce, including strengthening demand for qualified teachers and enhancing the status of ECE teachers. The majority of proposals are also expected to support the effective monitoring and enforcement of the Regulations, by providing much greater certainty and clarity regarding regulatory standards and requirements.

Care will be needed to ensure the proposals are implemented in a way that minimises any negative impacts on the diversity of service provision and choice of services currently available to parents and whānau. 9(2)(f)(iv)

In addition, the Ministry is undertaking further work to review the qualification requirements and associated funding settings needed to better support puna reo, including Ngā Puna Reo o Aotearoa, and Pacific language education and care services to meet the new requirements.

There are 13 proposed amendments to the Regulations

After considering the results of consultation and regulatory impact analysis, 13 amendments to the Regulations are proposed. These are outlined below:

9(2)(f)(iv)

In addition, to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based ECE services, and licensed home-based ECE services, it is proposed to:

1. Require that a person responsible in teacher-led ECE centres and licensed hospital-based ECE services must hold a Category One or Two practising certificate
2. Require persons responsible in teacher-led ECE centres to:
 - a. supervise children in attendance, and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff


- b. provide education and care to children in attendance and guidance to teaching staff
 - c. ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching
 - d. ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend
- 3. Require persons responsible in teacher-led ECE centres to hold an accredited first aid qualification
- 4. Require person responsible in licensed hospital-based ECE services to:
 - a. supervise children and staff at the service and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults;
 - b. ensure there is at least one adult present when children are in the activity room;
 - c. provide education and care to children and guidance to teaching staff; and
 - d. ensure all staff are implementing the gazetted curriculum framework and know how to use it
- 5. Require the person responsible in licensed home-based ECE services to hold a Category One or Two practising certificate
- 6. Limit the home-based person responsible to work across up to two licences within each calendar month, and only on one licence at any time, and increase licence size from 80 to 100 children
- 7. Require the licensed home-based person responsible to provide professional development to educators on a regular basis and keep records of any such discussion
- 8. Require the licensed home-based person responsible to take all reasonable steps to observe, support and provide guidance on the curriculum delivery in the home during their visits and keep records of these activities
- 9. Require that person responsible in licensed home-based be 'locally based', and undertake further consultation with the sector on a definition for locally-based that sets out more clearly what it means in practice.

Implementation

Cabinet agreement will be sought to consult the sector on draft Regulations prior to their finalisation in mid-2023. This will also provide an opportunity to test the clarity and accessibility of the draft Regulations with stakeholders and ensure that service providers have plenty of warning of the proposed changes to prepare for their implementation.

The new regulations for both 80 percent qualified teachers and strengthening the person responsible requirement are expected to be gazetted around August/September 2023.

9(2)(f)(iv)



While the full impacts of the regulation on Māori immersion and bilingual services, Pacific medium services and rural and isolated services cannot be determined, there is a

significant risk that many of these services may not be able to meet the requirements without further support from Government. The Ministry is engaging with Māori immersion and bilingual services (including Ngā Puna Reo o Aotearoa), and Pacific medium services on meeting increased qualification requirements. The Ministry is looking at the implementation timeframe, whether other roles or qualifications should count towards the 80 percent standard, and how funding settings might need to be adjusted to account for other roles or qualifications. The Ministry intends to provide further advice on this to the Minister of Education in early 2023.

The majority of the changes to the person responsible requirements will come into effect immediately following the gazettal period, which is expected to be around August/September 2023. An additional six months will be provided for compliance with the requirement for person responsible to hold a Category One or Two practising certificate to ensure service providers have adequate time to comply.

The Ministry will monitor compliance through established processes

The Ministry will assess compliance with the new regulations in the same way it assesses compliance with the existing regulations. 9(2)(f)(iv)

9(2)(f)(iv)

Limitations and Constraints on Analysis

Imposed scope constraints

Requiring 80 percent qualified teachers in teacher-led ECE centres

1. Action 3.1 of the ELAP sets out the Government's intention to regulate for 80 percent qualified teachers in the medium term, before regulating for 100 percent in the long term. This was the main scope constraint for developing options, as it meant that consideration of other levels of qualified teachers (e.g., 70 percent or 90 percent) and non-regulatory options for achieving similar outcomes were not within the range of options considered. Action 3.1 also sets parameters around the timeframes by which 80 percent qualified teachers is expected to be implemented (i.e., mid-way through the ELAP, which is around 2024 - 2025).
2. The ELAP also notes that issues of consistency between the Regulations and the funding conditions as set out in the Early Childhood Education (ECE) Funding Handbook will be addressed as any changes are introduced. The key differences (underlined) are:
 - a. the Regulations require services to employ or engage at least 50 percent ECE qualified teachers (against minimum adult:child ratio requirements); and
 - b. the Funding Handbook encourages services to use 80 percent or more certificated ECE and/or primary teachers to cover minimum adult:child ratio requirements across a 4-month funding period.
3. Three options were identified and publicly consulted. Of these, option 2 was designed to achieve complete consistency between the Regulations and the funding conditions, although was not identified as the preferred option following feedback from public consultation and further analysis against the policy objectives. All three options sought to create greater consistency between the funding conditions and

Regulations by allowing both ECE and primary qualified teachers with a practising certificate to count as qualified teachers and being explicit that teachers must be qualified, registered, and certificated. 9(2)(f)(iv)

4. A further constraint on the analysis was the lack of ECE-specific workforce data. This made it difficult to accurately identify the potential impacts of the alternative options. For example, there is limited data on the number of qualified teachers currently employed and engaged within services, which makes it difficult to determine the ability of different services and different service types to meet an 80 percent qualified teacher requirement. To help mitigate the impact of the data constraints, service providers were directly asked about their expected ability to comply with the 80 percent requirement as part of public consultation.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

5. The relationship between the Regulations and the Health and Safety at Work Act 2015 (the HSW Act) was a constraint in the development of options for strengthening person responsible requirements. Under section 17 of the HSW Act, ECE service providers (i.e., licence holders) are considered to be the 'person conducting a business or undertaking' (PCBU). Under section 19 of the HSW Act, teachers and others employed at early learning services, including the person responsible, are considered to be workers.
6. Under section 36 of the HSW Act, the PCBU has the primary duty of care towards the health and safety of its workers and any other persons on its premises. Hence, service providers are ultimately responsible for children's health and safety. Under section 45 of the HSW Act, workers (i.e., teachers) only have some basic health and safety duties such as caring for their own safety and not adversely affecting the health and safety of others. However, under s 45(c), workers must also comply with any instruction that is given by the PCBU to allow the PCBU to comply with the HSW Act.
7. This means that, under the HSW Act, the person responsible (unless a PCBU or one of its directors) cannot be considered 'primarily responsible' for children's health and safety, as they are likely to be categorised as workers. However, Regulation 3 currently states that the person responsible is "*primarily responsible for, the day-to-day education and care, comfort, and health and safety of the children*".
8. The use of similar language in the Regulations to the HSW Act risks creating confusion and uncertainty regarding the responsibilities of the person responsible in ECE services when considered in the context of the HSW Act. The proposals have therefore sought to address this confusion and provide greater clarity and alignment between the HSW Act and the Regulations, where appropriate.

Evidence/assumptions underpinning the impact analysis

Requiring 80 percent qualified teachers in teacher-led ECE centres

9. There is strong evidence that structural factors, such as teacher qualifications, influence the quality of provision in early learning and, by extension, the quality of education and care outcomes for children, parents and whānau. There is also some

research that indicates that qualified teachers with ECE specific training are best suited to deliver the early learning curriculum¹.

10. While there is evidence of the benefits of employing qualified teachers, data indicating the sector's readiness to comply with a requirement to employ or engage 80 percent qualified teachers is less robust. Analysing funding rates is a useful indicator of services ability to comply, however there are limitations with using this data due to the flexibility around the funding rules and the fact that they are calculated using different variables and measure different outputs (for instance the funding rules allow for discretionary hours, which is currently 80 hours). A high percentage of services are funded for the higher 80%+ funding rates, 9(2)(f)(iv)

As such, the Ministry must make some assumptions (informed by feedback from public consultation and sector advisory groups) and remain conservative when considering the readiness of the sector for the implementation of new regulations.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

11. A 'person responsible' is currently required to hold a teaching qualification recognised by the Teaching Council of Aotearoa New Zealand² (the Teaching Council). As noted above, there is evidence that structural factors, such as teaching qualifications, 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 is not fully known.

Overall impact of these constraints

12. The overall impact of the above constraints is not expected to substantially impact on the integrity of the analysis outlined in this RIS.

Responsible Manager(s) (completed by relevant manager)

Paul Scholey
Senior Policy Manager
Early Childhood Education
Ministry of Education

P. Scholey

[24/11/2022]

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

¹Bertram, Tony, and Chris Pascal. 2016., Kelley, Pamela, and Gregory Camilli. 2007., *Proposal for key principles of a Quality Framework for Early Childhood Education and Care*, 2014., Sylva, Kathy, et al. 2004.

²As set out in [Regulation 3](#) of the Education (Early Childhood Services) Regulations 2008, for a person responsible at a licensed centre that is teacher led, a primary or early childhood teaching qualification recognised by the Teaching Council of Aotearoa New Zealand for registration purposes. For a person responsible at a licensed hospital-based education and care service, and at a licensed home-based education and care service, an early childhood teaching qualification recognised by the Teaching Council of Aotearoa New Zealand for registration purposes.

Panel Assessment & Comment:

The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statement: Final proposals for 80 percent qualified teachers and person responsible regulations for early childhood education services. The panel considers that it meets the Quality Assurance criteria. A convincing case is made for the preferred options, including where the status quo is proposed. Evidence of the degree of stakeholder support for each of these options and views on the benefits and risks. The Statement identifies the services and sectors where the proposed changes are more likely to be felt and more challenging, particular where workforce constraints are a potential barrier.

A separate discussion document, *Consultation on tranche two of the Early Learning Regulatory Review: Providing a definition of 'locally based' for person responsible in licensed home-based education and care services* has been developed to consult stakeholders on additional options identified through the earlier consultation process. This discussion document will support effective consultation and subsequent impact assessment.

Section 1: Diagnosing the policy problem

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

Requiring 80 percent qualified teachers in teacher-led ECE centres

Current regulations require 50 percent qualified teachers

13. The qualification requirements for teacher-led ECE centres and licensed hospital-based ECE services are set out in Regulation 44(4). Under the current regulations, these services must employ or engage 50 percent ECE qualified teachers³. This is measured against minimum adult:child ratio requirements and the service's licence maximum for service providers on a full or provisional licence, or the number of enrolments for service providers on a probationary licence. One student teacher studying towards an ECE teaching qualification may also count as qualified if they are in their final year of study.
14. However, the current Regulations do not require that 50 percent ECE qualified teachers be maintained at all times throughout the day that children are in attendance. They also do not require that 50 percent of the teachers that are in contact with children at any point during the day are ECE qualified teachers.

ECE funding incentivises 80-99 percent and 100 percent qualified teachers and is calculated using an average over a four-month period

15. 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 as well as a current practising certificate from the Teaching Council.
16. Services are eligible for higher funding rates if they use 80-99 percent or 100 percent certificated teachers to cover minimum adult:child ratio requirements on average over a

³ Education (Early Childhood Services) Regulations 2008, reg 44(3) – Qualifications, ratios, and service-size standard: general; These teachers are not required to hold a current practising certificate.

four-month funding period. This is calculated based on total staff required to cover minimum adult:child ratio requirements. In practice, this means services can fluctuate above and below 80 percent at various points during a four-month period and still qualify for higher funding rates. Services also have access to a certain number of discretionary hours⁴ during the funding period during which they are not required to comply with the qualification requirements.

17. Almost all services (i.e., over 95 percent) qualify for 80-99 percent or 100 percent certificated teacher funding rates. However, services that do not reach this threshold are more likely to be licensed 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, and services operating in low socio-economic areas.

The Government has committed to regulating for 80 percent qualified teachers in the medium-term

18. Action 3.1 of the ELAP sets out the Government's commitment to regulate for 80 percent qualified teachers in teacher-led ECE centres in the medium-term (i.e., by around 2024 - 2025, before regulating for 100 percent in the long term. This commitment is based on evidence that teaching qualifications provide teachers with the professional competencies and skills needed to deliver positive education and wellbeing outcomes for children.
19. For example, international research⁵ finds that certificated ECE and primary qualified teachers are better placed to facilitate children's learning by encouraging independent thinking and problem solving compared to unqualified and uncertificated teachers. In this research, teaching qualifications are frequently cited as a key structural factor influencing the quality of individual adult-child interactions. These high-quality early learning experiences have a positive impact on later life outcomes for children's future education, health and employment.
20. The ELAP also notes that issues of consistency between the regulatory requirements and the funding conditions set out in the ECE Funding Handbook will be addressed as any changes are introduced. The inconsistencies create confusion and uncertainty for service providers, parents and whānau. As noted above, key differences are:
 - a. the Regulations require services to employ or engage at least 50 percent ECE qualified teachers (against minimum adult:child ratio requirements); and
 - b. the Funding Handbook encourages services to use 80 percent or more certificated ECE and/or primary teachers to cover minimum adult:child ratio requirements across a 4-month funding period.

The current regulatory standards are considered too low to ensure the desired level of quality education and care outcomes for all children

21. Currently, the minimum regulatory standards do not ensure the desired level of quality education and care outcomes for children that would be achieved with the implementation of the 80 percent qualified teachers regulation. While current funding conditions incentivise the use of higher proportions of qualified staff, these are

⁴ A discretionary hour is an hour that a service can claim an Other Teacher as a Certificated Teacher for the purposes of the Staff Hour Count.

⁵ Bertram, Tony, and Chris Pascal. 2016., Peisner-Feinberg, Ellen S., and Margaret R. Burchinal. 1997., Schreyer, Inge and Pamela Oberhuemer. 2017., *Act on Early Childhood Education and Care 2018* (Finland).

measured as an average over a four-month period and do not provide certainty that qualified teaching staff are in contact with children at all times that children are attending the service. A consistent and sustained lift in minimum standards for all children will not be achieved without amending regulation.

22. Funding data suggests that children attending licensed hospital-based ECE 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, and services operating in low socio-economic areas are currently likely to be a greater risk of not obtaining the benefit of higher levels of qualified staff.
23. Furthermore, inconsistencies between the Regulations and the funding conditions are expected to continue under the status quo. These inconsistencies create uncertainty and confusion for service providers, parents and whānau as to who counts as being qualified. They also risk creating confusion and potentially misleading parents and whānau about the quality of education and care their children are receiving at different times when they are attending a service.

Cabinet agreed to public consultation on options to regulate for 80 percent qualified in September 2021

24. In 2019, the Ministry identified a range of options to regulate for 80 percent and 100 percent qualified ECE or primary school teachers. An [interim RIS](#) was prepared in which six options were analysed. In September 2021, Cabinet agreed to publicly consult on three options [CBC-21-MIN-0087 refers]. The Ministry undertook consultation between September and October 2021. The results of that consultation have informed the contents of this RIS.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

Current person responsible requirements in teacher-led ECE centres and licensed hospital-based ECE services

25. The Regulations currently require that persons responsible in teacher-led ECE centres be directly involved in, and primarily responsible for, the day-to-day education and care, comfort, and health and safety of the children. Persons responsible in licensed hospital-based ECE services have primary responsibility for the education of children in the service, ensuring supervision of children in the activity room, and supporting children's health, safety and care.⁶ In both service types, the person responsible is required to supervise children and adults providing education and care.⁷ There must be one person responsible for every 50 children when children attend the service.⁸
26. The person responsible in teacher-led ECE centres can hold an ECE or primary teaching qualification, while in licensed hospital-based ECE services they must hold an ECE teaching qualification. Persons responsible must also be certificated with the Teaching Council. Currently, the person responsible requirement is the only safeguard ensuring that a qualified and certificated teacher is present when children attend a licensed ECE service.

Current person responsible requirement in licensed home-based ECE services

⁶ Education (Early Childhood Services) Regulations 2008, [reg 3 – Interpretation](#).

⁷ Education (Early Childhood Services) Regulations 2008, [reg 44\(1\)\(d\) – Qualifications, ratios, and service-size standard: general](#).

⁸ Education (Early Childhood Services) Regulations 2008, [reg 3 – Interpretation](#) and [reg 44\(1\)\(d\)\(ii\)](#) – there must be at least one person responsible for every 50 children in attendance.

27. Licenced home-based ECE is delivered in private homes by educators working with one to four children at any time. In licenced home-based ECE services, a qualified, registered, and certificated ECE teacher, called the 'co-ordinator' or 'person responsible,' visits homes to support the educators and oversee the education and care of the children. This is different to other parts of the early learning sector as the educators, instead of teachers, have a greater day-to-day role in children's education and care.
28. The Regulations currently state that, in licensed home-based ECE services, the co-ordinator or 'person responsible' has primary responsibility for overseeing the education and care, comfort and health and safety of the children attending the service. They also have primary responsibility for providing professional leadership and support to educators within the service.⁹

A review of home-based ECE was undertaken in 2018

29. A review of home-based early learning was undertaken in 2018. Following the review, Cabinet agreed to a range of recommendations aimed at improving the quality of licensed home-based ECE services [CAB-19-MIN-0016 refers]. This included a package of measures focused on strengthening the role of the co-ordinator or 'person responsible'. The proposals outlined in this RIS seek to build on this earlier work.

There is a lack of clarity around the responsibilities of persons responsible in all service types

30. The person responsible requirement has been in place in some form since the Child Care Centre Regulations 1960. Since 1990, the person responsible regulations have largely remained the same. More recently, the passing of the HSW Act has resulted in a lack of clarity about what is expected of the person responsible versus the service provider (i.e., licence holder) (discussed above). As well as creating confusion and uncertainty, there is a concern that the lack of clarity between these two different pieces of legislation could compromise the level of supervision oversight and care of children in ECE services.

Cabinet agreed to publicly consult on proposals to strengthen the person responsible role in September 2021

31. Cabinet agreed to publicly consult on proposals to strengthen the person responsible role [CBC-21-MIN-0087 refers]. Two separate public consultations were held in September and October 2021. One consultation covered four proposals to strengthen the person responsible role in teacher-led ECE centres and hospital-based services and was held alongside the options for regulating for 80 percent qualified teachers. The second consultation concerned five proposals to strengthen the person responsible role in licensed home-based ECE services.
32. Public consultation on strengthening the person responsible role in licensed home-based ECE services concerned the proposals that the Ministry developed and tested with the Home-based Sector Reform Advisory Group following the 2018 Review of Home-Based ECE.

What is the policy problem or opportunity?

Requiring 80 percent qualified teachers in teacher-led ECE centres

Nature, scope and scale of the problem

⁹ Education (Early Childhood Services) Regulations 2008, [reg 3 – Interpretation](#).

