

# Coversheet: Network Planning in Early Learning

Advising agencies	Ministry of Education
Decision sought	Proposals for inclusion in the Education and Training Bill
Proposing Ministers	Minister of Education

## Summary: Problem and Proposed Approach

**Problem Definition**  
**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

In recent years there has been an increase in the number of children attending early learning services and the patterns of attendance have shifted. The market has responded by rapidly expanding in a relatively unrestricted environment. This has resulted in issues with quality of provision in some parts of the sector. There is also a view that this has resulted in some areas experiencing under or oversupply of child places.

**Proposed Approach**  
**How will Government intervention work to bring about the desired change? How is this the best option?**

This regulatory impact analysis proposes amending the current licensing framework to establish a two stage licensing process which will see applications for new services assessed on their ability to meet the needs of the community as well as on the licensing history of any existing services owned or operated by, or connected with the applicant. This will result in new licences only being granted to applicants that are establishing a service in an area where there is a need for a new service and do not have a history of low quality provision.

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

Ensuring sufficient quality early learning provision will benefit stakeholders in the following ways:

- Sufficient supply will enable labour market participation benefiting families and wider government through incomes, tax take, and less call on social development assistance.

- Service providers will potentially experience less market volatility and have a higher degree of certainty around occupancy within their services.
- Parents and whānau will also benefit from services meeting their needs in terms of the type of provision for example philosophy, identity, language and culture. They will also have confidence that the service they send their children to is of a certain standard.
- The new two stage licensing process will mean the Ministry of Education will be able to manage the network of provision to ensure there is adequate supply of child places. It will also mean achieving a lift in quality through declining new licence applications by providers with a history of low quality provision.

#### **Where do the costs fall?**

The monetised costs from this proposal will be approximately \$13 million across the forecast period for the Ministry of Education associated with the implementation of the two stage licensing process, and establishing and administering the new network planning approach.

Services will see an increase in costs associated with the two stage licensing process and potential for a licence application to be declined.

#### **What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?**

There is a risk that the Ministry may not be able to respond to the demands/wishes of communities fast enough (for example following a natural disaster) or be able to appropriately account for the role of parental choice in early learning when making network decisions. This may result in some areas experiencing undersupply either in terms of numbers of child places or in terms of the type or philosophy of service required in a particular community.

There is also a risk that by intervening in the market in this way it will effectively protect those services already operating who may be of low quality by not allowing new services to open in competition. As part of the Strategic Plan for Early Learning there has been a series of recommendations proposed aimed at lifting quality of provision which will include increased monitoring of services. There is also work underway to review the accountability mechanisms within the regulatory framework to ensure effective management of poor performance within the sector.

This regulatory impact analysis is part of the first stage in regulatory change required to implement a network planning approach; therefore, further work is required to effectivity implement the changes which includes how to mitigate the risks that have been identified.

#### **Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.**

No significant incompatibilities with the Government's Expectations for the design or regulatory systems have been identified.

## Section C: Evidence certainty and quality assurance


<b>Agency rating of evidence certainty?</b>
<p>There is limited information about the extent of any under or over supply of provision within the early learning market due to the open and diverse nature of the sector. It is also difficult to take into account the role that choice and preference plays for parents and whānau when deciding where to send their children to an early learning service due to the wide range of factors influencing behaviour. This means there is a degree of uncertainty with regards to the nature and extent of any issues with under or oversupply of child places.</p> <p>There is a higher degree of certainty regarding the levels of quality within the network. However, this is limited by the fact that the Ministry does not have a systematic way of reviewing all services against the regulatory framework but instead relies on notifications from the Education Review Office, complaints from the public or notified incidents.</p>

*To be completed by quality assurers:*

<b>Quality Assurance Reviewing Agency:</b>
Ministry of Education
<b>Quality Assurance Assessment:</b>
Partially meets
<b>Reviewer Comments and Recommendations:</b>
While the problem is concise, it is not clear and therefore not compelling given the proposed change over time.

# Impact Statement: Network Planning in Early Learning

## Section 1: General information

<b>Purpose</b>
The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.
<b>Key Limitations or Constraints on Analysis</b>
Due to constraints associated with having limited evidence as to the extent of the problem with under or oversupply of provision within the market, the analysis within this regulatory impact assessment relies on a series of proxy measures (occupancy and wait times) as well as some anecdotal evidence as a way of defining and assessing the problem.
<b>Responsible Manager (signature and date):</b>
Dr Andrea Schöllmann  Deputy Secretary Education System Policy Ministry of Education 11/ 10 / 2019

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

Early childhood education (ECE) or early learning caters for children from birth until they start school. Unlike schooling, children are not required to attend early learning, although approximately 97 percent of children attend an early learning service before starting school.<sup>1</sup> Early learning is not just about providing education and care for children, it also supports labour market participation for parents and whānau.

Almost all early learning services (bar Te Kura: The Correspondence School) are independent of government and are either private businesses,<sup>2</sup> or community-based or not-for-profit organisations.<sup>3</sup> There are several service provision types licensed or certificated under the Education (Early Childhood Services) Regulations 2008 or Education (Playgroups) Regulations 2008. There are also different languages, philosophies and environments represented within each service type.

