

In confidence

Office of the Minister of Education

Chair, Cabinet Legislation Committee

Allowing primary qualified teachers to be the person responsible in teacher-led, centre-based early learning services

Proposal

- 1 I seek Cabinet's agreement to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to allow primary qualified teachers to be the person responsible in teacher-led, centre-based services.

Executive Summary

- 2 The Regulations require at least one person responsible in teacher-led, centre-based services. This person is in charge of the day-to-day education and care, comfort, and health and safety of children in attendance.
- 3 While both early childhood education (ECE) and primary qualified teachers with a practising certificate count as certificated teachers for funding purposes, the Regulations only allow ECE qualified teachers to be a person responsible.
- 4 There are indications of tight teacher supply in the early learning sector, with services in some areas finding it difficult to recruit or retain qualified teachers. Allowing primary qualified teachers to be person responsible was suggested by some in the early learning sector as a means to ease these pressures on teacher-led centres.
- 5 From 23 September to 20 October 2019, the Ministry of Education ran consultation on two proposals:
 - 5.1 allow primary qualified teachers to be a person responsible in centres for designated hours of the day (i.e. the first and last 90 minutes of licensed daily hours)
 - 5.2 allow primary qualified teachers to be a person responsible in centres at all times.
- 6 Based on consultation feedback, I propose allowing primary qualified teachers to be a person responsible in teacher-led centres at all times. This change should ease pressure on centres and boost teacher supply without reducing the quality of provision.
- 7 This change requires amendments to clauses 3, 44 and Schedule 1 of the Education (Early Childhood Services) Regulations 2008.
- 8 It is important to encourage prospective teachers to enter into ECE initial teacher education programmes, so I only intend for this to be a temporary change to help with teacher supply. I intend to review the Regulations again in late 2022.

- 9 I plan for Cabinet to refer the Amendment Regulations to the Executive Council on 9 December, with a view for the Regulations to come into force on 9 January 2020.

Background

The person responsible role

- 10 The Education (Early Childhood Services) Regulations 2008 require all teacher-led, centre-based services to have a person responsible.
- 11 In teacher-led centres, the person responsible is in charge of the day-to-day education and care, comfort, and health and safety of children. This includes supervising children and other teaching staff at all times.
- 12 There must be at least one person responsible for every 50 children in attendance. This role is often rostered amongst eligible staff.
- 13 The Regulations only allow ECE qualified teachers to be the person responsible in teacher-led centres. This explicitly prevents primary qualified teachers from taking on more formal responsibilities in teacher-led centres. Inadvertently, this can discourage primary qualified teachers from working and then remaining in teacher-led centres.
- 14 Primary qualified teachers certificated with the Teaching Council of Aotearoa New Zealand can be counted as certificated teachers for funding purposes.

Teacher supply pressures

- 15 Over the past year there have been some indications that there is limited supply of early childhood education (ECE) qualified teachers. Teaching vacancies are increasing and fewer vacancies are being filled by qualified teachers. ECE initial teacher education completions have also halved over the last decade.
- 16 Participation in ECE at teacher-led centres is also projected to increase in coming years. While overall numbers of staff have been rising to meet this demand, much of the recent increase has been met from unqualified staff.
- 17 In 2018, approximately 4.5% of all certificated teachers working in teacher-led, centre-based services had a primary teaching qualification.
- 18 In August 2019, I met with representatives from the Early Childhood Council, Montessori Aotearoa New Zealand, New Zealand Kindergartens Incorporated and Te Rito Maioha Early Childhood New Zealand. We discussed how to stimulate teacher supply and alleviate pressure on centres.
- 19 During this meeting, it was suggested that allowing primary qualified teachers to act as a person responsible at opening and closing would help ease pressure on centres. Opening and closing are times when there are typically fewer children present, and therefore also fewer staff. At least one staff member must be the person responsible.

Results from the consultation

- 20 In September, I agreed to release the discussion document on two proposals which would change the person responsible requirements in teacher-led centres:
- 20.1 allow primary qualified teachers to be a person responsible in centres for designated hours of the day (i.e. the first and last 90 minutes of licensed daily hours)
 - 20.2 allow primary qualified teachers to be a person responsible in centres at all times.
- 21 The Ministry of Education ran public consultation over four weeks from 23 September to 20 October 2019. Sector stakeholders were invited to complete a short survey or send a more detailed submission to the Ministry.
- 22 81% of survey respondents (648) agreed that primary qualified teachers should be able to work as a person responsible, while 19% disagreed (153). Of the two proposals put forward, the majority (84%) of respondents believed primary qualified teachers should be able to act as a person responsible at all times. These respondents did not consider that allowing primary trained teachers to be person responsible would negatively affect the quality of education and care.
- 23 Respondents who preferred allowing primary qualified teachers to be a person responsible for designated periods only considered that this would provide centres with flexibility, but indicated that ECE qualified teachers are better suited to the person responsible role overall.
- 24 Respondents who disagreed with the proposals argued that only ECE qualified teachers have the skills, experience and pedagogy needed to effectively deliver *Te Whāriki*, the early learning curriculum document. Further, they noted that allowing primary qualified teachers to take on more responsibility and supervise other teaching staff would reduce the quality of provision, which could affect children's learning and developmental outcomes.