The regulatory standards do not ensure the desired quality education and care outcomes for all children - inconsistencies between the Regulations and funding conditions create confusion

33. As noted above, Regulation 44(4) requires teacher-led ECE centres and licensed hospital-based ECE services to engage 50 percent ECE qualified teachers. However, the current settings do not require that 50 percent qualified ECE staff be maintained at all times throughout the day, or that 50 percent of the teachers that are in contact with children at any point during the day are ECE qualified teachers. The Regulations also do not require qualified teachers to also be certificated.
34. Currently, the only assurance that a qualified, registered, and certificated teacher is present when children are present is the person responsible requirement, which requires every licensed early learning service to have at least one person responsible for every 50 children when children are in attendance. Therefore, the current regulations are potentially misleading about the actual level of education and care that is provided by qualified ECE teachers at any point in time in licensed ECE services.
35. There are also inconsistencies between the Regulations and the funding conditions which cause further confusion for service providers, parents and whānau. For example, the funding conditions allow both ECE and primary teachers to count towards qualification requirements, but the Regulations state that only ECE teachers can count. In addition, the funding conditions state that qualified teachers must also be certificated, but the Regulations do not require certification.
36. The current regulations provide services with a high degree of flexibility and discretion in meeting the current qualification requirements, but do not necessarily have positive outcomes for the education and care of all children. International research, mentioned above, outlines a clear link between teachers having higher levels of educational attainment (for example, a bachelor's degree) with more positive outcomes in early childhood classrooms. Thus, the current regulatory settings are likely to negatively impact outcomes for children, as they allow more unqualified teachers to provide education and care more of the time children are in attendance.
37. Action 3.1 of the ELAP aims to address this problem by regulating for 80 percent qualified teachers in teacher-led ECE centres in the medium term before regulating for 100 percent in the long term. Implementing Action 3.1 also provides an opportunity to harmonise the regulatory and funding settings related to teaching qualifications.

The scale of the problem is hard to estimate but is not thought to be large

38. Funding data indicates that the majority (over 95 percent) of licensed services qualify for 80-99% and 100%+ certificated teacher funding rates. Based on this data, it is likely that the majority of services are currently employing or engaging reasonably high levels of qualified teachers, well above current regulatory requirements. While this suggests the scale of the problem is relatively small overall, there is a greater risk for some services. Māori bilingual and immersion services, Pacific medium services and services located in rural or isolated areas are likely to struggle with meeting the regulation and may require further support.
39. However, compliance with funding conditions is calculated differently to compliance with the regulatory requirements. Funding compliance is calculated as an average over a four-month period and services are able to use a certain number of discretionary hours. This means that funding data does not mean that over 95% of licensed services employ or engage over 80 percent qualified teachers at all times.

40. The Ministry does not have accurate data on the actual number of services that currently employ or engage over 80 percent qualified teachers at all times. However, the 2021 census data suggests that the number of services that are not currently achieving this is approximately 25-33 percent of licensed teacher-led services.

Key stakeholders and the nature of their interest

Key stakeholders	Nature of their interests
Children, parents and whānau	<p>Quality of education and care services:</p> <ul style="list-style-type: none"> influenced by the proportion of qualified teachers used in a service better teaching practices and quality teacher-child interactions are often associated with teaching qualifications.
Service providers	<p>Some services may face ongoing sustainability impacts that mean they will either need to reduce their licence size or face risk of closure.</p> <ul style="list-style-type: none"> funding data indicates 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 percent standard under current labour market and funding conditions.
Teaching workforce	<p>Non-qualified teachers:</p> <ul style="list-style-type: none"> some services may need to replace non-qualified staff with ECE and/or primary qualified and certificated teachers <p>Qualified teachers:</p> <ul style="list-style-type: none"> those that are only qualified would need to become and remain certificated the importance of their qualification will be more explicitly recognised demand for qualified teachers will increase.
Ministry of Education	<p>Needs to be able to assess compliance with the standards set in the Regulations effectively and efficiently, including having the ability to identify and respond to non-compliance in a timely and appropriate manner.</p>

Distribution of impacts

Some types of services are likely to be more affected by regulating for 80 percent qualified teachers in centres than others

41. We know from funding data that some types of services are less likely to qualify for higher funding rates than others based on the levels of qualified staff they currently employ and engage. These services include licensed hospital-based ECE 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, and services operating in low socio-economic areas. Based on this information, and the results of public consultation, it can be assumed that these types of services are currently more likely to be affected by having lower proportions of qualified teachers than other types of services. They may also find it more difficult to attract and retain higher levels of suitable, qualified teachers.

The impact on some population groups is likely to be greater

42. Children that attend services that have lower proportions of qualified teachers may be more likely to experience poorer education and care outcomes. For example, better teaching practices, teacher:child language interactions, and the ability to create a supportive learning environment for children may be associated with higher

qualification levels. This has a flow on impact on children's learning and wellbeing. Teachers may also be less experienced with how to effectively react to a health and safety issue or engage with parents and whānau.

43. Based on funding data and feedback from public consultation, these children are more likely to include those that attend licensed 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, and services operating in low socio-economic areas.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

Nature, scope and scale of the problem

Person responsible requirements are not clear or fit for purpose

44. A range of problems have been identified with the current person responsible requirements across all service types (teacher led ECE centres, and licensed hospital-based and licensed home-based ECE services), including that they are not clear or fit for purpose to safeguard children's best interests.
45. These problems were highlighted by the Regulations Review Committee when they reviewed the Regulations following a change that allowed primary qualified teachers to be persons responsible from January 2020. The Committee considered the Regulations to be unclear, noting it was difficult to understand:
- how many staff are required to be on site at an ECE at any one time
 - what qualifications those staff are required to have; and
 - whether it is possible for an ECE centre to be open without any ECE trained staff.
46. The Committee also pointed out the lack of clarity that a person responsible counts towards the regulated ratio requirements.

The Regulations do not clearly articulate the person responsible roles and responsibilities for teacher-led ECE centres

47. The Regulations do not clearly articulate the person responsible roles and responsibilities. It is unclear what is meant by being "directly involved in and primarily responsible for, the day-to-day education and care, comfort, and health and safety" of children in the service. For example, despite the expectation that a person responsible will act to ensure children's health and safety, there is no explicit requirement in the Regulations for the person responsible to hold a current first aid qualification.
48. The Early Childhood Council (the ECC) has previously lobbied to replace the person responsible requirement with a shared responsibility amongst qualified teachers. Their main argument is that most staff working in teacher-led ECE centres are qualified and certificated and would already consider themselves responsible for children's education and care and health and safety. These arguments suggest a lack of clarity within the sector about the difference between the role of person responsible and the role of other qualified teachers at an ECE service (noting that the person responsible is meant to supervise both children as well as the adults, including other qualified teachers, providing education and care).

There is also lack of clarity regarding the person responsible role in licensed hospital-based ECE services

49. In licensed hospital-based ECE 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 attending children and adults providing education and care. The person responsible in licensed hospital-based services must hold an ECE teaching qualification and a practising certificate.
50. As with licensed teacher-led ECE centres, there is a lack of clarity in the Regulations for licensed hospital-based ECE services about:
- what it means for the person responsible to be primarily responsible for children's education; and
 - whether a person responsible counts towards the regulated ratio requirements.
51. The supervision requirements set out in the Regulations for persons responsible are also inconsistent. For example, under Regulation 3, the person responsible must ensure supervision of children in the activity room. This enables the person responsible to either supervise children in the activity room or delegate supervision to another adult at the service. However, Regulation 44(1)(d) requires the person responsible to supervise children and adults providing education and care. This implies that the person responsible must supervise children and staff in all spaces, including the activity room, whenever children attend.

The role of home-based persons responsible in the Regulations is not sufficiently clear or explicit

52. Licensed home-based ECE services fulfil a unique role in the ECE sector. Unlike centre-based ECE services, it is often delivered by educators with no formal qualifications working with one to four children in their own or the children's home. A registered and certificated ECE teacher, the person responsible or coordinator, visits the homes to support these educators and oversee the education and care of the children.
53. In licensed home-based ECE, the person responsible is primarily responsible for overseeing and supporting the provision of quality education and care. However, how they are meant to do this is not clear in the Regulations, and there can be confusion as to the requirements that apply across all services and/or only to licensed home-based ECE services.
54. The lack of clarity is partly due to the nature of the role, since in licensed 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 actually provide. The Regulations are also 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 requirements¹⁰.
55. The result is that the expectations for the role are often open to interpretation, leading to inconsistent practice. For example, 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

¹⁰ The person responsible for a licensed home-based education and care service must— (a) contact each educator engaged in the service at least once per fortnight; and (b) visit each educator engaged in the service at least once per month; and (c) take all reasonable steps each month to observe each child participating in the service while that child is receiving education and care.

consistent supervision to the same educators and children, affecting the development of meaningful relationships.

56. 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, the Regulations do not elaborate how or when they should do this. As a result, the person responsible may provide no or minimal professional leadership to educators day-to-day or in practice, affecting theirs and the children's development.
57. The Regulations currently do not require the person responsible to hold a Category One or Two Teaching Council practising certificate. This is problematic because it allows graduate teachers and those who have recently returned to the profession to hold the role and have responsibility for exercising the support function. The persons responsible role is suitable for experienced teachers. Therefore, teachers holding a Category One or Two practising certificate are more suitable for the role, as it 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.

The scale and impact of the problem are likely to be moderate

58. Limited data makes it difficult to estimate the scale and impact of the problems that have been identified with the current person responsible requirements. However, given the person responsible is intended to play a key role in ensuring children receive quality education and adults and teachers are supervised, and the problem relates to the person responsible role for all service types (i.e., teacher led ECE centres, and licensed hospital-based and licensed homebased ECE services), the scale and potential impact of the problem are considered to be significant. Furthermore, as noted above, concerns have been raised previously by the Regulations Review Committee.

Key stakeholders and the nature of their interest

Distribution of impacts

59. All teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services are required to have persons responsible and therefore all services are

Key stakeholders	Nature of their interests
Children, parents and whānau	Quality of education and care services: <ul style="list-style-type: none"> setting clearer expectations for persons responsible is likely to affect the quality of service provision, particularly in relation to the supervision of children and other teaching staff. Parents and whānau are likely to have greater confidence in the supervision and oversight of their children when they are attending ECE services if requirements are clear and robust
Service providers	Clear parameters about what is expected of the person responsible vis-à-vis the service provider, particularly in relation to the interface with the HSW Act.
Person responsible	May affect their day-to-day duties and responsibilities, the overall status of their role, with the size of the impact depending on how they are currently performing their duties.
Teaching staff	Teaching staff are affected by any changes as they are supervised by the person responsible and the person responsible can play a key role in determining their overall job satisfaction and professional development.
Ministry of Education	Same interests as for 80 percent qualified.

affected. However, the nature of the impact on home-based services is likely to be different to that for teacher-led ECE centres and licensed hospital-based services as the person responsible is not ordinarily present in the home where care is provided. As

such, they are likely to perform their oversight and supervisory responsibilities in different ways to persons responsible in teacher-led ECE centres and licensed hospital-based ECE services.

What objectives are sought in relation to the policy problem?

60. The proposals to address both policy problems seek to achieve the following objectives:
- a. **Quality provision** – changes to the Regulations are expected to result in improvements to the quality of ECE services provided to children, parents and whānau, and ensure that all children receive quality education and care
 - b. **Affordability** – in order to maintain service affordability and participation in early learning, any additional costs to service providers, which may be passed on to parents and whānau in the form of increased fees, must be justified and proportionate to the outcomes that will be achieved
 - c. **Strong and capable workforce** – changes to the Regulations should help to support the development of a strong, sustainable, and capable teaching workforce, including through providing greater job security, improved role clarity, better working conditions, and strengthening the status of being a qualified ECE teacher.
 - d. **Diverse provision** - any changes to the Regulations should ensure that parents and whānau can continue to have access to a choice of quality licensed ECE services that meet their needs and aspirations for their children. This is particularly important for services that cater to diverse communities and communities traditionally not well served by the education system, including Māori and Pacific bilingual and immersion services, services in lower-socioeconomic communities, and isolated services.
 - e. **Effective monitoring and enforcement** – changes to the Regulations must be able to be monitored and enforced effectively, efficiently and in a timely manner including being clear and giving certainty to service providers, teachers, and parents and whānau.

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

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

61. The options have been assessed against the status quo in terms of their ability to achieve the policy objectives, i.e.,
- a. **Quality provision** – To what extent is the proposal expected to result in improvements to the quality of ECE services provided, and education and care outcomes for children?
 - b. **Affordable services** – To what extent is the cost of the proposal expected to impact the affordability of service provision, including access and participation for parents and whānau?
 - c. **Strong and capable workforce** – To what extent does the proposal support the development of a strong, sustainable, and capable teaching workforce?

- d. **Diverse provision** – To what extent does the proposal impact the ability of parents and whānau to continue to have access to a choice of quality licensed ECE services that meet their diverse needs and aspirations for their children?
 - e. **Effective monitoring and enforcement** – To what extent can the proposals be monitored and enforced effectively, efficiently and in a timely manner by the Ministry, including being clear and giving certainty to service providers, teachers, and parents and whānau?
62. Consideration has also been given to the extent to which proposals help to improve alignment between the Regulations and the funding conditions. However, this was not used a policy objective or criterion as there may be justified reasons why from policy perspective it is appropriate for the Regulations and funding conditions to differ.

What scope will the options be considered within?

Requiring 80 percent qualified teachers in teacher-led ECE centres

63. As noted above, the scope within which the options have been developed was constrained by Action 3.1 of the ELAP, which sets out the Government's intention to regulate for 80 percent qualified teachers in teacher-led ECE centres in the medium term (i.e., by around 2025 – 2026). The ELAP also states that issues of consistency between the Regulations and funding conditions would be addressed as part of any changes. The need to have regard to this also impacted the scope within which options were considered.
64. Six options for regulating for 80 percent qualified teachers were outlined in the August 2021 *Interim RIS: 80% qualified teachers and person responsible*. These options were narrowed to three which were publicly consulted on, as set out in the below table:

Option	Included in Consultation?
1: Enhanced status quo – services must engage or employ 80 percent qualified teachers (measured against minimum adult:child ratio requirements)	No
1A: Retaining a high percentage of ECE qualified teachers – services must engage or employ 80 percent qualified teachers (measured against minimum adult:child ratio requirements) with 50 percent of these teachers needing to hold an ECE teaching qualification	Yes
2: Matching the Regulations with the funding rules – services must use 80 percent qualified teachers to cover minimum adult:child ratio requirements, on average, over a four-month funding period	Yes
3: 80 percent in ratio at all times – services must use 80 percent qualified teachers to cover minimum adult:child ratio requirements whenever children are present	No
4: Average over one month – services must use 80 percent qualified teachers to cover minimum adult:child ratio requirements, on average, over a one-month funding period	No

5: Ensuring ECE qualified teachers are always present – services must engage or employ 80 percent qualified teachers (measured against minimum adult:child ratio requirements). At all times children attend, 50 percent of teachers need to hold an ECE teaching qualification.	Yes
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65. Under each of the options, ECE and primary qualified teachers holding a practising certificate would count towards the 80 percent standard.
66. After assessing each of the options against the criteria in the interim RIS, it was considered that options 1, 3 and 4 should not be progressed further. The scope was therefore limited to the remaining 3 options (i.e., 1A, 2 and 5).

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

67. As noted above, the need to address uncertainty created by the interaction of the HSW Act and the Regulations impacted the scope within which options for strengthening person responsible requirements were considered.

What options are being considered?

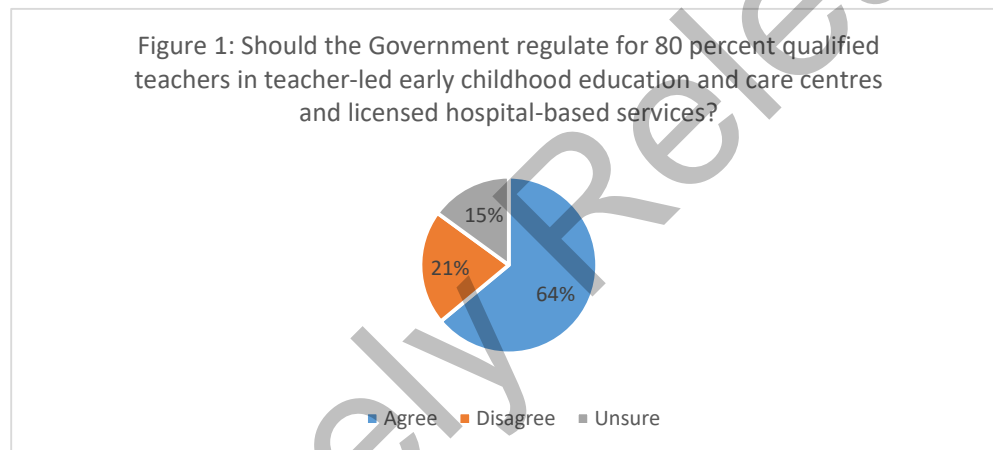
Requiring 80 percent qualified teachers in teacher-led ECE centres

68. Options were identified across four proposals for regulating for 80 percent qualified teachers in teacher-led ECE centres. These proposals were publicly consulted on in September and October 2021. A total of 218 survey responses and 34 written submissions were received. Most respondents were early learning service owners or managers (51%) and early learning teachers or educators (36%). The remainder included non-government organisations, parents and whānau and members of the public. Focused consultation was also undertaken with the licensed home-based sector, licensed hospital-based services, puna reo, and Pacific medium services.
69. Overall, there was clear support for the intent of the proposals. However, some services providers raised concerns about their ability to meet the 80 percent qualification requirements due to tight teacher supply and funding constraints. The availability of suitably qualified teachers was a particular concern for puna reo, and Pacific medium service providers who noted they have additional requirements for teachers and services, such as language and cultural competencies. Isolated service providers also said they face difficulties recruiting qualified staff.
70. Feedback from the Early Learning Regulatory Review Advisory Group included the need for a clear timeline to regulate for 80 percent qualified teachers and changes the sector can manage. They noted that one sweeping change that happens quickly would damage the sector, through loss of provision and service closures.

Proposal 1: Regulating for 80 percent teachers in licenced teacher-led ECE centres

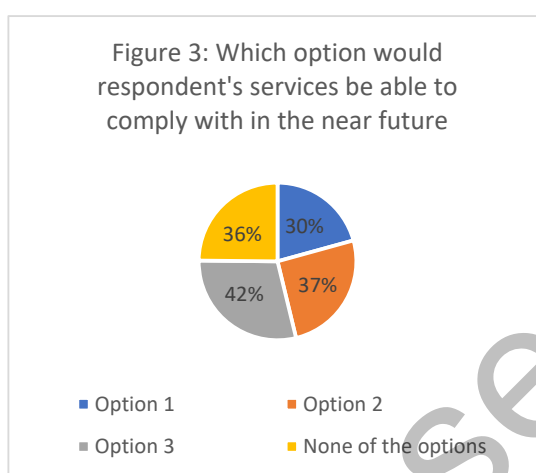
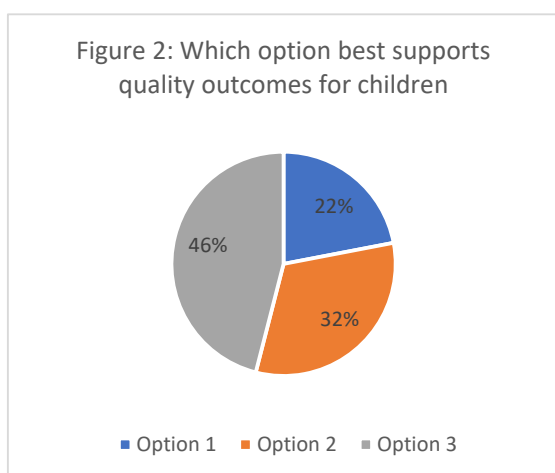
71. In addition to the status quo, the following three options were considered for requiring 80 percent teachers in teacher-led ECE centres:
- **Option 1: Retaining a high percentage of ECE qualified teachers.**
 - Require services to employ 80 percent ECE or primary qualified teachers with a practising certificate and imposes a sub-requirement where services must employ 50 percent ECE qualified and certificated teachers.
 - Measured against the service's licence maximum (full licence) or number of enrolments (probationary licence).