Within the diverse provision of early learning there are six broad service types, each with different requirements and funding rates, including:

- education and care, including kindergarten (59% of all services)
- home-based (8% of all services)
- hospital based and casual education and care (approximately 0.5% of all services)
- kōhanga reo (8% of all services)
- playcentre (7% of all services)
- playgroup (17% of all services)

Education and care services are where children are overseen by teachers with a recognised ECE teaching qualification.<sup>4</sup> The person responsible for these services must also be certificated with the Teaching Council of Aotearoa New Zealand.<sup>5</sup>

Within this category, there is a distinction between education and care (including kindergartens) services and home-based services. Education and care services are centre-based and can be licensed for up to 150 children and require at least 50% ECE qualified teachers during regulated staff ratio hours.<sup>6</sup> Home-based services, on the other hand, are

<sup>1</sup> Information about participation in early learning is available at <https://www.educationcounts.govt.nz/statistics/early-childhood-education/participation>.

<sup>2</sup> Private services include those owned by a private company, publicly-listed company, private trust, partnership or an individual. Private services are able to make financial gains and distribute these to their members.

<sup>3</sup> A community-based service is a service that is an incorporated society, a charitable, statutory or community trust, or is owned by a community organisation (e.g., a city council, church or university). Community-based services are prohibited from making financial gains that are distributed to their members.

<sup>4</sup> Education (Early Childhood Services) Regulations 2008, reg 44(4).

<sup>5</sup> Education (Early Childhood Services) Regulations 2008, reg 3; ECE Funding Handbook.

<sup>6</sup> Education (Early Childhood Services) Regulations 2008, reg 20A-26, sch 1.

comprised of a network of homes on one licence (with up to four children in each educator's home), which is supervised by a certificated teaching co-ordinator who works across the network.<sup>7</sup> Each home-based licence is limited to a network of up to 80 children at one time.

The remainder of the service types is where the education and care is undertaken by the parents or whānau of the children attending, or by educators or kaiako specifically trained in the practices and philosophies distinct to that service type.<sup>8</sup> This category encompasses home-based, Te Kōhanga Reo, playcentres and playgroups.

It is worth noting that playgroups are only certificated services and are therefore not licenced in the same way as the rest of the service types. For this reason playgroups have been excluded from the proposals in this regulatory impact statement.

While there is a diverse range of provision, licensed and regulated providers of early learning are required to implement the Ministry of Education's early childhood education curriculum framework (*Te Whāriki mātauranga mō ngā mokopuna o Aotearoa Early Childhood Curriculum*), which is gazetted in part.

The Ministry checks, through licensing processes, whether prospective early learning services meet prescribed standards before they enter the sector. A service provider can apply for and hold multiple licences, with licence size changing depending on service type.<sup>9</sup>

Once a service provider is licensed, the Ministry of Education undertakes no further mandatory checks to ensure they continue to comply with the regulatory requirements, including the licensing criteria. However, the Ministry does respond to and investigate complaints.

While the Ministry does not have an active monitoring role, the Education Review Office (ERO) reviews early learning services with a focus on how well-placed a service provider is to promote positive learning outcomes for children. On average, ERO reviews each service once every three years.

The Ministry subsidises early learning to encourage children's participation in the sector and enable labour force participation for parents and whānau. The funding rates available to services vary by service type, child age (under 2s and over 2s), subsidy type (the ECE Subsidy, 20 Hours ECE, Plus 10), teacher qualifications and the proportion of qualified teachers and educators.<sup>10</sup> To be eligible for Ministry of Education funding rates, services must comply with the requirements in the Education (Early Childhood Services) Regulations 2008, the relevant Licensing Criteria and the rules in the ECE Funding Handbook.

---

<sup>7</sup> Education (Early Childhood Services) Regulations 2008, reg 3.

<sup>8</sup> Parent-led services, available at <http://minedu.cwp.govt.nz/early-childhood/running-a-service/starting-a-service/establishing-a-puna-kohungahunga/types-of-ece-services/parent-led-services/>.

<sup>9</sup> Education (Early Childhood Services) Regulations 2008, sch 3.

<sup>10</sup> A full break down of funding rates is available at <https://www.education.govt.nz/assets/Documents/Early-Childhood/Early-Childhood-Education-Funding-Handbook/Early-Childhood-Funding-Handbook-Appendix-1-Funding-Rates-to-2020-TKR-updated.pdf>.

In 2017/18, government spent \$1.83 billion on early learning, equating to 0.63% of GDP.<sup>11</sup> There were also 5,471 early learning services with 200,588 enrolments.<sup>12</sup>

The recommendations in this document relate to the network planning provisions within the Strategic Plan for Early Learning. The Plan aims to provide a shared vision and road map towards an early learning sector that gives all children genuine opportunities for high quality learning and development that supports their identity, language and culture and enables them to learn and thrive. A Ministerial Advisory Group (MAG) was appointed in April 2018 to advise the Minister of Education on the development of a ten year Strategic Plan for Early learning. The MAG, who drafted the plan, were empowered to consider any matter relating to the early learning sector, including policies around funding, regulation and support and the curriculum. As a result, the entire early learning system was assessed, alongside the Review of Home-based Early Childhood Education.