Changing the person responsible requirements

- 25 I propose allowing primary qualified teachers to be the person responsible in teacher-led centres at all times. This is designed as a temporary measure to ease pressure on centres so that they can use primary qualified teachers more easily, particularly while there are limited numbers of ECE qualified teachers available in the market. As such, I intend to review this change in late 2022.
- 26 The major advantages of this option is that it would enhance roster flexibility and could encourage more primary qualified teachers to enter the sector. Centres would be better positioned to comply with the Regulations in circumstances out of their control, such as when an ECE qualified teacher (acting as a person responsible) needs to leave early because of an emergency.
- 27 I understand respondents' concerns that the change could reduce the quality of provision. However, I do not believe it will affect the quality of provision in the short term because there are sufficient protocols in place to ensure ECE pedagogy and best practice continue to be used.

- 28 The Regulations require at least 50% of teaching staff to be comprised of ECE qualified staff. This ensures that there will continue to be a high presence of ECE qualified teachers in teacher-led centres.
- 29 While there are pedagogical differences between ECE and primary initial teacher education, primary qualified teachers in teacher-led centres are required to use pedagogical approaches consistent with *Te Whāriki*. Service providers are more likely to nominate primary and ECE qualified teachers for the person responsible role if they believe that person has a good understanding of ECE pedagogy, *Te Whāriki* and the licensing requirements.
- 30 The Education Review Office regularly evaluates the implementation of *Te Whāriki*, which should help to ensure ECE pedagogy continues to be used appropriately.

Timing and 28-day rule

- 31 I propose that Cabinet refer the Amendment Regulations to the Executive Council on 9 December 2019. The Amendment Regulations will be gazetted on 12 December 2019 and will come into force on 9 January 2020. This is in line with the 28-day rule.

Compliance

- 32 The Amendment Regulations comply with the following:
- 32.1 the principles of the Treaty of Waitangi;
 - 32.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 32.3 the principles and guidelines set out in the Privacy Act 1993; and
 - 32.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 33 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

- 34 The Amendment Regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 35 A Regulatory Impact Assessment has been prepared and is attached in Appendix One.
- 36 The Ministry of Education's RIA panel has reviewed the Regulatory Impact Analysis "Person responsible requirements" produced by the Ministry of Education and dated 27 November 2019. The panel considers that it partially meets the Quality Assurance

criteria. “While the problem is concise and clear it is not compelling given the proposal is based on limited information. It has therefore not been possible to quantify all the costs and benefits, however the panel notes that it will allow for more flexible staffing options for the teacher-led providers that have staffing constraints”.

Publicity

- 37 The Amendment Regulations will be notified in the New Zealand Gazette.
- 38 The Ministry will use the School and Early Learning Bulletins, and the Education Gazette to communicate with the sector about the Amendment Regulations.

Proactive release

- 39 I intend to proactively release this paper in full (as required by CO (18) 4).

Consultation

- 40 The Education Review Office has been consulted on this paper. The Treasury has been informed about the proposed change and the Amendment Regulations.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Education (Early Childhood Services) Regulations 2008 prevent primary qualified teachers from being the person responsible in teacher-led centres;
- 2 **note** that there are indications of tight supply of ECE qualified teachers;
- 3 **note** that consultation feedback showed strong support for the proposal allowing primary qualified teachers to be the person responsible in teacher-led centres at all times because it would ease pressure on centres, enhance roster flexibility and encourage more primary qualified teachers to enter the sector;
- 4 **agree** that primary qualified teachers should be allowed to be the person responsible in teacher-led centres;
- 5 **approve** the Amendment Regulations to allow primary qualified teachers to be the person responsible in teacher-led centres;
- 6 **note** that this is a temporary solution designed to ease pressure on teacher-led centres, and that the person responsible requirements will be reviewed again in late-2022;
- 7 **agree** that Cabinet should refer the Amendment Regulations to the Executive Council on 9 December.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education