- **Option 2: Matching the Regulations to the funding rules.**
 - Require services to use 80 percent qualified and certificated teachers to cover minimum adult:child ratios across a four-month period.
 - Allows services to use discretionary hours for regulatory and funding purposes.
 - **Option 3: Ensuring ECE qualified teachers are always present.**
 - Regulates for 80 percent in the same manner as Option 1 but imposes a new 50 percent ECE qualified standard (measured at all times).
 - Measured against minimum adult:child ratio requirements for services with a full licence and number of enrolments for services with a probationary licence.
72. Feedback from consultation indicated that a majority of respondents agreed that the government should regulate for 80 percent qualified teachers across teacher-led early childhood education and care centres and licensed hospital-based services¹¹.



73. The main barrier identified by respondents was tight teacher supply, particularly of ECE qualified teachers. Respondents also indicated that low funding rates and low salaries are a barrier to services operating at 80 percent qualified teachers at all times.
74. Some respondents considered the cost of employing qualified staff a barrier stopping services from operating with 80 percent qualified teachers. Respondents also highlighted the impact of particular barriers - like the teacher shortage, pay, and funding - on Māori and Pacific services and supporting cultural competency.
75. Many attendees of the targeted consultation with puna reo and Pacific medium services voiced the need for different requirements for their teachers and services. This often centred around language skills being more important than qualifications in these services. Thus, many attendees felt that quality in a Pacific centre does not necessarily look the same as quality in an English medium centre.
76. We also asked which option they felt best supports quality outcomes for children, of those who selected an option, 46 percent favoured option 3.
77. Respondents considered their service would be able to comply with Option 3. Notably, 36 percent of respondents did not consider any of the options achievable or were unsure about which option they could comply with in the near future.

¹¹ Note: Respondents were able to select multiple options in the above questions, therefore percentages do not total 100%



78. Again, respondents cited tight teacher supply and low funding rates as the key barriers preventing services from consistently operating with 80 percent qualified teachers. Many respondents indicated that improving funding rates, with better remuneration for qualified teachers, would go some way towards addressing this issue, as it would help attract more prospective teachers to the profession.

Proposal 2: Levels of qualified staff in licensed hospital-based ECE services

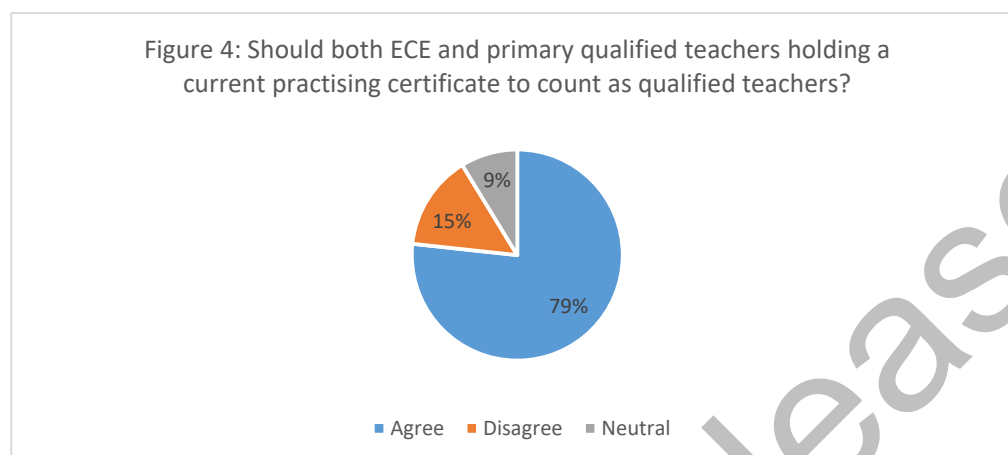
79. In addition to the status quo, the following options were considered for setting the level of qualified teachers required in licensed hospital-based ECE services:
- Option 1: align the requirements for licensed hospital-based ECE services with proposals for requiring 80 percent qualified teachers in teacher-led ECE centres.
80. During consultation, licensed hospital-based providers (and others) noted that it may be particularly difficult for hospital-based ECE services to meet the 80 percent requirement. A number of respondents felt that licensed hospital-based ECE services should be exempt from 80 percent because of the specialised nature of the services, the numbers of children that attend, and their notional role. In addition, there are many adults in a hospital, including parents, caring for the children that attend.

Proposal 3: Requiring teachers to be qualified and certificated in teacher-led ECE centres and licensed hospital-based ECE services

81. In addition to the status quo, the following options were considered for clarifying what it means to be qualified in teacher-led ECE centres and licensed hospital-based services:
- Option 1: Require that teachers must be both qualified and certificated¹² in teacher-led ECE centres and licensed hospital-based ECE services
82. Being certificated means that qualified teachers must also have a current practising certificate, which is renewed every three years. Teachers must continue to meet certain requirements, which includes completing satisfactory professional development and developing and practising te reo me ngā tikanga Māori. This proposal would also ensure consistency between the Regulations and the funding conditions.

¹²A certificated teacher holds a NZ ECE or primary teaching qualification and a current practising certificate, or an overseas qualification assessed by NZQA as comparable to a NZ ECE or primary teaching qualification and a current practising certificate, or a letter from the Teaching Council with a clear ECE or primary "endorsement" (where registration has been gained through the Council's discretionary pathway), and a current practising certificate.

83. Respondents were asked if both ECE and primary qualified teachers holding a current practising certificate should count as qualified teachers. Of those that responded, most agreed. However, many also supported counting primary qualified teachers holding a current practising certificate towards the 80 percent standard and felt this was particularly necessary because of shortages of qualified ECE teachers.



Proposal 4: Specifying who can count as qualified

84. In addition to the status quo, the following options were considered for specifying who may count as qualified for the purposes of complying with the 80 percent requirements:
- Option 1: Remove the ability for student teachers studying towards an ECE teaching qualification to count as qualified (consistent with funding conditions).
85. Many respondents, particularly those associated with education and care services, considered that student teachers in their final year of study towards an ECE qualification should be counted towards 80 percent qualified teachers. During our targeted consultation with puna reo and Pacific medium services, many attendees commented that counting student teachers in their final year of study could help to alleviate teacher supply issues. This was particularly heard from Pacific services, who felt that it could be a way to attract graduating teachers who will become qualified in the near future.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

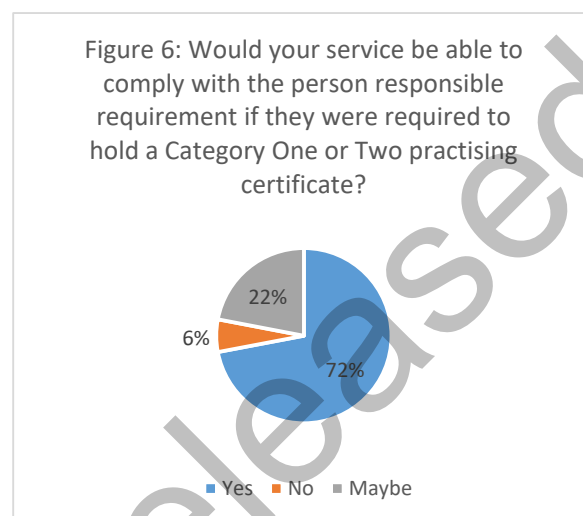
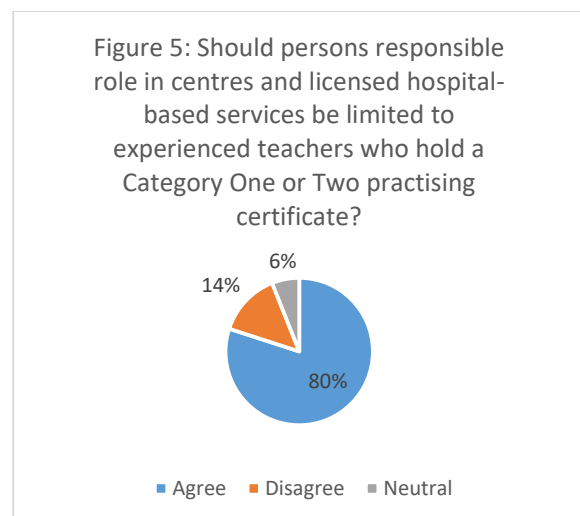
86. Options were identified across nine proposals to strengthen person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services. These proposals were consulted on alongside the options for regulating for 80 percent qualified teachers in September and October 2021. Consultation on proposals for person responsible in licensed home-based ECE services was undertaken separately. 97 survey responses and seven written submissions were received.

Person responsible in licensed teacher-led centre-based and hospital-based services

Proposal 1: Require the person responsible in teacher-led ECE centres and licensed hospital-based ECE services to hold a Category One or Two practising certificate

87. In addition to the status quo, the option to require persons responsible to hold a Category One or Two practising certificate in licensed teacher-led centres and hospital-based services was developed. 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.

88. Feedback from consultation indicated that most respondents agreed that the person responsible role should be limited to experienced teachers who hold a Category One or Two practising certificate. Some respondents thought that the person responsible should have experience working in ECE, and some thought it should be a requirement that they have ECE experience or training.



Person responsible in teacher-led ECE centres

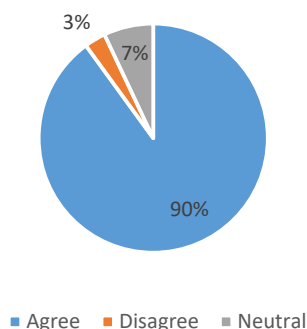
Proposal 2: Clarifying the person responsible functions, including the supervision requirement in teacher-led ECE centres

89. In addition to the status quo, the following option was identified for clarifying the person responsible functions in teacher-led ECE centres, including the supervision requirement:

- Option 1: Clarify that the person responsible would be expected to:
 - i. provide education and care to children in attendance and guidance to teaching staff
 - ii. ensure all staff are aware of gazetted curriculum framework and how to use it in their teaching
 - iii. ensure that health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend
 - iv. supervise children in attendance and staff providing education and care (even if located in separate spaces)

90. Feedback from consultation indicated that most respondents agreed that the person responsible functions and duties should be clarified. Many respondents were satisfied with the clarifications outlined in the proposal, although several respondents thought that the person responsible requirement as a whole requires further clarification. Several respondents were particularly concerned with the logistics of supervision in services that have children in separate rooms.

Figure 7: Should the person responsible functions and duties for centres be clarified?

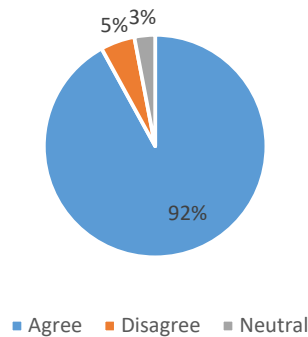


91. As a result of feedback, a further option was developed following consultation to provide more clarification and specify that the person responsible is required to be actively involved with children and staff. This is intended to make it clear that the person responsible cannot fulfil their duties when they are on a break or in another part of the centre, such as an office or kitchen.
- Enhanced Option 1A (following stakeholder feedback): Clarify that persons responsible are required to:
 - i. supervise children in attendance, and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff
 - ii. provide education and care to children in attendance and guidance to teaching staff
 - iii. ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching
 - iv. ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend

Proposal 3: Person responsible to hold a first aid qualification

92. In addition to the status quo, the following option was identified for the levels of first aid training that a person responsible should have:
- Option 1: Require that the person responsible in teacher-led ECE centres must hold a current first aid qualification gained from a New Zealand Qualifications Authority (NZQA) accredited first aid training provider. The person responsible would be included in the current 1:25 ratio for first aid qualification requirements
93. Feedback from consultation indicated that most respondents agreed that the person responsible should have a first aid qualification. Many respondents noted that their services already require the person responsible to have first aid qualifications. Several respondents queried whether a first aid qualification would be necessary in hospital-based services.

Figure 8: Should the person responsible in centres hold a first aid qualification?

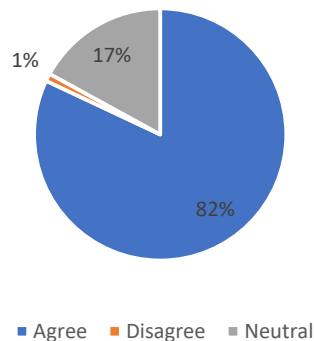


Person responsible in licensed hospital-based ECE services

Proposal 4: Clarifying what is meant by being responsible for children's education and the supervision requirement in licensed hospital-based ECE services

94. In addition to the status quo, the following option was identified for clarifying what is expected of a person responsible in relation to children's education and supervision:
- Option 1: Clarify that the person responsible would be expected to:
 - i. ensure all staff are aware of the gazetted curriculum framework and how to use it
 - ii. provide education and care to children and guidance to teaching staff
 - iii. ensure there is at least one adult present when children are in the activity room
 - iv. supervise children and staff at the service, and adults in the activity room (even when children and staff are located in separate spaces).
95. Most respondents agreed that the functions and duties for licensed hospital-based person responsible should be clarified as specified above. Some respondents thought that the person responsible role requires further clarification, particularly in relation to supervision and separate spaces.

Figure 9: Should the functions and duties of persons responsible for licensed hospital-based services be clarified?



96. As a result of feedback, a further option was developed to provide more clarification to the person responsible functions and duties in licensed hospital-based services, particularly with regards to be actively involved with children, teaching staff, and adults.

- Enhanced Option 1 (Option 1A): Clarify that persons responsible in hospital-based services are required to:
 - i. supervise children and staff at the service, and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults
 - ii. ensure there is at least one adult present when children are in the activity room
 - iii. provide education and care to children in attendance and guidance to teaching staff
 - iv. ensure all staff are implementing the gazetted curriculum framework and know how to use it.

Person responsible in licensed home-based ECE services

Proposal 5: Require the person responsible in licensed home-based ECE services to hold a Category One or Two practising certificate

97. In addition to the status quo, the following option was identified for the level of experience required for person responsible in licensed home-based ECE services:

- Option 1: Require the 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 would be expected to meet the Teaching Council's Standards | Ngā Paerewa.

98. Feedback from consultation indicated that most respondents agreed that the person responsible role should be restricted to experienced teachers with a full practising certificate. When asked if their service would be able to comply with this requirement, 66 percent of respondents said they would be able to.

Figure 10: Should the person responsible role in licensed home-based services be limited to experienced teachers who hold a Category One or Two practising certificate?

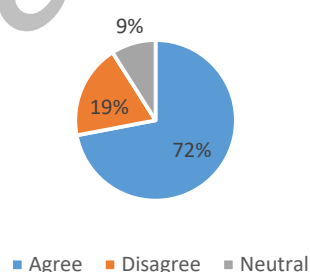
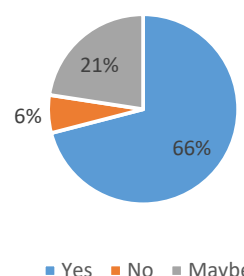


Figure 11: Would your service be able to comply with the person responsible requirement if they were required to hold a Category One or Two practising certificate?



99. Key concerns raised included tight teacher supply and difficulty employing fully certificated persons responsible, especially in isolated areas. Some respondents expressed concerns that this change may obstruct the pathway for educators to become the visiting teacher once they become qualified.

Proposal 6: Limiting the number of licences the person responsible can work across within each calendar month and increasing the licence size

100. In addition to the status quo, the following option was identified for setting the number of licences that the person responsible can work across within each calendar month:

- Option 1: Limit the person responsible to working on a single service licence within a calendar month and increase the maximum licence size from 80 to 100 children to provide some scope for services to expand (as restrictions on what licences the person responsible can work on may reduce their flexibility)

101. As part of public consultation, stakeholders were asked if they agreed that the home-based person responsible should work on a single licence over a defined period (i.e., one month) to ensure greater continuity between educators and persons responsible, and to minimise the unclear division of responsibility that can occur when the role is not licence specific. Just over half (56 percent) of respondents agreed, 19 percent were neutral, and 23 percent disagreed.

102. Key concerns included the lack of flexibility this would create for the home-based sector. Some services commented that they may allocate persons responsible based on language and other needs of the homes, which may be across a few licences. Another concern raised was that this restriction would make it difficult for services if the person responsible goes on leave.

103. Stakeholders were asked whether increasing the licence size from 80 to 100 children would address any of the drawbacks with restricting the home-based person responsible to a single licence (as it provides services with the scope to expand the number of children within the same person responsible requirements of 1:50). Just under half (44 percent) of respondents agreed that the increase would address the drawbacks.

Figure 12: Should the person responsible be limited to working on a single service licence within a calendar month

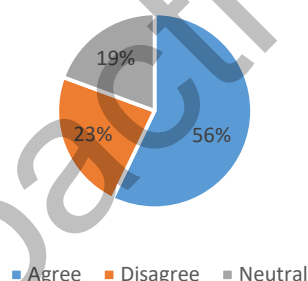
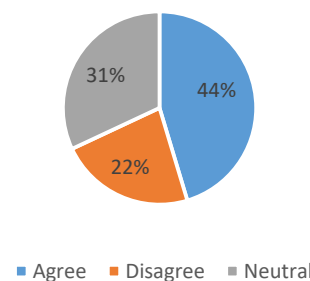


Figure 13: Should the maximum licence size be increased from 80 to 100 children to provide some scope for services to expand

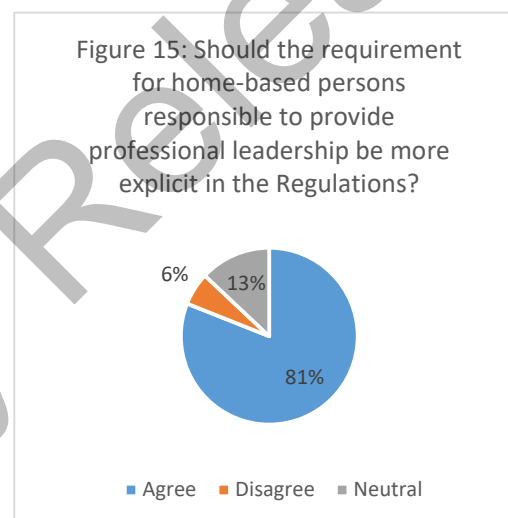
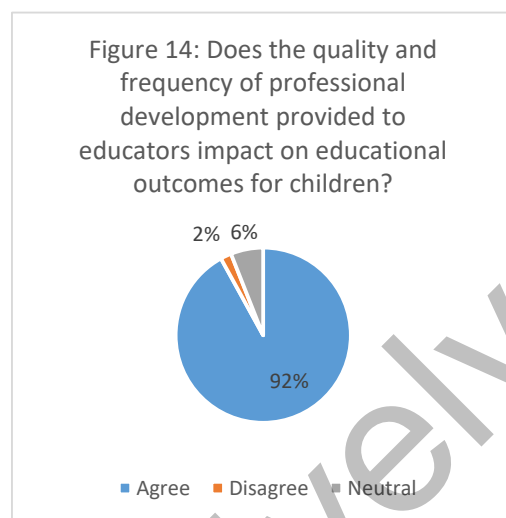


104. As a result of public consultation, a second option was later developed and has been analysed as part of this RIS:

- Option 2: allow the person responsible to work across two service licences within a calendar month, but only one licence at any one time, and increase the maximum licence size from 80 to 100 children.

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

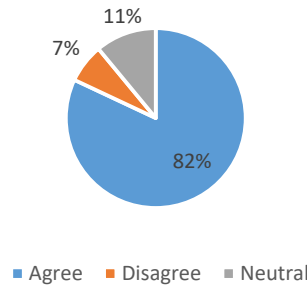
105. In addition to the status quo, the following option was identified for specifying the role persons responsible should have in supporting an educator's professional development:
- Option 1: Require the person responsible to support educators' professional learning and development in the course of working with them.
106. Consultation feedback indicated that most respondents agree that the quality and frequency of professional development provided to educators impacts on educational outcomes for children. Furthermore, 81 percent of respondents agreed that the requirement for the home-based person responsible to provide professional leadership should be more explicit in the Regulations. Many respondents commented that their services are already requiring this from the person responsible. Some suggested that the person responsible should be required to keep records of professional development discussions with educators.