Consultation on the draft Plan ran over the November 2018 to February 2019 period. Stakeholders were encouraged to share their ideas in an online survey or make a submission on the Education Conversation | Kōrero Mātauranga website. The Ministry also hosted a number of public hui across different parts of the country.

## 2.2 What regulatory system, or systems, are already in place?

The regulatory system governing minimum standards for ECE in New Zealand is divided into three tiers:

1. first tier – the Education Act 1989;
2. second tier – regulations for ECE services and playgroups. These are predominantly stated in the Education (Early Childhood Services) Regulations 2008 and Education (Playgroups) Regulations 2008; and,
3. third tier – the Criteria. These are more detailed standards set under the empowering second tier regulation that services must comply with, and are promulgated by the Ministry of Education. These cover a wide range of areas e.g., expectations around the premises, health and safety, governance and management as well as professional practice. The Criteria are used by the Ministry in its assessment of service quality compliance against regulated standards.

The Criteria are used by the Ministry in its assessment of service quality compliance against regulated standards.

The government has a duty of care over all citizens and residents. Government regulation of ECE is therefore intended to ensure at least minimum standards of health, safety,

<sup>11</sup> Available at <https://www.educationcounts.govt.nz/statistics/early-childhood-education/finances>.

<sup>12</sup> Note licensing data is based on the number of active licences as at 31 May 2018. Enrolment data is based on the annual ECE census which takes place in June of the year in question and describes regular enrolments in the return week regardless if children were absent. Enrolments in casual education and care services and hospital-based services have historically not been included because they do not have regular enrolments. Data sourced from <https://www.educationcounts.govt.nz/statistics/early-childhood-education/services> and <https://www.educationcounts.govt.nz/statistics/early-childhood-education/participation> on 16 July 2019.

wellbeing and education for young children. This particularly extends to situations where parental responsibility is not being directly exercised and where very young children, who are unlikely to be able to completely protect themselves from harm, are involved. Also, parents may be deterred from using ECE services if they have doubts about their child's potential safety.

Regulation is also used as a mechanism to implement government policies and goals, for example, around diversity and choice or ratios of adults to children.

ERO has a significant role in the sector as the government agency that evaluates and reports on the education and care of children in ECE.

### **2.3 What is the policy problem or opportunity?**

For all children to benefit, the early learning system must consistently provide high quality experiences across the range of provision types valued by parents and whānau. In recent years the number of children participating in early learning has increased, and children are participating at younger ages and for longer hours. This has resulted in the rapid expansion of early learning services, albeit with different levels of growth between service types, in a relatively unrestricted environment. There is concern that this rapid expansion may have come at the expense of quality provision for some service providers due to the pace of change.

#### **Provision within the network**

The early learning network as it currently exists has evolved organically as a result of past and present policies and parental and service provider choice. New early learning service providers are free to enter the market if they can meet the minimum licensing standards set by the Ministry of Education.<sup>13</sup>

The current policy settings are neutral towards the types of new service that may be set up, allowing this to be determined by the market. The settings allow for diversity in service types or philosophy if they occur but do not specifically plan for diversity. There is no specific commitment to the provision of choice (of hours, fees, age-range, philosophy or ownership model) nor is there a guarantee that early learning will be conveniently located for all families. Essentially all network planning decisions are left for the market to determine which means there is a risk that some areas experience either under or over supply of services. There is also no mechanism to decline a licence if the applicant meets all the licensing criteria.

There is a view from some parts of the sector that new services opening up may be outstripping demand for child places which is impacting the viability of existing service providers. This has been potentially exacerbated by previous policies aimed at encouraging high rates of participation in early learning. There is also a risk that some areas may experience insufficient early learning provision or the services do not match the needs and aspirations of parents and whānau.

---

<sup>13</sup> There are also a number of other regulatory requirements that services must comply with such as health and safety legislation, and building consent through the Resource Management Act.



However, due to the open nature of the early learning market there is limited data and information to gauge the extent of the supply and demand for places or the reasons for services entering or exiting the market. Over the last ten years, 1174 services have closed and 1819 services have opened. In 2011 and 2012 there were a large number of services that closed due to mergers with other services. This may have been in part to the shift from the 1998 Regulations to the 2008 Regulations which increased the licence size from 50 to 150.

When services close the reason for closure is recorded and since 2016 the most common reason for closure was declining roll, or owner retiring/disestablishing their service. A declining roll would indicate that there is an issue with oversupply in some areas which is impacting on the viability of those services. However, this data should be treated with caution as it is self-reported and only records one reason for closure without context.

Occupancy rates and wait times vary according to location, service type and age of the children.