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

107. In addition to the status quo, the following option was identified to strengthen the role of persons responsible in the professional development of educators:
- Option 1: Require the person responsible to guide and observe the educator's delivery of the curriculum when children are present.
108. Consultation feedback indicated that 82 percent of respondents agreed that the Regulations should articulate the expectation for the person responsible to guide and observe curriculum delivery during home visits. In addition, 86 percent of respondents agreed that the person responsible should be required to guide and observe the curriculum delivery in line with the curriculum framework.
109. Many respondents commented that their service already requires this and that it is important for educators to have support from the person responsible to gain understanding of the curriculum.

Figure 16: Should the Regulations articulate requiring the expectations for persons responsible to guide and observe curriculum delivery during home visits?



Proposal 9: Requiring the person responsible to be 'locally-based'

110. In addition to the status quo, the following options were identified for ensuring that the person responsible are within sufficiently close proximity to educators to support their existing oversight and supervisory functions:

- Option 1: Require that the person responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002
- Option 2: Require that the person responsible live within 'reasonable travel time' of the homes, which could be defined as within up to four hours or a shorter time period.

111. As part of public consultation, stakeholders were asked whether the licensed home-based person responsible should be locally based in relation to the homes in the service to better support their existing supervision and oversight functions.

112. Of the two options consulted on, respondents thought that the definition based on travel time was more appropriate than the definition based on a geographic requirement. However, many comments discussed the need to have different requirements to account for differences in rural and urban travel and that more flexibility should be afforded for different situations. There were also comments that travelling four hours is too long to be considered locally based. As a result of these comments and further analysis against the policy objectives, a further option was developed for defining what it means for person responsible to be locally based, outlined in Table 2 below.

Figure 17: Should persons responsible be locally based in relation to the homes in the service to better support their existing supervision and oversight functions?

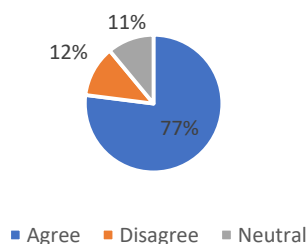
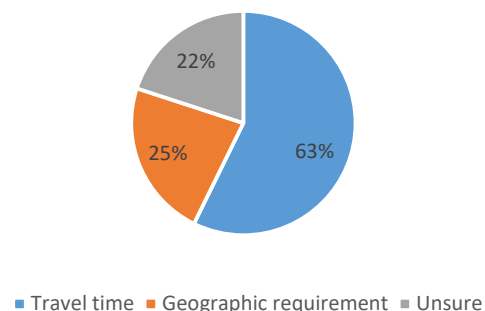


Figure 18: Should the definition of locally based be based on travel time or geographic requirement?



How do the options compare to the status quo/counterfactual?

Requiring 80 percent qualified teachers in teacher led ECE centres

113. Table 1 compares each option for the proposals to regulate for 80 percent qualified teachers in teacher-led ECE centres against the status quo using the policy objectives/criteria and stakeholder feedback. It identifies the preferred option as the one that best meets the policy objectives and is expected to deliver the highest net benefits.

Objectives/Criteria: <ul style="list-style-type: none">Quality provision – the extent to which the proposal is expected to result in improvements to the quality of ECE services provided, and education and care outcomes for childrenAffordable services – the extent to which costs of the proposal are expected to impact affordability of service provision, including access and participation for parents and whānauStrong and capable workforce – the extent to which the proposal supports the development of a strong, sustainable, and capable teaching workforceDiverse provision – the extent to which the proposal impacts the ability of parents and whānau to continue to have access to a choice of quality licensed ECE services that meet their diverse needs and aspirations for their childrenEffective monitoring and enforcement – the extent to which proposals can be monitored and enforced effectively, efficiently and in a timely manner by the Ministry, including being clear and providing to service providers, teachers, and parents and whānau.	Key for qualitative judgements: <ul style="list-style-type: none">+++ much better than the status quo++ better than the status quo+ somewhat better than the status quo0 about the same as the status quo- somewhat worse than the status quo-- worse than the status quo--- much worse than the status quo
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Table 1: Analysis of options for proposals to regulate for 80 percent qualified teachers in teacher led ECE centres

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Proposal 1: Regulating for 80 percent teachers in teacher-led ECE centres							
Status quo: Teacher-led ECE centres must employ or engage 50 percent ECE qualified teachers	0	0	0	0	0	0	Feedback from consultation indicates that only 21% of respondents disagreed with regulating for 80%, while 64% agreed and 15% were unsure.
Option 1: Retaining a high percentage of ECE qualified teachers – services must employ 80% ECE or primary qualified teachers with a practising certificate, with 50% ECE qualified and certificated teachers. This is measured against the service’s licence maximum (full licence) or number of enrolments (probationary licence).	<div>++ Guarantees each service engages or employs a high number of ECE qualified teachers, which should lift or maintain quality provision.</div>	<div>- While there will be an additional cost to some services, this option does not require services to use a high proportion of qualified teachers to be in contact with children at all times which should help manage overall cost. As with all options, it allows both ECE and primary qualified teachers to count which provides additional flexibility to meet new standards.</div>	<div>+ As this option requires services to employ 50% ECE qualified teachers, it adds weight within the sector to the importance of holding an ECE qualification. As with all options, unqualified teachers risk losing their job if they do not upskill.</div>	<div>- Participation and parental choice will still be facilitated. However, there is a risk that without additional support, Māori and Pacific bilingual and immersion services and some services operating in isolated and disadvantaged areas might not be able to comply and may therefore close.</div>	<div>0 The Ministry would assess compliance as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review.</div>	<div>+1</div>	<div>Option 1 is not preferred. While it would improve outcomes for children by ensuring that a greater number of ECE qualified teachers are employed or engaged, it does not require a certain proportion of qualified teachers to be in contact with children at all times.</div> <div>Feedback from consultation indicated that Option 1 was preferred by 18% of respondents, 22% felt it was the option that best supported quality outcomes for children, and 30% felt that their service could comply with it in the near future.</div>

Table 1: Analysis of options for proposals to regulate for 80 percent qualified teachers in teacher led ECE centres

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Option 2: Increase to 80 percent by matching the Regulations to the funding rules - 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.	+ Ensures each service uses a high proportion of primary and/or ECE qualified teachers to cover ratio requirements on average over a four-month period. Is likely to boost quality for some services that are not currently receiving 80-99% or 100% certificated teacher funding rates.	- While there will be an additional cost to some services, services will be able to manage these costs to some extent by being able to fluctuate above and below the 80% threshold at various points in time over a four-month period. As with all options, it allows both ECE and primary qualified teachers to count which provides additional flexibility to meet new standards.	- While this option ensures greater recognition of the value of a teaching qualification, it does not add weight to the importance of holding an ECE qualification. There is also a risk of greater job instability as providers may make greater use of casual and employment arrangements to staffing manage costs. As with all options, unqualified teachers risk losing their job if they do not upskill.	- Participation and parental choice will still be facilitated. However, there is a risk that without additional support, Māori and Pacific bilingual and immersion services and some services operating in isolated and disadvantaged areas might not be able to comply and may therefore close. This is demonstrated through current funding data, which shows that these services are at greater risk of obtaining funding for employing higher levels of qualified teacher.	- - 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 enforcement and remediation, which does not support quality outcomes for children. Additionally, the use of discretionary hours dilutes the intention of regulating for 80% qualified teachers.	- 4	<p>Option 2 is not preferred. While many service providers are likely to be familiar with this approach, it would be difficult for the Ministry to monitor and enforce in an effective and timely manner. In addition, this option would not ensure the best outcomes for children as services could regularly fall below 80 percent qualified teachers and there is no way to ensure that qualified teachers are in contact with children at all times they are in attendance.</p> <p>Feedback from public consultation indicated that Option 2 was preferred by 30% of respondents, 32% felt it was the option that best supported quality outcomes for children, and 37% felt that their service could comply with it in the near future.</p>
Option 3: Increase to 80 percent by ensuring ECE qualified teachers are always present - services must use 50% ECE qualified and certificated teachers to cover minimum adult:child ratio requirements whenever children are present. Services must also engage or employ 80% ECE or primary qualified teachers with a practising certificate, as measured against minimum adult:child ratio requirements	+++ Provides significant lift in quality because a high proportion of ECE qualified teachers would be engaged and always be in contact with children when children attend the service.	- - This option is likely to impose the greatest cost on services as it requires them to ensure a proportion of qualified teachers are always present when children are present (as well as increasing overall levels of qualified teachers). Without additional support, there is a risk that some services may not be able to achieve this standard and may need to either reduce their licence size or close. As with all options, it allows both ECE and primary qualified teachers to count which provides additional	++ This option recognises and lifts the status of the ECE qualification which is expected to have a positive impact on enrolment in the ECE qualification and therefore supply. As ECE teacher are required in be in contact with children at all times, this option also increases demand for ECE qualified staff. As with all options, unqualified teachers risk losing their job if they do not upskill.	- - As this option imposes the greatest cost on providers, it most impacts participation and parental choice. In particular, it 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 may not be able to comply and may either have to reduce their licence size or close.	++ This option would provide greater clarity and specificity to the requirements regarding levels of qualified teachers, which assist with monitoring and enforcement.	+3	<p>Option 3 is the preferred option. While it is expected to impose the highest cost on service providers and have the greatest impact on diversity of provision, the costs are expected to be outweighed by the benefits. In particular, option 3 has the best outcomes for quality provision, as it would guarantee that minimum presence of ECE qualified teachers is always in contact with children. It also strengthens and enhances the workforce and ensures the Ministry can assess and enforce compliance in a timely manner.</p> <p>However, feedback from public consultation indicated that Option 3 was preferred by only 46% of respondents: 46% felt it was the option that best supported quality outcomes for children: and 43% felt that their service could comply with it in the near future.</p> <p>9(2)(f)(iv)</p>

Table 1: Analysis of options for proposals to regulate for 80 percent qualified teachers in teacher led ECE centres

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
		flexibility to meet new standards.					<div>9(2)(f)(iv)</div> <div>In addition, the Ministry is undertaking further work to engage with Māori and Pacific services on alternative pathways and support for meeting the proposed 80 percent certificated teacher regulations. This will aid in the supporting the sustainability and diversity of services when implementing option 3.</div>
Proposal 2: Levels of qualified staff in licensed hospital-based ECE services							
Status quo: Licensed hospital-based ECE services must employ or engage 50 percent qualified teachers	0	0	0	0	0	0	The status quo is the preferred option. Feedback from consultation highlighted a range of practical difficulties in increasing the levels of qualified teachers at licensed hospital-based ECE services. Therefore, it is recommended that the current 50% qualified teachers' requirement for licensed hospital based ECE services be retained.
Option 1: Increase level of qualified staff to 80 percent, the same as for teacher-led ECE centres	+ This option may improve quality of provision. However, the potential gains are expected to be small as services operate with notional rolls, and	- - Based on feedback, it does not appear to be feasible for hospital-based services to adhere to an 80 percent requirement. These services have	- Many teaching staff in hospital-based services are qualified and over 60% of the staff work part time. These teachers would lose their roles if licensed hospital-	- - Based on feedback, there is a risk that this option would mean that licensed hospital-based services are no longer	0 The Ministry would assess compliance as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a	-4	Regulatory impact analysis and feedback from consultation indicate that the costs of option 1 are likely to significantly outweigh any benefits. Therefore, this is not the preferred option.

Table 1: Analysis of options for proposals to regulate for 80 percent qualified teachers in teacher led ECE centres

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
	already have many hospital staff, clinicians and parents working with children to ensure quality of provision and to meet the children's additional needs.	notional rolls with irregular patterns of attendance, and over 60 percent of staff work part time. This makes consistent compliance with the 80 percent standard difficult.	based services could no longer operate under this option.	operationally viable and may close.	poor Education Review Office (ERO) review.		
Proposal 3: Requiring that teachers be qualified and certificated in teacher-led ECE centres and licensed hospital-based ECE services							
Status quo: Teachers must be qualified	0	0	0	0	0	0	
Option 1: Require that teachers must be both qualified and certificated in teacher-led ECE centres and licensed hospital-based ECE services.	++ To be certificated, teachers must meet standards set by the Teaching Council, including ongoing professional development. This requirement will lift overall levels of capability in the teaching workforce, which will have a positive impact on the quality of provision for children, parents and whānau.	- Services who support teachers to become certificated and maintain ongoing certification may face additional costs (e.g., training and professional development), although these are not expected to impact on significantly on overall affordability. Some service providers may pass the 3 yearly cost of certification on to teachers.	++ This requirement will lift the overall capability of the workforce by ensuring teachers keep up to date with professional learning and development and other requirements necessary for certification. This should help lift the status and professionalism of ECE teachers and encourage more people to enter the profession. Teachers that do not already maintain ongoing certification are likely to face additional costs every 3 yearly to comply with this requirement.	- Funding data and feedback from consultation indicates the Māori and Pacific bilingual and immersion services and services operating in isolated and disadvantaged areas face particular challenges recruiting suitably qualified (including certificated) teachers. The additional costs associated with certification may also have a disproportionate impact on these services. If these services are unable meet the requirements, then there is risk that they may close, reducing the diversity of provision.	+ The proposed qualification requirements are clearer than current requirements and therefore easier to monitor and enforce. Greater consistency with funding conditions would help services to understand and comply with the requirements.	+3	Option 1 is the preferred option. While there is risk of additional costs for service providers and teachers, and a risk to the diversity of provision, these costs and risks are expected to be outweighed by benefits associated with the lift in quality provision and a strong and more capable workforce. During consultation, 79 percent of respondents agreed that both ECE and primary qualified teachers holding a current practising certificate should count as qualified teachers; 15 percent disagreed, and 9 percent were neutral.
Proposal 4: Specifying that teachers in their final year of study may not count as qualified							
Status quo: Teachers in their final year of study can count as qualified	0	0	0	0	0	0	

Table 1: Analysis of options for proposals to regulate for 80 percent qualified teachers in teacher led ECE centres

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Option 1: Specify that teachers in their final year of study cannot be counted as qualified	<div><div></div><div>Ensures that teachers that count as qualified are fully qualified which should lead to better outcomes for children.</div></div>	<div><div></div><div>May lead to a small increase in cost for some services who need to employ one additional fully qualified teacher in order to meet the requirements</div></div>	<div><div></div><div>Reinforces the importance and value of being fully qualified but may discourage services from employing partially qualified teachers and make it harder for training teachers to fund their studies.</div></div>	<div><div></div><div>Māori and Pacific language services that have difficulty finding suitably qualified teachers may be more likely to employ teachers in their final year of study and therefore may be disproportionately impacted</div></div>	<div><div></div><div>Likely to make it easier for the Ministry to determine who can count as qualified for the purposes of complying with the Regulations. Also aligns with Funding Conditions</div></div>	<div><div></div><div>0</div></div>	Option 1 is the preferred option. While the net benefit of this option is not necessarily higher than the status quo, it ensures the Regulations align with the funding conditions, which is a commitment in the ELAP.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

114. Table 2 compares each option for proposals to strengthen person responsible requirements to the status quo using the policy objectives/criteria and stakeholder feedback. It identifies the preferred option as the one that best meets the policy objectives and is expected to deliver the highest net benefits.

Objectives/Criteria: <ul style="list-style-type: none">• Quality provision – the extent to which the proposal is expected to result in improvements to the quality of ECE services provided, and education and care outcomes for children• Affordable services – the extent to which costs of the proposal are expected to impact affordability of service provision, including access and participation for parents and whānau• Strong and capable workforce – the extent to which the proposal supports the development of a strong, sustainable, and capable teaching workforce• Diverse provision – the extent to which the proposal impacts the ability of parents and whānau to continue to have access to a choice of quality licensed ECE services that meet their diverse needs and aspirations for their children• Effective monitoring and enforcement – the extent to which proposals can be monitored and enforced effectively, efficiently and in a timely manner by the Ministry, including being clear and providing to service providers, teachers, and parents and whānau.	Key for qualitative judgements: <ul style="list-style-type: none">+++ much better than the status quo++ better than the status quo+ somewhat better than the status quo0 about the same as the status quo- somewhat worse than the status quo-- worse than the status quo--- much worse than the status quo
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Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Person responsible in licensed teacher-led centre-based and hospital-based services							
Proposal 1: Person responsible in teacher-led ECE centres and licensed hospital-based services to hold a Category One or Two practising certificate							
Status quo: Persons responsible must be qualified and certificated but does not need a minimum level of experience.	0	0	0	0	0	0	
Option 1: Require the person responsible to hold a Category One or Two practising certificate.	++ Teaching staff would be supervised by experienced teachers, which should lift pedagogy and improve educational and care outcomes for children.	- There may be additional costs for services that do not currently employ a person responsible with this level of experience. Teaching Council data indicates that around 99% of current ECE trained teachers hold a Category One or Two practising certificate, which suggests most services should be able to comply. However, this proposal may be impacted by concerns about tight teacher supply, and, some services, particularly Māori and Pacific immersion	++ Teaching staff would be supervised by experienced teachers, which should lift pedagogy and professional development. The importance and status of the role of person responsible would be enhanced.	- 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, which could impact on access, diversity and choice for some important population groups.	++ This proposal is clear and should be easy to understand, monitor and enforce.	+4	Option 1 is the preferred option. It provides certainty that teaching staff will be supervised by experienced teachers, which should lead to improved outcomes for children and strengthen the workforce. Additional support may be required for Māori and Pacific immersion services, isolated services, and services in low socio-economic areas. 80 percent of respondents to public consultation supported this option and 72 percent said that their service would be able to comply (22 percent said they might be able to comply, and 6 percent said they could not comply). To manage the impact on services and protect diversity of provision, it is recommended that commencement of this requirement be delayed by six months relative to the other changes. This will provide services with more time to comply and ease pressure on services impacted by tight teacher supply.

¹ The figure on the percentage of teachers who hold a full practising certificate is incorrect. We are looking into more up-to-date data and we are working through the implications of this.

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
		services and those located rurally, may find it difficult to employ fully certificated teachers in the person responsible role.					
Person responsible in teacher led ECE centres							
Proposal 2: Clarifying the person responsible functions, including the supervision requirement in teacher led ECE centres							
Status quo: Persons responsible must supervise children and staff and are directly involved in, and responsible for children's day-to-day education and care, comfort, health and safety.	0	0	0	0	0	0	
Option 1: Clarify persons responsible functions and duties as outlined in paragraph 87 above. 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 persons responsible have clear obligations when a service is open due their supervisory role.	++ Enhances overall level of quality provision by providing greater clarity about what is expected of persons responsible. Also helps ensure greater consistency in the quality of education and care they uphold.	0 Not expected to impact the affordability of service provision.	+ Provides greater role clarity for person responsible. Is expected to support a lift in overall levels of capability in workforce through improved professional leadership of teachers within services by person responsible.	0 Not expected to impact the diversity of service provision.	++ Clear and easy to follow, monitor and enforce. It is an improvement on the current person responsible requirement where the roles and responsibilities are vague and hard to follow.	+5	Option 1 has strong net benefits, including lifting quality provision, strengthening the workforce, and enabling effective monitoring and enforcement. 90 percent of respondents to consultation agreed with the need to clarify the person responsible role in centres and the clarifications proposed, and 3 percent disagreed. However, a number commented that further clarification would help, hence we have developed option 1A below.

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Enhanced Option 1A (following stakeholder feedback): Clarify persons responsible functions and duties, including requirement to supervise children in separate spaces and be actively involved (as outlined in paragraph 89 above)	+++ Same as for Option 1, with added benefits of requiring persons responsible to be ' <u>actively involved</u> ' which makes it clear their role cannot be performed when they are on a break or doing tasks in other parts of the centre (e.g., in the office or the kitchen). The requirement to ensure all staff ' <u>implement the gazetted curriculum</u> ' is expected to further lift educational outcomes for children.	0 Same as for option 1.	++ Same as for option 1, with the added benefit of additional role clarity in relation to how the person responsible role is to be performed, particularly in relation to the curriculum.	0 Same as for option 1	+++ Same as for option 1, with the added benefit of further clarity as to how to determine whether the person responsible is fulfilling the required duties and functions.	+8	Option 1A is the preferred option. It extends the net benefits of option 1 by addressing areas identified during public consultation as requiring more certainty (i.e., ensuring the person responsible is 'actively involved' with children and staff, and strengthening requirements to implement the curriculum).
Proposal 3: Person responsible to hold a first aid qualification							
Status quo: Persons responsible are not required to hold a first aid qualification	0	0	0	0	0	0	
Option 1: The person responsible must hold a first aid qualification	++ This new requirement should help ensure persons responsible have the skills and knowledge to help children immediately following an incident and better support children's health and safety.	- Likely to impose additional costs on some service providers as not all persons responsible currently have a first aid qualification. However, these costs are not expected to be large as many services noted they already implement this requirement during consultation.	+ While this option imposes additional qualification requirements on person responsible, it ensures persons responsible will have the skills and training needed to fulfil their role and strengthen overall capability.	0 While some services may find it more difficult to meet the additional costs associated with this proposal than others (e.g., those in lower socio-economic communities), it is not expected to substantially impact on the diversity of service provision.	+ This proposal is clear and should be easy to follow, monitor and enforce.	+3	Option 1 is the preferred option. It ensures the person responsible can respond to children's health and safety needs, should they arise, and is not expected to impose additional costs on the majority of service providers. 92 percent of respondents to public consultation agreed with this option, while 5 percent disagreed, and 3 percent were neutral. Many respondents noted that their services already require the person responsible to have first aid qualifications.

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Person responsible in licensed hospital-based services							
Proposal 4: Clarifying what is meant by being responsible for children’s education and the supervision requirement in licensed hospital based ECE services							
Status quo: Current functions and responsibilities of person responsible in licensed hospital-based services are unclear.	0	0	0	0	0	0	
Option 1: Clarify what is meant by being responsible for children’s education and the supervision requirement (as outlined in paragraph 92 above)	++ Enhances the overall level of quality provision by providing greater clarity about what is expected of persons responsible, including the need for supervision while children are in the activity room.	0 This proposal is not expected impact the affordability of service provision.	+ Provides greater role clarity for person responsible. Is expected to support a lift in overall levels of capability in workforce through improved professional leadership of teachers within services by the person responsible.	0 This proposal is not expected to impact the diversity of service provision.	++ This proposal is clear and should be easy to follow, monitor and enforce. It is an improvement on the current person responsible requirement where the roles and responsibilities are vague and hard to follow.	+5	Option 1 has clear net benefits, including lifting quality provision, strengthening the workforce, and enabling effective monitoring and enforcement. 82 percent of respondents agreed that the functions and duties for licensed hospital-based person responsible should be clarified as specified in option 1, while 17 percent were neutral, and 1 percent disagreed. As with the proposals for clarifying person responsible in teacher led ECE centres, some respondents thought that the person responsible role requires further clarification, particularly in relation to supervision in separate spaces. Therefore, we consider it appropriate to align the supervision component of this proposal with our recommended action for clarifying the person responsible role in centres. This is set out in Option 1A below.
Enhanced Option 1A: Clarify what is meant by being responsible for children’s education and the supervision requirement, including being actively involved (as outlined in paragraph 94)	+++ Same as for Option 1, with added benefits of requiring persons responsible to be ‘actively involved’ which makes it clear their role cannot be performed whilst they are located elsewhere. The requirement to ensure all staff ‘implement the gazetted curriculum’ is expected to further lift educational outcomes for children.	0 Same as for option 1.	++ Same as for option 1, with the added benefit of additional role clarity in relation to how the person responsible role is to be performed, particularly in relation to the curriculum.	0 Same as for option 1	+++ Same as for option 1, with the added benefit of further clarity as to how to determine whether the person responsible is fulfilling the required duties and functions.	+8	Option 1A is the preferred option. It extends the net benefits of option 1 by addressing areas identified during public consultation as requiring more certainty (i.e., ensuring the person responsible is ‘actively involved’ with children and staff, and strengthening requirements to implement the curriculum).

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Person responsible in licensed home-based services							
Proposal 5: Require the person responsible in licensed home-based ECE services to hold a Category One or Two practising certificate							
Status quo: While persons responsible in home-based services must be qualified and certificated teachers, they do not need a minimum amount of experience.	0	0	0	0	0	0	
Option 1: Require the person responsible to hold a Category One or Two practising certificate.	++ Ensures persons responsible have at least two years of recent teaching experience and meet the Teaching Council's Standards Ngā Paerewa, which means educators would be supervised by experienced teachers, which should lift pedagogy and improve educational and care outcomes for children.	- There may be additional costs for services that do not currently employ a person responsible with this level of experience. During consultation, 66 percent of respondents said their centre would be able to comply, 21 percent said that they may be able to, and 6 percent responded that they would not be able to comply. Key concerns raised included tight teacher supply and difficulty employing fully certified persons responsible, especially in isolated areas.	+ Educators would be supervised by experienced teachers, which should lift pedagogy and professional development. The importance and status of the role of person responsible would be enhanced. However, during consultation, some respondents thought this change may obstruct the pathway for educators to become the visiting teacher once they become qualified.	- Feedback from consultation indicates that it may be difficult for some services to meet this requirement. This was particularly noted for services isolated services but may also impact Māori and Pacific bilingual and immersion services, and services in low socio-economic areas as these services typically have fewer qualified and certificated teachers available to them. Hence, it may be more difficult for them to meet this standard, which could impact on access, diversity and choice for some important population groups.	++ This proposal is clear and should be easy to understand, monitor and enforce.	+3	Option 1 is the preferred option. As with the equivalent proposal for teacher-led ECE centres and licensed hospital-based ECE services, it provides certainty that educators will be supervised by experienced teachers. This should lead to improved outcomes for children and strengthen the workforce. Overall, this proposal was well supported during public consultation, with 72 percent of respondents agreeing, and 19% disagreeing. However, additional support may be required for Māori and Pacific immersion services, isolated services, and services in low socio-economic areas. To manage the impact on services and help maintain diversity of provision, it is recommended that commencement of this requirement be delayed by six months relative to the other changes. This will provide services have more time to comply and ease pressure on services impacted by tight teacher supply and funding constraints.
Proposal 6: Limiting the number of licences the person responsible can work across within each calendar month to two and increasing the licence size from 80 to 100 children							
Status quo: Person responsible requirements are not licence-specific (i.e., specific to one licence and those educators and children on	0	0	0	0	0	0	

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
that licence) and person responsible may work across any number of licences.							
Option 1: Limit the home-based person responsible to work on a single licence within each calendar month, and increase licence size from 80 to 100 children	++ Enhances overall level of quality provision by restricting the person responsible from regularly working on multiple licences, including simultaneously, which will help ensure they build strong relationships with educators and children and perform their role effectively.	- - Feedback from consultation indicates that this proposal would impact negatively on service providers by being overly restrictive (e.g., restricting rostering, making it hard for person responsible to take leave). Service providers may have to employ additional person responsible to work around these restrictions. However, the increase in licence size will help ensure the time of a second person responsible can be utilised more efficiently.	- While this option will help build the capability of educators by ensuring they receive consistent oversight and professional development from a single person responsible, it also restricts the ability for persons responsible to make the best use of their skills and experience and may inhibit their ability to take leave or cover for other persons responsible (around 40% in the sector work part-time and may need to fill in for others who are absent).	- Feedback from the Home-based Sector Reform Advisory Group indicated that this option may interfere with services ability to roster persons responsible to educators and children based on their strengths, which may negatively impact the range of services provided (e.g., persons responsible may have specialist language or learning support skills)	++ The requirements are clear, and it will be easier for the Ministry to evidence that services are meeting the 1:50 person responsible to children ratio at all times.	0	Option 1 is not the preferred option. While it would ensure that persons responsible developed strong relationships with educators and children by only working on one licence, feedback provided through consultation indicated it is not practical for many services and may have unintended consequences (e.g., a person responsible would not be able to cover for a person responsible on another license; service providers may be restricted in matching skills of a person responsible with the needs of educators and children). Just over half (56 percent) of respondents to consultation agreed with this proposal, 19 percent were neutral, and 23 percent disagreed. Members of the Home-based Sector Reform Advisory Group supported this proposal but noted the potential negative impact on the ability to roster persons responsible based on their strengths.
Option 2 (developed following feedback from consultation): Limit the home-based person responsible to work across up to two licences within each calendar month, and only on one licence at any time, and increase licence size from 80 to 100 children	++ Enhances overall level of quality provision by restricting the number of licences a person responsible can work on at any one time, which will help ensure they build strong relationships with educators and children and perform their role effectively.	- This option will still restrict current practices around the rostering of person responsible across multiple licences but is less restrictive than option 1. As with option 1, the increase in licence size will help ensure the time of a second person responsible can be utilised more efficiently.	+ This option will help build the capability of educators by ensuring they receive consistent oversight and professional development from no more than two different persons responsible. It also ensures sufficient flexibility to ensure persons responsible can make best use of their skills sets and take leave when needed.	0 Provides flexibility to ensure persons responsible with particular skill sets can be rostered across two licences and therefore is not expected to impact the current levels of diversity of provision.	++ The requirements are clear, and it will be easier for the Ministry to evidence that services are meeting the 1:50 person responsible to children ratio at all times.	+4	Option 2 is the preferred option. Option two was developed to address concerns with option 1 identified during public consultation. Option two will lift quality provision and be sufficiently flexible for service providers to implement. It will also make it easier for the ministry to monitor compliance with the Regulations. Due to this amendment easing pressure on home-based services, we will not be consulting with the sector again on this proposal.
Proposal 7: Requiring the person responsible to support educators' professional development when contacting and visiting them							

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
Status quo: person responsible is required to provide “professional leadership and support” to educators in the service.	0	0	0	0	0	0	
Option 1: Require the home-based person responsible to provide professional development to educators on a regular basis and keep records of any such discussion	++ Ensures educators receive ongoing professional development which will lead to improvements in educational and care outcomes for children. 92 percent of respondents to public consultation agreed that the quality and frequency of professional development provided to educators impacts on educational outcomes for children, while only 2 percent disagreed.	- Expected to have minimal impact on affordability as many respondents noted during public consultation that their services already require this from the person responsible.	++ Ensuring a focus on professional development rather than leadership and support, and ensuring continuity and structure to professional development, is expected to substantially strengthen the capability of the workforce	- Some risk that any additional costs have a disproportionate impact on Māori and Pacific bilingual and immersion services, isolated services, and services in low socio-economic areas. However, the level of additional cost is not expected to impact the overall sustainability or diversity of service provision.	++ This proposal will ensure the requirements for the person responsible in relation to professional development are clear, and the requirement to keep records will make the requirements easier to monitor and enforce.	+4	Option 1 is preferred. This option supports the Ministry to be an effective 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 and lift the quality of provision that educators are providing to children and whānau. During consultation, 81 percent of respondents agreed that the requirement for the home-based person responsible to provide professional leadership should be more explicit (6% disagreed).
Proposal 8: Requiring the person responsible to guide and observe the curriculum delivery during home visits							
Status quo: There is no direction on the purpose of in-home visits or what it means to ‘take steps to observe the children receiving education and care each month’	0	0	0	0	0	0	
Option 1: Require the home-based person responsible to take all reasonable steps to observe, support and provide guidance on the curriculum delivery in the home during their visits and keep records of these activities	++ Emphasises the importance of curriculum delivery and provides greater role clarity for persons responsible in relation to their role in this, which would in turn ensure children are receiving quality education.	- May result in additional compliance costs by requiring persons responsible to spend more time with educators and keep records of visits. Any additional costs are not expected to be significant and will depend on current practice (e.g., many persons responsible	++ Provides greater role clarity for persons responsible and strengthens educator capability in curriculum delivery. Adds additional responsibilities to person responsible role.	- Risk that additional costs have a disproportionate impact on Māori and Pacific bilingual and immersion services, isolated services and services in low socio-economic areas. However, the level of additional cost is not expected to impact the	++ Clarifying the role of person responsible and requiring the keeping of records will help to ensure the Ministry can effectively monitor and enforce compliance with the regulatory standard.	+4	Option 1 is the preferred option. It 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. Feedback from consultation indicated that 82 percent of respondents agreed with this proposal, while 7 percent disagreed. Many respondents commented that their service already requires this and that it is important for educators to have support from the

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
		already keep records of visits).		sustainability or diversity of service provision.			person responsible to gain understanding of the curriculum.
Proposal 9: Requiring the person responsible to be 'locally-based'							
Status quo: Person responsible may be based anywhere and travel extensively to fulfil their minimum regulated duties	0	0	0	0	0	0	
Option 1: Require that the person responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002	+ Will help to ensure that persons responsible are within relatively close proximity to educators (i.e., so they don't travel by air), although it is noted that some territorial authority boundaries are large so the actual impact on practice and quality provision is unclear.	- This option may increase costs for service providers if the person(s) responsible are not already located within these areas although the incidence of this is not expected to be high.	0 This option is not expected to impact the workforce.	0 This option is not expected to impact diversity of provision.	+ This option makes it clear that persons responsible must be locally based. Compliance with the definition of locally based should be relatively easy to monitor and enforce as it is based on established geographical boundaries.	+1	Neither option 1 nor option 2 are preferred. 77% of respondents to public consultation agreed that licensed home-based person responsible should be locally based in relation to the homes in the service to better support their existing supervision and oversight functions (12 percent disagreed). However, only 25 percent thought the definition should be based on a geographic requirement (option 1) and 63 percent thought it should be based on travel time (option 2). However, many comments discussed the need to have different requirements to account for differences in rural and urban travel and that more flexibility for different situations. There were also comments that travelling four hours is too long to be considered locally based.
Option 2: Require that the person responsible live within 'reasonable travel time' of the homes, which could be defined as up to four hours.	+ Will help to ensure that persons responsible are within relatively close proximity to educators (i.e., so they don't travel by air), although it is noted that it may be quicker for a person responsible to travel by air to an educator's home than to travel four hours, so the actual impact on practice and quality provision is unclear.	- This option may increase costs for service providers if the person(s) responsible are not already located within these areas although the incidence of this is not expected to be high.	- This option may unintentionally negatively impact the role of person responsible if service providers consider it to mean that persons responsible can travel much further to undertake their functions and duties than the currently do (i.e., four hours is considered acceptable).	0 This option is not expected to impact diversity of provision.	- While this option makes it clear that persons responsible must be locally-based, there may be a lack of clarity for service providers as to what is considered acceptable in practice. Compliance with the definition of locally based may also be difficult to monitor as what is considered reasonable will need to be determined on a case-by-case basis.	-2	The Home-based Sector Reform Advisory Group generally supported the proposal, that persons responsible be locally based although it is noted that they already tend to rely on a locally based person responsible. After considering the results on public consultation and analysis against the policy objectives, it is proposed that the Regulations be amended to require the home-based person responsible be locally-based, but that further consultation be undertaken on a third option for the definition of 'locally-based', which is outlined below.

Table 2: Analysis of options for proposals to strengthen person responsible requirements in teacher-led ECE centres, licensed hospital-based and licensed home-based ECE services

Options	Objectives/Criteria						Analysis and preferred option
	Quality provision	Affordable services	Strong and capable workforce	Diverse provision	Effective monitoring and enforcement	Overall assessment	
<p>Option 3 (developed following public consultation): the person responsible must:</p> <ul style="list-style-type: none"> a. either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible b. are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children c. are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service, and d. are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency. 	<p>++ This option could have a significant impact on quality of provision by ensuring the person responsible is always within sufficiently close proximity to the educators and children for which they are responsible, to ensure quality service provision. It will also ensure the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children.</p>	<p>- - Depending on current practice, this option could impose additional costs on service providers by requiring them to change how they employ and use the person responsible. Services in isolated areas may find this particularly challenging if there is limited availability of teachers to fill the role of person responsible.</p>	<p>+ This option would give significantly more clarity to the role of person responsible in licensed home-based services and what it means to be locally-based. There may be a negative impact on current persons responsible who do not meet the requirements and must therefore relocate or risk losing their role.</p>	<p>- This proposal could impact the provision of services in isolated areas if they are unable to employ a person responsible that can be located sufficiently close to the educators and children for which they are responsible.</p>	<p>++ While there are aspects of this proposal that would need to be assessed by the Ministry on a case-by-case basis, this option provides much greater clarity and certainty about what it means for the person responsible to be locally based to enable effective monitoring and enforcement.</p>	<p>+2</p>	<p>Upon further analysis following the 2021 consultation, we do not consider that a definition of 'locally based' that relies solely on a 'reasonable travel time' (or geographic boundary) will achieve the policy objectives of this proposal. Option 3 aims to provide a definition of locally based that focuses more on clarifying the types of outcomes required of the person responsible role.</p> <p>As option 3 is significantly different to the options that we consulted on, we intend to undertake further consultation with the home-based sector on this option prior to making final recommendations to amend the Regulations.</p>

What are the marginal costs and benefits of the option?

Requiring 80 percent qualified teachers in teacher led ECE centres

115. Table 3 sets out the marginal costs and benefits for proposals to regulate for 80 percent qualified teachers in teacher-led ECE centres using the following preferred options:

- Increase to 80 percent by ensuring ECE qualified teachers are always present
- Requiring teachers to be qualified and certificated in licensed teacher-led and hospital-based services
- Specifying that student teachers in their final year of study can no longer count as qualified.

116. The broader impacts of the proposals, including how they achieve the policy objectives, are outlined in Table 1 above.