- Education and care has had a fairly static occupancy rate between 78-85% since 2000 or between 80-82% since 2010. In 2018, approximately half of services had no wait time for a place with the next highest wait time being between one and six months ranging from 17-20% of services.
- Kindergarten's occupancy rates have dropped from 91% in 2000 to 84% in 2017 with rates being largely static since 2011 (between 86-84%). Wait times in 2018 varied by age with 36% of those aged 2 waiting over six months for a place and those aged 3 and 4 either having no wait time (31-43%) or between one to six months (35-36%).
- Parents wanting to send their children to a home-based provider largely do not have to wait for a place (approximately 77% of services have no wait times). There is no occupancy data for home-based.
- Playcentre occupancy rates have fluctuated between 52-60% with the majority (83%) having no wait times.

### **Preventing low quality services from expanding**

In recent years there have been issues raised in relation to the quality of provision by some providers, including a series of large scale investigations into a number of providers which has resulted in the closure of some services.

There has also been an increase in complaints made to the Ministry in 2018 with 430 complaints compared with 339 in 2017. These complaints related to 345 services or 6.3% of the early learning sector. Of those complaints investigated, 56.5% were upheld (221 individual complaints). These 221 upheld complaints related to 176 early learning services, or 3.2% of all services operating in 2018. Complaints most commonly upheld in 2018 were related to:

- health and safety (17% of all complaints received);
- behaviour management (10% of all complaints received), and;

- supervision (9% of all complaints received).<sup>14</sup>

A further 170 complaints were identified as 'not upheld' following investigation. A complaint is determined as 'not upheld' when:

- the complainants' concerns were unable to be substantiated throughout the investigation process; and/or
- there was no evidence of non-compliance occurring at the service in relation to the complaint.

The Education Review Office (ERO) has identified variability in practice across the system, particularly around children's oral language learning,<sup>15</sup> and enabling infants and toddlers to become competent and confident communicators and explorers.<sup>16</sup> The ERO also has found that many services are not sufficiently responsive to Māori and Pasifika children.<sup>17</sup>

Under our current licensing framework there is no restrictions on these providers setting up another service even after the Ministry has cancelled their licence.

## 2.4 Are there any constraints on the scope for decision making?

The draft Plan was released for public consultation between 19 November 2018 and 15 March 2019 with the final Plan to be considered by Cabinet later in 2019. There will be a further regulatory impact analysis for the other proposals as part of this Cabinet process.

As well as the matters raised in the Strategic Plan, the Ministry has started looking at aspects of the early learning regulatory system as part of our stewardship role. The intention of that review is to ensure the regulations are fit for purpose and to enable a lift in system performance with a focus on improving quality. This includes the accountability framework for managing poor quality provision, areas that the Ministry regional offices and early learning services find confusing or difficult to interpret, and areas where there are inconsistencies between the regulatory and funding systems. It is intended that this regulations review will incorporate the first tranche of changes proposed in the final Strategic Plan to be progressed as a package in 2020 following public consultation. Other recommendations from the Strategic Plan that are requiring further policy work will be progressed at a later date.

<sup>14</sup> Note a single complaint can be counted against multiple categories.

<sup>15</sup> Education Review Office. (2017). *Extending their language – expanding their world. Children's oral language (birth-8 years)*. Wellington, NZ: ERO. Retrieved from <http://www.ero.govt.nz/publications/extending-their-language-expanding-their-world/>

<sup>16</sup> Education Review Office. (2015). *Infants and toddlers: competent and confident communicators and explorers*. Wellington, NZ: ERO. Retrieved from <http://www.ero.govt.nz/publications/infants-and-toddlers-competent-and-confident-communicators-and-explorers/>

<sup>17</sup> Education Review Office. (2013). *Priorities for children's learning in early childhood services*. Wellington, NZ: ERO. Retrieved from <http://www.ero.govt.nz/assets/Uploads/Priorities-for-Childrens-Learning-in-Early-Childhood-Services-May-2013-web.pdf>; Education Review Office. (2018). *Awareness and confidence to work with Te Whāriki*. Wellington, NZ: ERO. Retrieved from <https://www.ero.govt.nz/assets/Uploads/Awareness-and-confidence-to-work-with-Te-Whariki.pdf>

The Ministry is also in the process of beginning work to develop an education regulatory stewardship strategy across the whole of the education system which is likely to be published mid-2020.

More broadly, the Strategic Plan is one of the key medium term strategies that sits within the broader Education Work Programme that the Minister of Education has commissioned. There are a number of other pieces of work within the work programme that could impact on the final Plan, including the Tomorrow's Schools review, the Workforce Strategy, Ka Hikitia, and the Disability and Learning Support Action Plan. The implications will be considered as work progresses including how other pieces of work may impact the timing and phasing of implementation.

A well-functioning early learning system also supports parents, caregivers and whānau to participate in the labour market which aligns with the Government's broader economic strategy. It also supports the Government's forthcoming Child and Youth Wellbeing Strategy, and it will make a significant contribution to the outcomes under the 'children and young people are learning and developing' domain.