Table 3: Marginal costs and benefits of proposals to require 80 percent qualified teachers in teacher-led ECE centres			
Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred options compared to taking no action			
Teacher-led ECE centres service providers	Staffing costs Some services will face additional costs associated with employing more qualified staff, however the majority of services are not expected to be greatly affected. Funding data indicates that over 95% of services qualify for higher rates of funding. However, it also indicates that it may be more challenging for Māori and Pacific bilingual and immersion services, isolated services, and services in lower socio-economic communities to meet the new standards.	Low/Medium	Medium
	Staff professional learning and development Some services will face additional costs associated with staff training and development to ensure staff meet qualification and certification requirements, however the majority of services are not expected to be	Low/Medium	Medium

Table 3: Marginal costs and benefits of proposals to require 80 percent qualified teachers in teacher-led ECE centres

Affected groups	Comment	Impact	Evidence Certainty
	<p>greatly affected. Funding data indicates that over 95% of services qualify for higher rates of funding. However, it also indicates that it may be more challenging for Māori and Pacific bilingual and immersion services, isolated services, and services in lower socio-economic communities to meet the new standards. Consultation feedback has shown that Māori and Pacific bilingual and immersion services are likely to support their existing non-qualified staff to become qualified due to limited availability of qualified teachers with the necessary language and cultural skills and knowledge. Providing this additional support may impose costs on these services.</p>		
	<p>Lost income through reduced licence size and enrolments</p> <p>A small number of services may need to reduce the size of their licence or enrolments if they cannot meet the new standards. Funding data and feedback from consultation indicates that it may be more challenging for Māori and Pacific bilingual and immersion services, isolated services, and services in lower socio-economic communities to meet the new standards. Services that already have reduced attendance may be more likely to reduce licence size or enrolments as a result of these proposals.</p>	Low	Low
	<p>Lost income through service closing</p> <p>A small number of services may close if they cannot meet the new standards. Funding data and feedback from consultation indicates that it may be more challenging for Māori and Pacific bilingual and immersion services, isolated services, and services in lower socio-economic communities to meet the new standards. Services that are already struggling financially may be more likely to close as a result of these proposals and will therefore face higher impacts.</p>	Low	Medium

Table 3: Marginal costs and benefits of proposals to require 80 percent qualified teachers in teacher-led ECE centres

Affected groups	Comment	Impact	Evidence Certainty
Teaching workforce	<p>Becoming qualified</p> <p>Some teachers that will be counted within the 80 percent qualification requirement that are not currently qualified will face the costs of obtaining appropriate qualifications.</p>	Low	Medium
	<p>Teaching registration and certification</p> <p>All teachers counted within the 80 percent qualification requirement will need to become and remain certificated (cost every three years). Costs of certification include:</p> <ul style="list-style-type: none"> A Tōmua Provisional Practising Certificate is issued or renewed for three years A Tūturu Full Practising Certificate (Category One) is issued or renewed for three years Fee and levy for renewing a practising certificate 	<p>\$464.37 (NZ trained) or \$564.37 (Overseas), every three years</p> <p>\$512.37, every three years</p> <p>\$464.37, every three years</p>	Medium
	<p>Loss of income</p> <p>Non-qualified staff may lose their jobs and/or no longer be able to find employment in ECE services as the opportunities for unqualified staff become more limited.</p>	Low	Low
Ministry of Education (regulator)	<p>Information and education costs</p> <p>Minor costs associated with communicating new requirements, minimised by using established processes and channels.</p>	Low	High
	<p>Administrative costs</p> <p>Minor (if any) costs associated with changing existing systems and process to monitor compliance with new requirements.</p>	Low	High

Table 3: Marginal costs and benefits of proposals to require 80 percent qualified teachers in teacher-led ECE centres

Affected groups	Comment	Impact	Evidence Certainty
Parents and whānau	Higher fees Some parents and whānau may face higher childcare fees if service providers pass additional costs on to parents and whānau through fee increases.	Low/Medium	Low/Medium
	Loss of income Some parents and whānau may face a temporary loss of income if they have to stop working/reduce their hours because their service closes or reduces the size of its licence and they cannot access another service or suitable alternative childcare.	Low	Medium
Total monetised costs		Unknown	Medium
Non-monetised costs		<i>Low/Medium</i>	<i>Medium</i>
Additional benefits of the preferred option compared to taking no action			
Teaching workforce	Remuneration Remuneration levels for qualified and certificated teachers may increase as demand for these teachers will increase.	Medium	Low
	Employment opportunities and job security Employment opportunities for qualified teachers are likely to increase as demand for these teachers will increase. Job security may also improve as the changes to the Regulations will mean service providers must consistently employ qualified staff.	Medium	Low
Teaching council	Registration and certification	Medium	Medium

Table 3: Marginal costs and benefits of proposals to require 80 percent qualified teachers in teacher-led ECE centres			
Affected groups	Comment	Impact	Evidence Certainty
	More teachers will seek to become registered and certified, and therefore fee and levy revenue for the Teaching Council is expected to increase.		
Initial Teacher Education (ITE) providers	<p>Increase revenue</p> <p>Demand for ITE is expected to increase, and therefore revenue for ITE providers is expected to increase.</p>	Medium	Low
Children	<p>Improved outcomes</p> <p>Certificated ECE and primary qualified teachers are better placed to facilitate children's learning by encouraging independent thinking and problem solving compared to unqualified and uncertificated teachers. Therefore, children will experience greater positive outcomes when more certificated ECE and primary qualified teachers are present.</p>	Medium	Medium
Total monetised benefits	n/a	n/a	n/a
Non-monetised benefits		Medium	Low

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

117. Table 4 sets out the marginal costs and benefits for proposals to strengthen person responsible role in teacher-led ECE centres and licensed hospital-based ECE services using the following preferred options:

- Require person responsible in teacher-led ECE centres and licensed hospital-based services to hold a Category One or Two practising certificate
- Clarify the person responsible functions, including the supervision requirement in teacher led ECE centres
- Require person responsible to hold a first aid qualification

- Clarify what is meant by being responsible for children's education and the supervision requirement in licensed hospital based ECE services

118. The broader impacts of the proposals, including how they achieve the policy objectives, are outlined in Table 2 above.

Table 4: Marginal costs and benefits for strengthening person responsible role in teacher-led ECE centres and licensed hospital-based services			
Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Teacher-led ECE centres and licensed hospital-based service providers	<p>Staffing costs</p> <p>Teaching Council data indicates that around 99% of current ECE trained teachers hold a full practising certificate.¹ However, services that do not currently have person responsible(s) with a Category One or Two full practising certificate will need to employ one/some. As these teachers are more qualified, they are likely to be more expensive to recruit and employ. Feedback from consultation indicates that Māori and Pacific bilingual and immersion services can face particular challenges recruiting suitably qualified teachers due to their specific language and cultural needs. Isolated services also face teacher supply challenges as the relevant labour market is often very thin.</p>	Low	Medium
	<p>Staff professional learning and development</p> <p>Some persons responsible may require additional training and development to comply with the new requirements.</p>	Low	Medium
	<p>Lost income through service closure</p> <p>Services that are unable to employ persons responsible with a Category One or Two practising certificate may close.</p>	Low	Medium
Person responsible	First aid qualification	Low	Medium

¹ The figure on the percentage of teachers who hold a full practising certificate is incorrect. We are looking into more up-to-date data and we are working through the implications of this

	All persons responsible will need to obtain a first aid qualification and renew it every two years. Consultation feedback indicated that many services already comply with this proposal.	\$150 - \$300 every two years (per person)	
	<p>Obtaining Category One or Category Two qualification</p> <p>Persons responsible who do not currently have a Category One or Category Two qualification (i.e., a full practising certificate) will need to obtain one</p> <ul style="list-style-type: none"> A Tūturu Full Practising Certificate (Category One) is issued or renewed for three years A Pūmau Full Practising Certificate (Category Two) is issued or renewed for three years 	<p>Low</p> <p>\$512.37, every three years (per person)</p> <p>\$464.37, every three years (per person)</p>	Medium
	<p>Loss of income</p> <p>Persons responsible who do not currently have a Category One or Category Two qualification, and are unable to obtain one (e.g., they have not been teaching for long enough) are likely to lose their role as person responsible.</p>	Low	Medium
Ministry of Education (regulator)	<p>Information and education costs</p> <p>Minor costs associated with communicating new requirements, minimised by using established processes and channels.</p>	Low	High
	<p>Administrative costs</p> <p>Minor (if any) costs associated with changing existing systems and process to monitor compliance with new requirements.</p>	Low	High
Parents and whānau	<p>Higher fees</p> <p>Some parents and whānau may face higher childcare fees if service providers pass on any additional costs.</p>	Low	Medium
Total monetised costs		Unknown	Low
Non-monetised costs		Low	Medium

Additional benefits of the preferred option compared to taking no action			
Teaching council	<p>Revenue from practising certificates</p> <p>More persons responsible will seek their Category One or Two practising certificates, which will increase fee and levy revenue for the Teaching Council</p> <ul style="list-style-type: none"> A Tūturu Full Practising Certificate (Category One) is issued or renewed for three years A Pūmau Full Practising Certificate (Category Two) is issued or renewed for three years 	<p>Low</p> <p>\$512.37, every three years (per person)</p> <p>\$464.37, every three years (per person)</p>	Medium
Providers of first aide qualifications	<p>Revenue from first aide training</p> <p>All persons responsible will be required to obtain a first aide qualification and renew it every two years, which will increase revenue for the providers of these services.</p>	<p>Low</p> <p>\$150 - \$300 every two years (per person)</p>	Medium
Total monetised benefits		Unknown	n/a
Non-monetised benefits		Low	Medium

119. Table 5 sets out the marginal costs and benefits for proposals to strengthen person responsible role in licensed home-based ECE services using the following preferred options:

- Require the person responsible in licensed home-based ECE services to hold a Category One or Two practising certificate
- Limit the number of licences the licensed home-based person responsible can work across within each calendar month to two and increasing the licence size from 80 to 100 children
- Require the licensed home-based person responsible to support educators' professional development when contacting and visiting them
- Require the licensed home-based person responsible to guide and observe the curriculum delivery during home visits
- Require the licensed home-based person responsible to be 'locally-based'

120. The broader impacts of the proposals, including how they achieve the policy objectives, are outlined in Table 2 above.

Table 5: Marginal costs and benefits for strengthening person responsible role in licensed home-based services			
Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Licensed home-based ECE service providers	<p>Staffing costs</p> <p>Teaching Council data indicates that around 99% of current ECE trained teachers hold a full practising certificate.¹ However, services that do not currently have person responsible(s) with a Category One or Two full practising certificate will need to employ one/some. As these teachers are more qualified, they are likely to be more expensive to recruit and employ. Feedback from consultation indicates that Māori and Pacific bilingual and immersion services and isolated services can face particular challenges recruiting suitably qualified teachers due to their specific language and cultural needs. In addition, the requirements for person responsible to be locally based and to only work across up to two service licences may mean that some service providers need to employ additional persons responsible to some locations.</p>	Medium	Low
	<p>Staff professional learning and development</p> <p>Some persons responsible may require additional training and development to comply with the new requirements. In addition, the greater focus of person responsible on educator's professional development may require service providers to offer more resources in this area.</p>	Medium	Low
	<p>Systems and process to keep a record of visits</p> <p>Service providers that don't already have systems and processes in place to enable persons responsible to keep adequate records of visits with educators will need to establish these.</p>	Low	Medium
	<p>Lost income through service closure</p> <p>Services that are unable to comply with the requirements, including employing persons responsible with a Category One or Two practising</p>	Low	Low

¹The figure on the percentage of teachers who hold a full practising certificate is incorrect. We are looking into more up-to-date data and we are working through the implications of this

	certificate may close and ensuring person responsible is locally based, may lose their licence and therefore close. Services that are already struggling financially may be more likely to close as a result of these proposals.		
Person responsible (licensed home-based)	<p>Obtaining Category One or Category Two qualification</p> <p>Persons responsible who do not currently have a Category One or Category Two qualification (i.e., a full practicing certificate) will need to obtain one</p> <ul style="list-style-type: none"> A Tūturu Full Practising Certificate (Category One) is issued or renewed for three years A Pūmau Full Practising Certificate (Category Two) is issued or renewed for three years 	<p>Low</p> <p>\$512.37, every three years (per person)</p> <p>\$464.37, every three years (per person)</p>	Low
	<p>Loss of income</p> <p>Persons responsible who do not currently have a Category One or Category Two qualification, and are unable to obtain one (e.g., they have not been teaching for long enough), and those that need to relocate to be locally-based but are unable to so, risk losing their role as person responsible.</p>	Low	Low
Ministry of Education (regulator)	<p>Information and education costs</p> <p>Minor costs associated with communicating new requirements, minimised by using established processes and channels.</p>	Low	High
	<p>Administrative costs</p> <p>Minor (if any) costs associated with changing existing systems and process to monitor compliance with new requirements.</p>	Low	High
Parents and whānau	<p>Higher fees</p> <p>Some parents and whānau may face higher childcare fees if service providers pass on any additional costs through increased fees.</p>	Low	Medium
	<p>Loss of income</p> <p>Some parents and whānau may face a temporary loss of income if their service closes or reduces the size of its licence and they need to find alternative childcare.</p>	Low	Low

Total monetised costs		Unknown	Medium
Non-monetised costs		<i>Low</i>	Medium
Additional benefits of the preferred option compared to taking no action			
Licensed home-based ECE service providers	<p>Increased revenue</p> <p>Increasing licence sizes from 80 to 100 children will mean that service providers can generate more revenue.</p>	Medium	Medium
Teaching council	<p>Revenue from issuing practising certificates</p> <p>More persons responsible will seek their Category One or Two practising certificates, which will increase fee and levy revenue for the Teaching Council</p> <ul style="list-style-type: none"> A Tūturu Full Practising Certificate (Category One) is issued or renewed for three years A Pūmau Full Practising Certificate (Category Two) is issued or renewed for three years 	<p>Low</p> <p>\$512.37, every three years (per person)</p> <p>\$464.37, every three years (per person)</p>	Medium
Total monetised benefits		Unknown	n/a
Non-monetised benefits		<i>Medium-high</i>	

Section 3: Delivering an option

How will the new arrangements be implemented?

121. Cabinet agreement to the proposals outlined in this RIS will be sought in December 2022. Drafting of the regulations by the Parliamentary Counsel Office is expected to take place in early 2023.
122. We are also seeking Cabinet agreement to consult the sector on the draft Regulations prior to their finalisation in mid-2023. Consultation will provide an opportunity to test the draft Regulations with the early learning sector to ensure they are clear, accessible, and can be implemented. It will also ensure that service providers have time to familiarise themselves with the new requirements (including key compliance dates) and start preparing for their implementation (e.g., by making any necessary changes to their staff recruitment, employment, and training and development practices).
123. The new regulations for 80 percent qualified teachers strengthening person responsible are expected to be gazetted around August 2023. The persons responsible regulations will be implemented following this, 9(2)(f)(iv) [REDACTED]. The usual channels will be used by the Ministry to communicate the changes to the Regulations, including print and social media, and through professional learning and development material. The Ministry already has well established networks and communication channels with the sector to support the implementation of the proposed regulatory changes.

Requiring 80 percent qualified teachers in teacher led ECE centres

9(2)(f)(iv)

[REDACTED]

127. The Ministry is also undertaking a specific programme of work to engage with Māori immersion and bilingual services (including Ngā Puna Reo o Aotearoa), and Pacific medium services on their specific needs in relation to meeting the new qualification requirements.
128. As noted above, Māori immersion and bilingual services (including Ngā Puna Reo o Aotearoa), Pacific medium services, and isolated services face particular challenges recruiting suitably qualified teachers. The availability of suitably qualified teachers was a particular concern for puna reo and Pacific medium service providers during public

consultation who noted they have additional requirements for teachers, such as language and cultural competencies. These services are at greater risk of closure if they cannot meet the requirements. To better support these services, the Ministry is looking at the implementation timeframe, whether other roles or qualifications should count towards the 80% standard, and how funding settings might need to be adjusted to account for other roles or qualifications. 9(2)(f)(iv)

129. The Ministry intends to provide further advice to the Minister of Education in early 2023 on options for maintain the ongoing provision of these important services and ensure the Crown honour its obligations under Te Tiriti Waitangi. This includes looking closely at current qualification settings and associated funding settings to ensure they support these services.

Strengthening person responsible requirements in teacher-led ECE centres, and licensed hospital-based and licensed home-based ECE services

130. The majority of changes to the person responsible requirements will come into effect immediately following the gazettal period, which is expected to be around August/September 2023. The exceptions to this are:
- a. Proposal 1: Require the person responsible in teacher-led ECE centres and licensed hospital-based ECE services to hold a Category One or Two practising certificate
 - b. Proposal 5: Require the person responsible in licensed home-based ECE services to hold a Category One or Two practising certificate
131. These regulatory amendments will come into effect six months after the other changes for person responsible. This will ensure that services have more time to comply with this requirement, particularly Māori and Pacific bilingual and immersion services, and isolated services, which may be particularly impacted by tight teacher supply.
132. As noted above, the Cabinet agreement is being sought to consult on an alternative definition of locally-based for licensed home-based persons responsible. Subject to the outcome of consultation, Cabinet approval will be sought to amend the Regulations so that changes come into effect at the same time as the other amendments to licensed home-based person responsible requirements.

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

133. The Ministry will assess compliance with the new regulations as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review. It also monitors the number of complaints, interventions, provisional licences, and changes in the proportion of qualifications to evaluate whether the evidence around qualifications supporting quality is consistent. The Ministry works closely with ERO to understand issues or concerns regarding regulatory compliance across the sector.

9(2)(f)(iv)

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Interim Regulatory Impact Statement: Additional Tranche 2 issues – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures

Coversheet

Purpose of Document

Decision sought:	This interim analysis supports consultation on regulatory changes for adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures.
Advising agencies:	Ministry of Education
Proposing Ministers:	Hon Chris Hipkins, Minister of Education
Date finalised:	17 November 2022

Problem Definition

The current regulations do not expressly allow for new conditions to be added to a provisional licence during the term of the provisional licence or set boundaries around when and how this can be done. The inability to add additional conditions to provisional licences impedes the Ministry of Education’s (‘the Ministry’) ability to respond directly and in a timely manner when further non-compliance is identified. They also do not provide the services enough certainty around the expectations for when compliance issues must be addressed.

Additionally, although the current regulations require the Secretary for Education (‘the Secretary’) to cancel the licence of any service that has permanently ceased to operate, there is no definition of this in the regulations. This can lead to disagreement between the Ministry and the service provider about whether they have permanently ceased to operate or not. This can cause unnecessary confusion and distress and be both resource and time consuming for the service provider and the Ministry. The current regulations also do not set out the process for services to temporarily close. Not addressing this issue may lead to the inadvertent cancellation of licences of service providers who want to temporarily close but have genuine need and intention to reopen.

We are proposing to consult stakeholders on a limited number of proposals to address these issues. This analysis supports that consultation and complements the discussion document that will be released subject to Cabinet approval.

Executive Summary

The early learning regulatory review

The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care (‘the review’). The review is being undertaken in three tranches. The proposals outlined in this paper are part of Tranche Two of the review.

These proposals seek to amend the Education (Early Childhood Services) Regulations 2008 ('the Regulations') to:

- a. expressly allow the Secretary to add conditions to a service's provisional licence in cases where subsequent compliance issues are identified
- b. provide a definition of 'permanently ceased to operate' for the purpose of cancelling a service's licence
- c. allow for the Secretary, at their discretion, to grant a service provider the ability to temporarily close their service for a period of up to three months on application.

This interim paper provides analysis for proposals which we intend to undertake public consultation on.

Why change is needed to the ECE regulations

Regulations around provisional licensing

The reclassification of a ECE service provider's licence to a provisional licence is one of the key tools currently available to the Ministry to enforce compliance with the Regulations and licence conditions. A provisional licence allows a service to continue operating and children to continue attending while the service provider works towards achieving full compliance. Services that have their licence reclassified to a provisional licence must comply with conditions specified on the provisional licence by the specified date(s). Each condition on a provisional licence can have a different date specified for compliance. The Secretary can extend the deadline for a condition under Regulation 16(3). However, no compliance dates can be set later than 12 months after the provisional licence was issued. This helps to ensure that services address non-compliance in a timely manner.

Regulations around cancellation of licences, including ability for services to temporarily close

Current regulations state that the Secretary is required to cancel the licence of an early childhood service if satisfied that the service:

- a. has permanently ceased to operate; or
- b. has ceased to be an early childhood service; or
- c. if applicable, has ceased to operate in the premises specified in the licence and has not been issued with a temporary relocation licence.

Section 28(1) of the Act requires that licensed service providers who operate an early childhood education and care centre are committing an offence if they cease to operate a centre, in circumstances other than an emergency, without first notify the Secretary. A person who commits the above offence is liable for conviction to a fine not exceeding \$200.