The specific constraints for each of the recommendations is outlined below.

### **Provision within the network**

The major constraint is regarding the lack of information and Ministry capability needed to undertake a network planning approach. The early learning sector is more complex than the compulsory schooling sector due to a number of factors including the role of parental choice, the higher numbers of services, how enrolments operate compared to schools<sup>18</sup>, and the fact that the sector effectively operates as a private market. These factors make it difficult to measure community demand for new or different services in an area. Geography adds a further layer of complexity. Some parents choose services that are near their workplace, or are easy to access from public transport. Any issues with establishing a model to facilitate a network planning approach is also dependent on the quality of the information available, including the Census and data held by the Ministry.

As outlined above, the open and private nature of the market for early learning provision means that there is limited data and information to gauge the extent of the supply and demand for places or the reasons for services entering or exiting the market.

A further constraint with planned provision is how to take into account the role of parental choice. There are many different reasons parents chose to send their children to a particular ECE, which range from location either close to work, home or commuter links; particular philosophies or types of provision (including fees, hours of operation); reputation of quality; or a combination of these or other factors.

### **Preventing low quality services from expanding**

There is currently no agreed measure of quality in early learning especially across a diverse set of provision types that exist within the New Zealand context. This would mean that a

---

<sup>18</sup> Schools have a fairly static roll over the course of a year and students attend full time where as in ECE the numbers of hours children attend can vary, including splitting child funded hours across more than one child, and parents have more flexibility to change between services.

series of proxy measures would need to be used such as history of licensing interventions, frequency of ERO reviews, or complaints, to establish the level of quality within a service or of a service provider.

The New Zealand early learning sector also has a number of large operators that have a large number of services across regions or the country. This means that they may have a number of services that would be deemed to be of high quality at the same time as lower quality services but overall the organisation may be well run and there is a level of confidence on their ability to manage a new service to a certain standard.

## 2.5 What do stakeholders think?

The draft Strategic Plan for Early Learning was released for consultation from 19 November 2018 to 15 March 2019. Stakeholders were asked to provide feedback on the document, which contained five goals and 23 associated recommendations. Stakeholders were able to do this via an online survey, written submission and attend regional hui that took place throughout the country. The Ministry also commissioned three parent focus groups in Auckland, Christchurch and Whangarei to ensure that parent voice was captured during the consultation phase.

During the consultation period, 44 public hui were held, attended by more than 1,900 people. The Ministry received 2,264 online survey submissions and 219 written submissions during the consultation period. Feedback was received from across the early learning sector:

- Parents/caregivers/family members of children currently attending an early learning service
- Parents/caregivers/family members of past or future users of early learning services
- Kaiako/teachers/educators at an early learning service
- Managers/owners of early learning services
- Education peak bodies
- Education consultants
- Additional learning needs specialists
- Academics/lecturers/initial teacher education providers
- Teachers in training.

As well as those with a connection with the sector such as:

- Iwi Māori
- Health professionals
- Board of trustees members
- Non-government organisations

Broadly speaking, there was a high level of agreement with most of the recommendations in the draft Plan. The specific feedback from the consultation on each of the network planning recommendations are outlined below.

### **Provision within the network**

Of those that responded to the survey, 82.3% either agreed or strongly agreed with the recommendation. Those that did support this recommendation raised the following additional matters:

- While there may be plenty of provision in the current market, it might not be the right mix for the needs of a particular community.
- Existing services need more support before there are new services opening up.

Those that did not support or were neutral for this recommendation had three main concerns:

- that any network planning should be left to the market and private businesses to decide where to set up.
- uncertainty about the ability of the government or the Ministry to determine what need exists within local communities, particularly considering the diversity of provision and the role of parental choice.
- This in effect protects the incumbents who may not be providing what the community wants or may be of low quality.

There were also some submitters that tied network provision to the recommendation of considering the establishment of state-owned services or public provision. It was suggested that the sector move towards public provision including using the existing kindergarten network and willing community providers as a hub to build a new system including governance, professional and administrative support.

### **Preventing low quality services from expanding**

Of those that responded to the survey, 96% either agreed or strongly agreed with the recommendation. There was some support from survey respondents and those that attended the hui for going one step further and closing low quality services, particularly if they have been on a provisional licence for a long period or have been receiving support and there has been no marked improvement.

Of those that supported the recommendation there were three issues raised:

- There was concern that well-performing providers who purchase struggling centres who turn them around could be penalised or discouraged from this type of expansion.
- Owners and directors of failing centres should be prevented from setting up new services under a different company name.

- Similarly, owners and directors shouldn't be able to change the ownership or structure to another person or entity close to them to avoid being detected or as a way to reset the licence for financial reporting purposes.

Of those that didn't support this recommendation was concern about what criteria would be used to measure low quality, and also what supports will be available for services that were deemed to be of low quality.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

There are a range of regulatory and non-regulatory options available to implement a network planning approach in early learning. These options can be looked at as a continuum of options that can be progressed over time depending on how far the Government wishes to go towards fully public provided early learning.