In addition, where a service provider wants to cease operating for a short period of time, with a genuine intent to reopen, current operational practice is for the service provider to seek agreement from the Secretary to a 'Voluntary Temporary Closure'. If approved, voluntary temporary closures are usually agreed for a period of up to three months, after which a service can request a three-month extension in extenuating circumstances.

Problems with the current regulations

The regulations do not expressly allow for new conditions to be added to a provisional licence during the term of the provisional licence or set boundaries around when and how this can be done. Additional non-compliance can be identified during Ministry on-site visits to assess compliance with existing conditions or when responding to an incident or complaint.

Currently, although the Secretary can issue a written direction or suspend a service provider's licence, in many cases they can only make the service provider aware of the new non-compliance and then wait until the current provisional licence process has been completed before issuing a subsequent provisional licence to address this new non-compliance. The inability to add additional conditions to provisional licences impedes the Ministry's ability to respond directly and in a timely manner when further non-compliance is

identified. They also do not provide the services enough certainty around the expectations for when compliance issues must be addressed.

The current regulations also require the Secretary to cancel the licence of any service that has permanently ceased to operate. However, there is no definition of 'permanently ceased to operate' in the regulations, which means there can sometimes be disagreement between the Ministry and the service provider about whether they have permanently ceased to operate or not. This can cause unnecessary confusion and distress and be both resource and time consuming for the service provider and the Ministry.

Centre-based service providers are required to notify the Secretary when their service has ceased to operate. However, it is not uncommon for the Ministry to become aware that a service has ceased to operate without any notification being given. To carry out its network management function, the Ministry needs to know when a service is no longer operating so it can be removed from the network. This information is also important to prevent services from fraudulently claiming the ECE funding subsidy.

Related to this, the current regulations do not set out the process for services to temporarily close. Care is required to ensure that any changes to the requirements for the cancellation of licences do not inadvertently affect the ability of service providers to request a temporary closure where there is genuine need and intention to reopen.

Options considered to address issues with provisional licensing requirements

In addition to the status quo (option 1), three other options were considered for adding new conditions to existing provisional licences of services.

Option 2 – Amending Regulations so that additional conditions can be added to a provisional licence, at the discretion of the Secretary where it is considered fair and appropriate, to be met by a new deadline, but no longer than 12-months from when the licence was classified as provisional.

Option 3 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines the same as for existing licence conditions.

Option 4 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines that can extend beyond 12-months from when the licence was classified as provisional.

Following analysis against the policy objectives and criteria, the Ministry has determined that these options should not be considered as part of public consultation. Option 2 will be subject to public consultation, with the possibility of alternative options arising as part of feedback on this process.

Defining 'permanently ceased to operate' for the purposes of cancelling service licences

In addition to the status quo (option 1), two other options were considered for defining 'permanently ceased to operate' to improve clarity and certainty regarding the cancellation of licences for services that are no longer operating.

Both of these options propose to amend the Regulations to insert a definition of 'permanently ceased to operate' as:

- a. when the service provider has notified the Ministry that it has permanently ceased to operate; or
- b. when the Ministry is made aware that the service has not been operating for [a defined minimum period] as evidenced by two or more of the following criteria:
 - i. there being no children enrolled and/or attending the service; or
 - ii. there being no staff employed or engaged and working in the service; or
 - iii. the service provider has not claimed ECE funding.

However, the options differ in relation to how we define the minimum period of time that would need to pass with the criteria being met before a service would be deemed to have permanently ceased to operate.

Option 2 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at three months or more.

Option 3 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at six months or more.

Providing for services to be able to temporarily close

In addition to the status quo (option 1), three other options were considered to provide for services to be able to temporarily close if they intend to re-open their service.

Option 2 – Amend Regulations to explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months upon application, with the possibility of an extension on request.

Option 3 – Allow service providers to be able to temporarily close their service for a period of up to three months, with the requirement to notify the Secretary for approval

Option 4 – Remove the ability for service providers to seek approval to temporarily close their service, as is current operational practice.

Ministry analysis found that only Option 2 sufficiently met the policy objectives and assessment criteria. Based on this, the Ministry has decided to only include this option in public consultation, with the possibility of alternative options arising as part of feedback on this process.

Preferred options will be finalised after public consultation. This will include final assessment of the potential impact of the preferred options, including the costs, benefits, risks, and risk mitigations of the proposals, and the nature of potential impacts on different population groups.

Limitations and Constraints on Analysis

The key constraint for analysing options for addressing issues around adding conditions to provisional licences was to ensure any regulatory change was compatible with the existing regulations around compliance dates needing to be set within 12 months after the provisional licence was issued. This is important to ensure compliance requirements on service providers are fair and reasonable and help ensure that services can address non-compliance in a timely manner.

This constraint led to one of the proposed options for adding conditions to provisional licences being considered unfeasible, with the Ministry deciding against publicly consulting on this option.

There were no limitations or constraints on the analysis for the other proposals.

Responsible Manager(s) (completed by relevant manager)

Paul Scholey
Senior Policy Manager
ECE Policy
Ministry of Education



17 November 2022

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

Panel Assessment & Comment:

The Ministry of Education's Quality Assurance Panel has reviewed the Interim Regulatory Impact Statement "Additional Tranche 2 issues – adding conditions to provisional licences, defining 'permanently ceased to operate', and providing for temporary service closures".

This Statement was required as the associated discussion document did not meet the effective consultation requirements because it is seeking feedback on preferred options. The panel considers that this interim statement meets the Quality Assurance criteria. It provides analysis of options not included in the discussion document and will, therefore, support effective consultation and subsequent impact analysis.

Section 1: Diagnosing the policy problem

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

The early learning regulatory framework

2. The Government sets minimum standards for licensed early childhood services and certified playgroups and ensures these standards are met. These standards are set out in the early learning regulatory framework. Strong regulatory standards are important to protect children's health, safety and wellbeing in education and care services, and because research shows that high quality early learning experiences provide a platform for children to succeed as lifelong learners.
3. There are three tiers to the regulatory framework for licensed education and care services, including:
 - a. the Education and Training Act 2020 ('the Act'), which defines service types and provides for regulations and licensing criteria to be developed;

- b. the regulations¹, including the Education (Early Childhood Services) Regulations 2008 ('the Regulations'), which establish the licensing process and set minimum standards that all services must meet; and
 - c. the licensing criteria, which are used by the Ministry to assess compliance with the minimum standards set out in the regulations.
4. ECE services are required to be licensed under the Act. Licensing criteria, which is set out in the Regulations, are used by the Secretary for Education ('the Secretary') to assess how services comply with regulated standards of education and care. ECE services must meet the licensing criteria as well as the other regulatory requirements contained in the regulations in order to gain and maintain a licence to operate.

The early learning regulatory review

5. The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care ('the review'). The review is being undertaken in three tranches. The proposals outlined in this paper are part of Tranche Two of the review. These proposals seek to amend the Education (Early Childhood Services) Regulations 2008 ('the Regulations') to:
- a. expressly allow the Secretary to add conditions to a service's provisional licence in cases where subsequent compliance issues are identified;
 - b. provide a definition of 'permanently ceased to operate' for the purpose of cancelling a service's licence; and
 - c. allow for the Secretary, at their discretion, to grant a service provider the ability to temporarily close their service for a period of up to three months on application.

Requirements relating to provisional licensing

6. The reclassification of a ECE service provider's licence to a provisional licence is one of the key tools available to the Ministry of Education (the Ministry) to enforce compliance with the Regulations and licence conditions.
7. A provisional licence allows a service to continue operating and children to continue attending while the service provider works towards achieving full compliance. Regulation 15 provides for the Secretary to reclassify a probationary licence or a full licence as a provisional licence for several reasons, including if the service does not comply with the regulations or conditions on their licence.²
8. Services that have their licence reclassified to a provisional licence must comply with conditions specified on the provisional licence by the specified date(s). Each condition on a provisional licence can have a different date specified for compliance. Typical practice is that deadlines for complying with specific conditions are set up to three months.³ Issues that are likely to take longer to address, such as improvements to the delivery of the curriculum, may be set at six months.

¹ Other regulations include the Education (Playgroups) Regulations 2008 and the Education (Registration of Early Childhood Services Teachers) Regulations 2004, as well as the recent introduction of network management regulations.

² Other reasons that a service may have their probationary or full licence reclassified as a provisional licence includes when a complaint is lodged alleging non-compliance with the regulations; an incident involving a child has occurred at the service warranting investigation; or the service has not complied with a written direction from the Secretary under these regulations within a reasonable time.

³ Regulation 16(2) outlines that compliance dates will not usually be set longer than three months after the day on which the provisional licence was issued.

9. The Secretary can extend the deadline for a condition under Regulation 16(3). However, no compliance dates can be set later than 12 months after the provisional licence was first issued. This helps to ensure that services address non-compliance in a timely manner. This is important as it provides reassurance for parents and whānau of children in services that these services are addressing any compliance issues as promptly as possible.
10. A provisional licence remains in force until the Secretary either:
 - a. revokes the provisional licence and returns a full or probationary licence; or
 - b. cancels the service provider's provisional licence.
11. The Secretary must cancel a provisional licence if satisfied that any condition has not been complied with by the date specified for compliance.
12. The effect of the above regulations is that a provisional licence must be cancelled (i.e., the service provider will no longer be able to operate) if compliance is not demonstrated by the compliance date set for any one condition, regardless of whether there are later compliance dates set for other conditions, unless an extension is provided. Where a cancellation pathway is followed, the Secretary implements a process of giving notice of proposed provisional licence cancellations to ensure natural justice requirements are met.

Requirements relating to the cancellation of service licenses

13. Regulation 32(2) sets out the Secretary's powers to cancel a service provider's licence. It states that the Secretary is required to cancel the licence of an early childhood service if satisfied that the service:
 - a. has permanently ceased to operate; or
 - b. has ceased to be an early childhood service; or
 - c. if applicable, has ceased to operate in the premises specified in the licence and has not been issued with a temporary relocation licence.
14. The Secretary is required to take all reasonable steps to give the licensed service provider notice of the Secretary's intention to cancel the licence before cancelling, and to take account of any representations received from the service provider.
15. Section 28(1) of the Act requires that licensed service providers who operate an early childhood education and care centre are committing an offence if they cease to operate a centre, in circumstances other than an emergency, without first notifying the Secretary. A person who commits the above offence is liable for conviction to a fine not exceeding \$200. This requirement does not cover hospital-based or home-based service providers, and only concerns providers who operate a centre-based service.

Current Ministry practice around services who temporarily close their services

16. There are situations where a service provider may want to cease operating for a short period of time only and therefore not want their licence to be cancelled. For example, a service provider may temporarily close its premises to undertake renovations or as a result of temporarily low attendance numbers (e.g., due to the impact of COVID-19).
17. In these cases, current operational practice is for the service provider to seek agreement from the Secretary to a 'Voluntary Temporary Closure'. If approved, voluntary temporary closures are usually agreed for a period of up to three months, after which a service can

request a further three-month extension in extenuating circumstances.⁴ However, it is important that voluntary temporary closures are only permitted for a short and managed period of time, as extended closures can significantly impact the ability of service providers to continue to meet all of their ongoing regulatory requirements.

What is the policy problem or opportunity?

The current regulations don't allow for the Ministry to add new conditions to existing provisional licences

18. The regulations do not expressly allow for new conditions to be added to a provisional licence during the term of the provisional licence or set boundaries around when and how this can be done. Additional non-compliance can be identified during Ministry on-site visits to assess compliance with existing conditions or when responding to an incident or complaint.
19. While the Secretary can issue a written direction or suspend a service provider's licence, in many cases the Secretary has to wait until the current provisional licence process has been completed before issuing a subsequent provisional licence to address this new non-compliance. This may not be appropriate depending on the nature of the compliance issue.
20. The inability to add additional conditions to provisional licences impedes the Ministry's ability to respond directly and in a timely manner when further non-compliance is identified. They also do not provide the services enough certainty around the expectations for when compliance issues must be addressed.

There is no definition for 'permanently ceased to operate' when it comes to cancelling service licences

21. The current regulations require the Secretary to cancel the licence of any service that has permanently ceased to operate. However, there is no definition of 'permanently ceased to operate' in the regulations, which means there can sometimes be disagreement between the Ministry and the service provider about whether they have permanently ceased to operate or not. This can cause unnecessary confusion and distress and be both resource and time consuming for the service provider and the Ministry.
22. Centre-based service providers are required to notify the Secretary when their service has ceased to operate. However, it is not uncommon for the Ministry to become aware that a service has ceased to operate without any notification being given. This is particularly an issue for home-based services, who are not covered by the notification requirements in 28(1), where our data suggests that notification often tends to follow a change in management. To carry out its network management function, the Ministry needs to know when a service is no longer operating so it can be removed from the network. This information is also important to prevent services from fraudulently claiming the ECE funding subsidy.

There is no clear regulatory process for services to temporarily close

23. The current regulations do not set out the process for services to temporarily close. Care is required to ensure that any changes to the requirements for the cancellation of licences do not inadvertently affect the ability of service providers to request a temporary closure where there is genuine need and intention to reopen. This will be particularly important

⁴ In exceptional circumstances relating to COVID-19 services can request to stay closed for a further three months.

following the introduction of network management, where service providers that have their licence cancelled will need to apply for and receive network management approval before they can apply for a new licence if they want to reopen.

What objectives are sought in relation to the policy problem?

24. The proposal to address policy issues around adding new conditions to existing provisional licenses seeks to achieve the following objectives:
 - a. ensuring the Ministry can be a competent and responsive regulator, including undertaking enforcement action in a considered, proportionate, and timely manner;
 - b. ensuring there is clarity and certainty for service providers, parents and whānau, and the Ministry regarding the use of provisional licences to enforce compliance with the regulations and licence conditions; and
 - c. facilitating a prompt and timely response to compliance issues by service providers.
25. The proposals to address policy issues around defining 'permanently ceased to operate' and providing for temporary service closures seek to achieve the following objectives:
 - a. ensuring the Ministry can be a competent and responsive regulator, including establishing robust systems and practices to perform its network management function;
 - b. ensuring there is certainty for service providers, parents and whānau, and the Ministry regarding temporary closures and the cancellation of licences; and
 - c. ensuring clarity in regulations around when services permanently cease to operate and when licences are required to be cancelled.

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

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

26. The options have been assessed against the following criteria, which align with the policy objectives outlined in section 1:
 - a. **Ensuring the Ministry is a timely and effective regulator** – the Ministry needs to be able to provide accessible, timely information to support services to comply with their regulatory requirements.
 - b. **Improves the clarity and consistency of regulations** – regulatory requirements need to be clear and consistent so both services and the Ministry understand their roles and expectations, including ensuring that regulations avoid gaps, overlaps and duplicate requirements.
 - c. **Improves the transparency of regulations for parents and whānau of children in service** – regulations need to be transparent so that those who use the services can easily understand the requirements that services must abide by, which is to ensure the health, safety and wellbeing of children who attend services.
 - d. **Reduces compliance costs** – regulations need to be fair and equitable for all parties, so services can address compliance issues in a timely way.
 - e. **Compatible with existing regulations** – any regulatory changes need to be aligned with existing requirements to ensure regulations are robust.

27. These criteria align with Government Expectations for good regulatory practice.⁵

What scope will options be considered within?

28. As noted above, the scope within which the options have been developed was constrained by needing to ensure any regulatory change was compatible with the existing regulations around compliance dates needing to be set within 12 months after the provisional licence was first issued.

What options are being considered?

Adding new conditions to existing provisional licences

29. In addition to the status quo (option 1), three options were considered for adding new conditions to existing provisional licences of services.

Option 2 – Amending Regulations so that additional conditions can be added to a provisional licence, at the discretion of the Secretary where it is considered fair and appropriate, to be met by a new deadline, but no longer than 12-months from when the licence was classified as provisional

30. This option would amend Regulations to allow for new conditions to be added to services' provisional licences, at the discretion of the Secretary where it is fair and reasonable, with new compliance deadlines. Under this option services can still seek extensions to the timeframe for the new conditions in accordance with the current provisions for allowing extensions. The existing 12-month maximum period for all conditions to be complied with (inclusive of any permitted extensions) would still apply from when the licence was reclassified as provisional.
31. This option includes amending Regulations to give discretionary powers to the Secretary, where it is fair and reasonable, to add new conditions to provisional licences. This is because there may be situations where, depending on when additional non-compliance is identified and the nature of this non-compliance, adding additional conditions to a provisional licence would not be an appropriate enforcement response. This is because it may have an undue impact on the service provider, the children attending the service, and/or parents and whānau. For example, it may be preferable to allow the current provisional licence process to be completed and a new provisional licence issued, or the Secretary may have already confirmed their intention to cancel the licence.
32. In some cases, such as where the additional non-compliance found is relatively minor, the immediate issuing of another provisional licence can unnecessarily create a provisional licence history and/or require cancellation of the licence. Providing the Secretary with discretion to determine whether to add conditions to an existing provisional licence will help to ensure that the overall impact of any enforcement action is considered and proportionate to the situation and risks associated with the non-compliance issues being addressed.
33. This option would allow the Ministry to better undertake its regulatory function by providing more timely and responsive enforcement action to address newly identified compliance issues. It also provides services more certainty around our requirements to address compliance issues, as well as provide greater transparency for parents and whānau of a service's compliance with regulations.

⁵ The Treasury. 2017. Government Expectations for Good Regulatory Practice. URL: <http://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

34. Under this option there may still be situations where service providers would not have enough time to address any substantive compliance issues that arise close to the 12-month end date for a service to comply with conditions on their provisional licence. However, in such cases, the Secretary can wait to formally address the additional non-compliance as part of a service provider's new provisional licence (issued once the previous provisional licence date has ended) rather than adding conditions to the existing provisional licence. If the non-compliance is urgent the Secretary can issue a written direction or suspension of a service's licence.

Option 3 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines the same as for existing licence conditions

35. This option, similar the Option 2, would amend regulations to give the Secretary the discretion to add additional conditions to an existing provisional licence, with timeframes for compliance to be no later than the last deadline for existing licence conditions.
36. This option would provide some reassurance to parents and whānau that service providers would address any new matters of non-compliance within the same timeframes that were set to address the initial compliance concerns.
37. However, depending on the timing and nature of the new compliance concern identified, it may not allow service providers a reasonable amount of time to remedy these issues. This may also compromise the ability of the service provider to meet existing conditions on time. A further risk is that this option would likely cause service providers to more frequently request extensions to the timeframes that have been set which would increase the administrative burden for both the Ministry and service providers.
38. Additionally, the option to set additional conditions to the last deadline for existing licence conditions could be accommodated, if appropriate, within the scope of the Secretary's discretion as per Option 2.

Option 4 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines that can extend beyond 12-months from when the licence was classified as provisional, in exceptional circumstances

39. This option would amend the regulations so that additional conditions can be added to a provisional licence as per the above proposal, with timeframes for conditions allowed to extend beyond 12-months from when the licence was reclassified as provisional, under exceptional circumstances. What was deemed to be exceptional circumstances would be at the discretion of the Secretary. At present, the Secretary cannot set compliance dates beyond 12-months to avoid services being in an extended period of non-compliance.
40. This option would provide service providers with enough time to address any substantive compliance issues that arise while on a provisional licence, without the restriction of having to comply within the 12-month window from when their licence was first classified as provisional.
41. However, as expressed in the *Limitations and constraints* section above, allowing service providers to potentially be non-compliant with the regulations for longer than 12 months would present a significant change to the regulatory framework. This would reduce incentive for service providers to address compliance issues, which may place more risk on children who attend non-compliant services. Additionally, parents and whānau would reasonably expect compliance issues to be addressed by services within the 12-month licence period.

Options not being considered as part of public consultation

42. Options 3 and 4 do not meet the policy objectives and criteria as the timeframes are too impractical for service providers in terms of stress and cost (Option 3) and are incompatible with the existing regulatory framework (Option 4). Given this, the Ministry has determined that these options should not be considered as part of public consultation. Option 2 will be subject to public consultation, with the possibility of alternative options arising as part of feedback on this process.

Defining ‘permanently ceased to operate’ for the purposes of cancelling service licences

43. In addition to the status quo, two options were considered for defining ‘permanently ceased to operate’ to improve clarity and certainty regarding the cancellation of licences for services that are no longer operating.
44. Both of these options propose to amend the Regulations to insert a definition of ‘permanently ceased to operate’ as:
- a. when the service provider has notified the Ministry that it has permanently ceased to operate; or
 - b. when the Ministry is made aware that the service has not been operating for a defined minimum period as evidenced by two or more of the following criteria:
 - i. there being no children enrolled and/or attending the service; or
 - ii. there being no staff employed or engaged and working in the service; or
 - iii. the service provider has not claimed ECE funding.
45. However, the options differ in relation to how we define the period of time that would need to pass with the criteria being met before a service would be deemed to have permanently ceased to operate.
46. These options would provide greater certainty and clarity around the exercise of the power to cancel licences in Regulation 32, including greater clarity about when the Secretary is required to cancel licences that are not operating. This would also ease the removal of defunct licences from the network of licensed early childhood services to facilitate entry of new services as set out in the Act.⁶

Option 2 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at *three* months or more

47. This option enables more timely and active management of the network by removing non-operating services from the network more swiftly. This will free up space in the network for new service providers wanting to enter the network. However, there is a risk that three months is not enough time for service providers to determine whether they will permanently cease to operate or intend to resume operation.

Option 3 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at *six* months or more

48. This option may strike a more reasonable balance for a service provider to close its’ service for a short period of time when there are good reasons to do so before risking cancellation of the licence.

⁶ Sections 17-18 of the Act set out new network management requirements that service providers must meet before being granted a licence. These provisions come into force in 2023.

49. However, this option would not support the network management function as well as Option 1, because it would take longer for the Secretary to be able to cancel the licence of a service providers that has permanently ceased to operate but not notified the Ministry. This could have a negative impact on any new services assessment on whether there is an opportunity to seek network management approval.
50. The Ministry will publicly consult on both of these options, with the possibility of alternative options arising as part of feedback on this process.

Providing for services to be able to temporarily close

51. In addition to the status quo, one option as considered to provide for services to be able to temporarily close who intend to re-open their service.

Option 2 – Amend Regulations to explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension on request

52. This option is similar to current practice, where service providers can seek approval from the Secretary to temporarily close their service for up to three months, such as in cases where a service needs to close its premises to undertake renovations or as a result of low attendance numbers due to the impact of COVID-19. However, this option makes the Secretary's powers more explicit in the Regulations.
53. This option would also provide more certainty and transparency to the sector on temporary closures, as well as strengthen the Ministry's ability to enforce the existing requirements for early childhood education and care centres to notify the Ministry when they intend to close. However, we note that the exercise of discretion by the Secretary will be required to prevent service providers who have no intention of re-opening from being able to 'temporarily' close for extended periods of time while they seek to sell their service.

Option 3 – Allow service providers to be able to temporarily close their service for a period of up to three months, with the requirement to notify the Secretary for approval

54. This option would allow service providers the ability to temporarily close their services with the provider needing to notify the Ministry.
55. The benefit of this option is that the administrative cost to services would be reduced as they would not need to undergo an application process to be granted approval to temporarily close. However, this option would reduce the Ministry's role as a good regulator through having less ability to make an assessment as to whether a service is intending to reopen, or instead is seeking to temporarily close for extended periods of time while they seek to sell their service. This would negatively impact on the Ministry's network management function, as the Ministry needs to know when a service is no longer operating so it can be removed from the network.

Option 4 – Remove the ability for service providers to seek approval to temporarily close their service, as is current operational practice

56. This option would change current operational practice by removing the ability for service providers to apply to the Secretary for approval to temporarily close their service for a period of up to three months, or longer upon request.

57. The benefits of this option are that it would reduce administrative burden for the Ministry through removing the process for services to undertake a temporary closure, as well as prevent service providers who have no intention of re-opening from being able to 'temporarily' close for extended periods of time while they seek to sell their service.
58. However, this option would prevent the Ministry from being an effective and responsive regulator, as although there will be cases where service providers have legitimate reasons for closing their services temporarily, such as to undertake renovations of their premises, this option also creates perverse incentives for services to stay open, which may put children who attend the service at risk. This option also creates a lack of flexibility to respond to matters related to managing service provision and could impose significant costs on service providers (e.g., where services may need to relocate rather than temporarily close).

Options not being considered as part of public consultation

59. Options 3 and 4 do not meet the policy objectives and criteria as it prevents the Ministry from being an effective and responsive regulator and creates a lack of flexibility to respond to matters related to managing service provision and potentially creates significant costs. Given this, the Ministry has determined that these options should not be considered as part of public consultation. Option 2 will be subject to public consultation, with the possibility of alternative options arising as part of feedback on this process.

How do the options compare to the status quo?

Adding new conditions to existing provisional licences

	Option 1 – Status Quo	Option 2 – Add additional conditions to a provisional licence, at the discretion of the Secretary where it is considered fair and appropriate, to be met by a new deadline, but no longer than 12-months from licence classification [Reg change]	Option 3 – Add additional conditions to a provisional licence, with compliance deadlines the same as for existing licence conditions [Reg change]	Option 4 – Add additional conditions to a provisional licence, with compliance deadlines that can extend beyond 12-months from when the licence was classified as provisional, in exceptional circumstances [Reg change]
Supports the Ministry to be a timely and effective regulator	0	++ The Ministry can add new conditions to a current licence following subsequent assessment of a service site	+ The Ministry can add new conditions to a current licence following subsequent assessment of a service site, however there would be less time for services to address them than under option 1.	-- The Ministry can add new conditions to a current licence following subsequent assessment of a service site, however there would theoretically be no established end date for services to address compliance issues. This means a service can be on a provisional licence for a longer period of time (operating with compliance issues which may negatively impact children at service)
Improves clarity and consistency of regulations	0	++ Services will have more clarity around their licence conditions as new requirements are added following subsequent assessment	++ Services will have more clarity around their licence conditions as new requirements are added following subsequent assessment	+ Services will have more clarity around their licence conditions as new requirements are added following subsequent assessment, but less so about when compliance issues must be addressed by
Improves transparency of regulations for parents/whānau	0	++ Parents/whānau will have more transparency of what compliance issues services must address	++ Parents/whānau will have more transparency of what compliance issues services must address	+ Although parents/whānau will have more transparency of what compliance issues services must address, there's less clarity about when these issues need to be addressed by
Minimises compliance costs	0	+ Services will have new deadlines (i.e., more time) for addressing new compliance issues, but depends on when these new conditions are added (if close to 12-month licence window)	-- Services would be required to address new compliance issues within an existing deadline for a different condition. This may mean the timeframe set for services to meet the new condition is insufficient and services will immediately seek an extension	++ Services will have new deadlines (i.e., more time) for addressing new compliance issues, and these deadlines can extend beyond 12-months. This means less pressure for services if new conditions are added close to the end of 12-months
Compatible with existing regulations	0	+ Current regulations require services to address conditions on a provisional licence by the date specified and within 12-months of the licence first being issued	+ Current regulations require services to address conditions on a provisional licence by the date specified and within 12-months of the licence first being issued	-- This would be incompatible with existing regulations which requires services to meet conditions on provisional licence by a specified date and within 12 months of the licence first being issued
Overall assessment	0	+8	+4	0

Definition for ‘permanently creased to operate’ for service licence cancellations

	Option 1 – Status Quo	Option 2 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at <u>three</u> months or more [Reg change]	Option 3 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at six months or more [Reg change]
		NB: These options also propose inserting a definition of ‘permanently ceased to operate’ as: a. when the service provider has notified the Ministry that it has permanently ceased to operate; or b. when the Ministry is made aware that the service has not been operating for a minimum period of three months or more as evidenced by two or more of the following criteria: i. there being no children enrolled and/or attending the service; or ii. there being no staff employed or engaged and working in the service; or iii. the service provider has not claimed ECE funding.	
Supports the Ministry to be a timely and effective regulator	0	++ The Ministry will provide more timely and active management of the network by removing non-operating services from the network more swiftly. This will free up space in the network for new service providers wanting to enter the network	+ The Ministry will provide less timely and active management of the network by removing non-operating services from the network more swiftly (but more so than status quo). This will eventually free up space in the network for new service providers wanting to enter the network
Improves clarity and consistency of regulations	0	++ This will provide greater certainty and clarity around the exercise of the power to cancel licences in Regulation 32	++ This will provide greater certainty and clarity around the exercise of the power to cancel licences in Regulation 32
Improves transparency of regulations for parents/whānau	0	++ Parents/whānau will have greater transparency of when services are deemed to have permanently ceased to operate (and have their service licenced cancelled)	++ Parents/whānau will have greater transparency of when services are deemed to have permanently ceased to operate (and have their service licenced cancelled)
Minimises compliance costs	0	- Services may be required to provide the Ministry with evidence that their services are still operating (data on teacher employment, student numbers and funding)	- Services may be required to provide the Ministry with evidence that their services are still operating (data on teacher employment, student numbers and funding)
Compatible with existing regulations	0	NA	NA
Overall assessment	0	+5	+4

Example key for qualitative judgements:

++

much better than doing nothing/the status quo/counterfactual

+

better than doing nothing/the status quo/counterfactual

0

about the same as doing nothing/the status quo/counterfactual

-

worse than doing nothing/the status quo/counterfactual

--

much worse than doing nothing/the status quo/counterfactual

Providing for temporary service closures

	Option 1 – Status Quo	Option 2 – Explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension on request [Reg change]	Option 3 – Allow service providers to be able to temporarily close their service for a period of up to three months, with the requirement to notify the Secretary for approval [Reg change]	Option 4 – Remove the ability for service providers to seek approval to temporarily close their service, as is current operational practice [Non-reg change]
Supports the Ministry to be a timely and effective regulator	0	<div>++</div> <div>The Ministry will manage temporary closure process, including determining service approvals (removes ability for services to apply when they intend to close permanently)</div>	<div>--</div> <div>The Ministry will manage temporary closure process, however less ability to determine whether service is legitimately seeking temporary closure, or intending to close permanently</div>	<div>--</div> <div>There would be less visibility for Ministry to determine whether services are seeking to reopen, which may lead to service licences being inadvertently cancelled</div>
Improves clarity and consistency of regulations	0	<div>++</div> <div>The sector will have greater clarity around temporary closures, as requirements laid out in regulations</div>	<div>++</div> <div>The sector will have clarity around temporary service closures, as requirement to notify the Secretary laid out in regulations</div>	<div>--</div> <div>The sector will have no clarity around whether the Ministry will seek to cancel a service following a service closing (even if temporarily)</div>
Improves transparency of regulations for parents/whānau	0	<div>++</div> <div>Parents/whānau greater transparency of when services are closing temporarily, or when they have permanently ceased to operate</div>	<div>-</div> <div>Parents/whānau will have some transparency about whether a service is legitimately intending to reopen, or is permanently closed, as the Secretary has granted temporary closure</div>	<div>--</div> <div>Parents/whānau will have less transparency about whether a service is legitimately intending to reopen, or is permanently closed (as services won't have applied)</div>
Minimises compliance costs	0	<div>0</div> <div>Same as current practice</div>	<div>+</div> <div>Services will still have ability to temporarily close but will not need to undergo application process as is current practice</div>	<div>--</div> <div>Services will not have ability to temporarily close, putting them at risk of service licence cancellation</div>
Compatible with existing regulations	0	<div>NA</div>	<div>NA</div>	<div>NA</div>
Overall assessment	0	<div>+6</div>	0	-8

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

Adding new conditions to existing provisional licences

60. Our initial assessment is that option 2 (adding new conditions with new compliance deadlines, but within 12-months from when licence was classified as provisional) is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 1. As outlined in section 2, we will not be consulting on options three and four as they did not meet the policy objectives and criteria. We will finalise this assessment after the public consultation period.

Definition for ‘permanently creased to operate’ for service licence cancellations

61. Our initial assessment is that option 2 (setting the time period at three months or more that services are evidenced to not be operating) is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 1. We will finalise this assessment after the public consultation period.

Providing for temporary service closures

62. Our initial assessment is that option 2 (explicitly provide for service providers to apply for temporarily closure for a period of up to three months, with the possibility of an extension on request) is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 1. As outlined in section 2, we will not be consulting on options three and four as they did not meet the policy objectives and criteria. We will finalise this assessment after the public consultation period.

What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
Additional costs of the preferred option compared to taking no action			
Regulated groups	To come after public consultation is completed and the preferred options are finalised.		
Regulators			
Others (eg, wider govt, consumers, etc.)			
Total monetised costs			
Non-monetised costs			
Additional benefits of the preferred option compared to taking no action			
Regulated groups	To come after public consultation is completed and the preferred options are finalised.		
Regulators			
Others (eg, wider govt, consumers, etc.)			
Total monetised benefits			
Non-monetised benefits			

Section 3: Delivering an option

How will the new arrangements be implemented?

To come once preferred options are finalised.

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

To come once preferred options are finalised.



Cabinet Social Wellbeing Committee

Minute of Decision

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

Proposals for Tranche 2 of the Early Learning Regulatory Review

Portfolio Education

On 7 December 2022, the Cabinet Social Wellbeing Committee (SWC):

Background

- 1 **noted** that:
 - 1.1 in July 2020, SWC noted that the Ministry of Education had begun a comprehensive review of the Early Learning Regulatory System (the Review) and agreed to initial regulatory changes [SWC-20-MIN-0116];
 - 1.2 the proposals in the paper under SWC-22-SUB-0232 are part of Tranche 2 of the Review;
- 2 **noted** that in September 2021, the Cabinet Business Committee agreed to consult on key regulatory proposals for Tranche 2, including:
 - 2.1 regulating for 80 percent qualified teachers in teacher-led early childhood education and care centres;
 - 2.2 strengthening the person responsible requirement in teacher-led early childhood education and care centres, and licensed hospital-based and licensed home-based early childhood education and care services;

[CBC- 21-MIN-0087]
- 3 **noted** that feedback from consultation indicated clear support for the objectives of the proposals but that some services are concerned about current workforce and funding constraints, particularly Māori immersion and bilingual services (including Ngā Puna Reo o Aotearoa), Pacific medium services, and isolated services;

Regulating for 80 percent qualified teachers

9(2)(f)(iv)



9(2)(f)(iv)

- 10 **authorised** the Minister of Education and Associate Ministers of Education (Māori Education and Pacific Peoples) to make further policy decisions if necessary for the purpose of drafting regulations, subject to their decision being consistent with the policy intent in the paper under SWC-22-SUB-0232 to ensure children, parents and whānau can continue to access a diverse range of quality early learning services, including Māori and Pacific language services, and services in isolated and low socio-economic communities,

Strengthening the Person Responsible Requirement

- 11 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services to hold a Full (Category One or Two) practising certificate;
- 12 **agreed** that the commencement of the requirement in paragraph 9 be delayed for 6 months after the commencement of other regulatory changes agreed below for persons responsible;
- 13 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in teacher-led early childhood education and care centres to:
- 13.1 supervise children in attendance and staff providing education and care (even if located in separate spaces), which includes being actively involved with children and teaching staff;
 - 13.2 provide education and care to children in attendance and guidance to teaching staff;
 - 13.3 ensure all staff are implementing the gazetted curriculum framework and know how to use it in their teaching;
 - 13.4 ensure that day-to-day health and safety risks and hazards are identified, and appropriate steps are taken to address those risks or hazards when children attend;
- 14 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in teacher-led early childhood education and care centres to hold an accredited first aid qualification and that they be included in the current 1:25 ratio for first aid qualification requirements;
- 15 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require persons responsible in licensed hospital-based education and care services to:
- 15.1 supervise children and staff at the service and adults in the activity room (even when children and staff are located in separate spaces), which includes being actively involved with children, teaching staff and adults;
 - 15.2 ensure there is at least one adult present when children are in the activity room;
 - 15.3 provide education and care to children and guidance to teaching staff;
 - 15.4 ensure all staff are implementing the gazetted curriculum framework and know how to use it;

- 16 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require that the person responsible in licensed home-based education and care services only work across up to two licences within each calendar month, and only one licence at any one time;
- 17 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to increase the maximum licence size for licensed home-based education and care services from 80 to 100 children;
- 18 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require that the person responsible for licensed home-based education and care services be locally-based;
- 19 **agreed** that the Ministry of Education undertake further consultation on a definition of 'locally-based' for person responsible in licensed home-based education and care services, which is that they must:
- 19.1 either reside, or have a permanent place of business from which they conduct their daily responsibilities, in the same local area as the educator(s) for which they are responsible;
 - 19.2 be in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the education and care, comfort, and health and safety of the children;
 - 19.3 be able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service;
 - 19.4 be able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency;
- 20 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require the person responsible in licensed home-based education and care services to take all reasonable steps to observe, support, and provide guidance on the curriculum delivery in the home during their visits and to keep records of these activities;
- 21 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to require the person responsible in licensed home-based education and care services to provide professional development to educators on a regular basis and to keep records of any such discussion;

Approval to draft and consult on changes to the Regulations

- 22 **invited** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;
- 23 **agreed** that the Parliamentary Counsel Office be invited to identify opportunities for simplifying and improving the clarity and accessibility of the relevant parts of the Education (Early Childhood Services) Regulations 2008 when drafting the amendments agreed above;
- 24 **authorised** the Minister of Education to make any minor and technical decisions that may arise during the drafting process, provided the decisions are consistent with the above decisions;

- 25 **noted** that the above decisions with drafting implications are subject to Parliamentary Counsel Office's discretion as to how best to express these in legislation;
- 26 **authorised** the Ministry of Education to undertake consultation on the draft regulations;

Approval to undertake consultation on additional Tranche 2 proposals

- 27 **agreed** that the Ministry of Education undertake public consultation on proposals to amend the Education (Early Childhood Services) Regulations 2008 to expressly allow the Secretary for Education to add conditions to provisional licences;
- 28 **agreed** that the Ministry of Education undertake public consultation on proposals to amend the Education (Early Childhood Services) Regulations 2008 to provide a definition of 'permanently ceased to operate' and a process for temporary service closures;
- 29 **authorised** the Minister of Education to release the following discussion documents, attached under SWC-22-SUB-0232, for public consultation subject to any minor editorial, formatting and layout changes required:
- 29.1 Providing a definition of 'locally-based' for person responsible in licensed home-based education and care services;
- 29.2 Adding conditions to provisional licences, defining 'permanently ceased to operate', and providing for temporary closures;
- 30 **invited** the Minister of Education to report back to SWC by 31 July 2023 with further proposals for regulatory change arising from the public consultation outlined above.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Kelvin Davis
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Damien O'Connor
Hon Peeni Henare
Hon Willie Jackson
Hon Jan Tinetti
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC



Cabinet

Minute of Decision

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Report of the Cabinet Social Wellbeing Committee: Period Ended 9 December 2022


On 12 December 2022, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 9 December 2022:

Out of scope

SWC-22-MIN-0232 **Proposals for Tranche 2 of the Early Learning
Regulatory Review** CONFIRMED
Portfolio: Education

Out of scope

Out of scope



Rachel Hayward
Secretary of the Cabinet