While the draft Early Learning Strategic Plan considered network planning and preventing low quality services from expanding as two separate actions, we see these actions working together to support a high quality and diverse network. Therefore, we have brought these two actions together as a package to support quality and choice within the network.

The options to progress planned provision are:

#### *Option one: Market driven planning*

This option would be an enhanced status quo with some changes to support provider's decision making and stimulating provision as appropriate.

The Ministry would support provider decision making through making publically available up-to-date data on occupancy rates, waitlist times, and birth rate information; provide additional support for community groups thinking about opening a new service; and require a community needs analysis for any new licence application. Stimulating provision could be done via funding grants to entities or communities looking to establish a service in areas the Ministry has determined there is a need for more child places such as on equity grounds.

There is a risk that this option may still result in areas experiencing under or oversupply of child places as there would be no mechanism to decline an application for a licence based on the needs within the network.

This option would not require regulatory change; however, requiring a community needs analysis would require a change to the licensing criteria. However, this option does not prevent providers who may have a history of low quality provision from entering the market.

#### *Option two: Enhanced market driven planning*

This option would be similar to option one in that it would be largely left to the market to determine where there is a need for more child places; however, a provider's history of provision would be taken into account when determining if they were to be granted a licence to operate or not.

The current approach to licensing means that a potential service provider applies to the Ministry of Education get a licence once they have acquired and fit out a building (either through buying or leasing premises) and are at the stage being ready to opening for enrolments. This requires considerable investment by the service provider; therefore, it is recommended that there be a two stage licencing process with the first stage being prior to acquiring premises. The stages of licence application would be:

1. Preliminary process – application to either the Minister or the Ministry of Education which would be granted depending a demonstrated need in the community as well as on the licensing history of any existing services owned or operated by, or connected with the applicant.
2. Final licensing process – applicants would go through the licensing process as set out in regulations. This will continue to be undertaken by the Ministry.

This would require a change to the Education Act 1989 and Regulations to allow for a broader range of criteria to be taken into account when granting a licence to operate and to allow for the two stage licensing process.

*Option three: Ministry driven planning*

The Ministry would develop a regional planning model and process to determine where new child places are needed which could extend to be the type of provision that is needed in a particular community. This model could take into account the following information – occupancy rates, wait times, current types of provision, parental and community preferences, population projections, major residential or business developments, and/or existence of arterial/commuter routes. It is be possible to align school planning network practices and catchment information. Any process should also take into account local circumstances such as regional growth strategies and other community intelligence.

This option could be delivered by way of either the Ministry seeking expressions of interest for particular areas or publish a list of areas where more provision is required and leaving it to the market to respond. This would be driven by the numbers of places required in a particular area but as more information is gathered this could be expanded to include the type of provision to take into account parental choice and diverse types/modes of provision.

As with option two, it would also require a two stage application process –

- The first stage would see potential service providers for the areas that have been identified where more provision is required apply to be the provider to open (prior to acquiring land or building). Applicants would be assessed on their ability to meet the needs of the community as well as on the licensing history of any existing services owned or operated by, or connected with the applicant.
- The second at the stage of licensing to ensure the service meets the regulated standards for licensing.

This option would also require changes to the Education Act and Regulations to allow for a broader range of criteria to be taken into account when granting a licence to operate.

**3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?**

The criteria for assessing the likely impacts of the options are as follows:

- Impact on the quality of education and care for children, and the health and safety of children;



- Impact on parents and whānau (including cost and maintaining the ability to access ECE);
- Impact on educator workforce;
- Compliance costs for ECE providers; and,
- Costs to government and ease of implementation.

Taking a stakeholder approach to assessment means we can see how particular options impact different sectors of society. The options will have different impacts on each of the stakeholder groups but not necessarily at the expense of the others.

### **3.3 What other options have been ruled out of scope, or not considered, and why?**

We have not considered employing a contractual based provision to market stimulation for early learning provision as this would be an entirely new function for the Ministry. This would involve the Ministry contracting services to provide additional child places in areas of undersupply. The Ministry does currently provide some grants to assist providers in establishing new services in areas of undersupply as a way to encourage participation. These grants do not extend to ongoing support for these services. Ongoing contractual arrangements could be considered as part of the ongoing work to review equity funding or to support community based providers that has been included in the Early Learning Action Plan.

Enhancing or increasing current subsidy rates as a way to stimulate supply have also been ruled out of scope. These would not address the issues of oversupply or stop poor quality providers from entering the market.

## Section 4: Impact Analysis

	Status quo	Option 1: Market driven planning	Option 2: Enhanced market driven planning	Option 3: Ministry driven planning
<b>Impact on the quality of education and care for children, and the health and safety of children</b>	<b>0</b> The status quo means that some children may not have access to a service that meets their needs, or their service closes due to declining roll. New services that open may not be providing quality education and care due to the open nature of the market.	<b>+</b> This option is expected to result in services only opening where there is a need for child places. It is also expected that there will be less closures resulting from a smoother demand cycle meaning less children having to be moved to another service.	<b>++</b> Same as with option1, it is expected to result in services may only opening where there is a need for child places meaning good access to services, although this is left to the market to determine. This will enhance participation.  New services will not be opened by those with a poor history of provision; therefore, positive impact on children's outcomes.	<b>++</b> Same as with option 1 and 2. However, as the Ministry will only approved applications in areas where there is a need for a new service there is a higher likelihood of sufficient child places with a positive impact on participation and children's outcomes. However, there is a risk that there may be a lag time in determining areas in need of new child places meaning some children may not have space in fast growing areas.
<b>Impact on affordability and choice for parents and whānau</b>	<b>0</b> The status quo means that some services may not be meeting the needs of parents due to insufficient supply which could be having a negative impact on some families labour market participation or the service may not be meeting their family's needs in terms of identity, language and culture.	<b>+</b> As above, there are more likely to be services in the areas that are needed by parents and whānau and less closures. This will result in better options for parents and whānau when looking for a service to send their child and therefore overall better labour market outcomes.  It is also possible that the market would be more responsive to parents and whānau views on the types of services they want to send their children too as more information becomes available.	<b>++</b> Same as option 1; however, parents and whānau can have greater confidence that the service they are sending their children to is being delivered by a provider who does not have a history of poor quality.	<b>++</b> Again, this option is expected to ensure that there is good coverage of services where there is need for child places which enables good labour market participation for parents and whānau. As with option 2 parents and whānau can have greater confidence that the service they are sending their children to is being delivered by a provider who does not have a history of poor quality.  As the Ministry improves the quality of network data and gathers more information on parental preferences, it is expected that there will be services in areas that meets parents and whānau expectations on the types of services they want to send their children too, including bilingual or immersion services. However, it will take time to build this data and information and there is a risk that the government may not be as quick to respond to parents and whānau demands as communities and the private market can including in areas of high growth.  There is a risk that by only allowing new services where there is an identified need it would protect those services already operating in the market who may not be providing high quality provision, or what parents and whānau want.
<b>Compliance costs for services</b>	<b>0</b> Services would continue to be free to make their own business decisions without interference from the government. Some services would continue to not have access to the information and data regarding need so may open in areas that are financially risky.	<b>+</b> This option will mean that services and potential applications for a licence will have access to greater information about areas where there may be a need for child places. Currently not all services or potential licence applicants have the resources to access this information or do the level of analysis to help determine need.  This option would also likely see less fluctuations in the numbers of services meaning those that are already in the market have greater business stability.  If there was a requirement to provide a needs analysis with an application there would be	<b>0</b> Same as option 1. However, some services may be prevented from opening a new service if they have, or have had, services that have been put onto a provisional or suspended licence or had a licence cancelled.	<b>0</b> By implementing a Ministry driven planning approach this would result in removing some autonomy from services in terms of deciding where to open a new service. However, this would reduce the likelihood of new services opening up and not being able to fill their places due a lack of demand.  There is a risk that by only allowing new services where there is an identified need it would protect those services already operating in the market who may not be providing high quality provision, or what parents and whānau want or need.  As with option 2, some services may be prevented from opening a new service due to their licensing history.

		additional costs to services to provide this analysis.		
	Status quo	Option 1: Market driven planning	Option 2: Enhanced market driven planning	Option 3: Ministry driven planning
<b>Workforce impact</b>	<b>0</b> Status quo may see some market fluctuations which will impact on job security for some in the workforce.	<b>+</b> This option would likely see less fluctuations in the market, including closures of services, meaning there may be more job security for the early learning workforce.	<b>++</b> Same as option 1. Workforce can have some confidence in the quality of the providers that open new services following the changes.	<b>++</b> Same as option 1 and 2.
<b>Cost to government and ease of implementation</b>	<b>0</b> Status quo has no direct fiscal impact; however, if current trends continue there may be an increase in the numbers of complaints and issues with the quality of providers.	<b>0</b> Implementing this option would require some additional resource for the Ministry to build up the data to share with services and to support the market stimulation in areas of under supply. However, this option may result in more stable provision meaning high participation of children and positive labour market outcomes for parents and whānau.	- Same as option 1. Would come with some fiscal cost associated with the two stage licensing process, however, would have benefits in terms of ensuring children have access to quality services and enabling labour market participation for parents and whānau.	- Same as option 1 and 2. This option would have a higher resource impact than option 2 for the Ministry due to build the capability and infrastructure needed and ongoing administration of the network on top of the two stage licensing process.
<b>Overall Assessment</b>	<b>0</b>	<b>4+</b> Overall this option would be an improvement on the status quo and could be progressed without regulatory change and minimal impact on the delivery of early learning.	<b>5+</b> This is a good option to progress; however, there is a risk that the market may not pick up and use the data that the Ministry provides and therefore there may be an increase in declined applications due to services wanting to open in areas without a need for new services.	<b>5+</b> This would be the Ministry's preferred option. However, as there are currently limitations to the availability of data on the extent of the issue or to effectively plan in a way that meets the needs of parents and whānau so it may take some time to implement.

**Key:**

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

## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The preferred option is to move towards a Ministry driven planned approach over time to ensure there is sufficient supply of child places rather than areas of under or over supply as well as no new service providers entering the market with a history of low quality provision.

The first step in the process could be to implement option 1 (enhanced status quo of market driven planning) by making more information available to assist services in their planning decisions. This will allow time for the required legislative changes and for the Ministry to build up the information and capability to more effectively implement a Ministry driven approach. However, option 1 would still see any provider being able to enter the market meaning there may still be issues with quality.

Some of the larger providers may be concerned with the new requirements around expansion being prevented in cases where they have, or have had, services on provisional or suspended licences or had licenses cancelled. However, the benefits of lifting the overall quality of provision from a whole of sector and societal point of view outweigh these views.

### 5.2 Summary table of costs and benefits of the preferred approach

Affected parties	Comment	Impact	Evidence certainty
------------------	---------	--------	--------------------

#### Additional costs of proposed approach, compared to taking no action

Regulated parties	Additional costs associated with the two stage licensing process and potential for a licence application to be declined.  Impact on private entities decision making regarding the opening of new services.	Medium-high	Low-medium
Regulators	Significant costs associated with the two stage licensing process, establishing and administering the new network planning approach. Does not include any costs associated with any ongoing monitoring of the regime once implemented as it is assumed this will take place as part of business as usual activities.	Approx. \$13 million across the forecast period and \$4 million ongoing per annum.	Medium
Wider government	No change from the status quo	Low	Low
Children, parents and whānau	Government may not be able to respond to the demands/wishes of communities fast enough meaning some areas may be undersupplied in the short term particularly when there are quick shifts in population such as during times of high	Low	Low

	net migration or following a natural disaster.		
<b>Total Monetised Cost</b>	Only possible to cost the impact on the government due to the private nature of the market and lack of robust information on cost drivers for services.	Approx. \$13 million across the forecast period and \$4 million ongoing per annum.	Low-medium
<b>Non-monetised costs</b>		Medium	Low-medium

<b>Expected benefits of proposed approach, compared to taking no action</b>			
Regulated parties	Higher degree of certainty regarding likely uptake of child places in a new service.  Possibly less market volatility.	Medium	Low
Regulators	Ensuring sufficient quality early learning provision to meet population demands.	Low-medium	Low
Wider government	Sufficient early learning provision enables labour market participation for parents and whānau therefore there is less call on social development assistance and great taxpayer base.	Low	Low
Children, parents and whānau	Sufficient quality early learning provision enables labour market participation for parents and whānau.  Potential for the types and coverage of quality early learning provision to be meeting the needs of parents and whānau	Low	Low
<b>Total Monetised Benefit</b>		N/A	N/A
<b>Non-monetised benefits</b>		Low-medium	Low

### 5.3 What other impacts is this approach likely to have?

No further impacts have been identified at this stage in the process.

### 5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The preferred option is compatible with the Government's expectations for the design of regulatory systems. However, there are some impacts on private entities decision making flowing from the potential to have a licence declined. This could have an adverse impact on

market competition if it has the effect of protecting current operators in the market which may be of lower quality or not meeting the needs of the community. However, it is our view that the benefits outweigh the minimal impact on market competition. The Ministry will also planning on undertaking a programme of increased monitoring of services which may result in lower quality providers being exited from the market therefore making space for other operators to enter the market.

DRAFT

# Section 6: Implementation and operation

## 6.1 How will the new arrangements work in practice?

The first stage to move towards a planned network planning approach would be to implement option one which is aimed at supporting services to make better informed choices regarding the opening of new services through provision of data. This could be done through existing IT channels such as the Education Counts website. A communications plan will be developed to ensure sector is made aware of the information and the reason for it.

To fully implement a ministry driven approach to network planning there will need to be a change to both the Education Act 1989 and Education (Early Childhood Services) Regulations 2008 to allow the Ministry to have discretion in granting a licence and to implement a two stage licensing process. The changes required to the Act will be included as part of the Education and Training Bill which is due to be introduced in November 2019 with the associated regulation changes being considered as part of the regulatory review that the Ministry of Education has recently commenced. The regulatory review will result in a new regulations being implemented in late 2021 or early 2022. A fuller implementation plan will be developed closer to the implementation of the two stage licensing process.

## 6.2 What are the implementation risks?

Some of the larger service providers expressed concern that they would be adversely impacted by not being able to expand or open new services due to having one or more provisional or suspended licenses. This was a particular concern for those providers that have taken on poor performing services with the intention (and track record) of turning those services around. However, licensing history is only one of the criteria that will be taken into consideration when determining if a licence will be granted and there will be no absolute or automatic declining of an application if a service has a proportionally small number of their licences impacted if they meet the other criteria.

It is also assumed that due to these changes giving the signal in shift of focus to being around quality, services will overtime adapt and lift the overall quality of provision due to the impact it may have on future business decisions. If this assumption doesn't materialise there won't be a direct impact on the implementation of a network planning approach, but there may be no discernible impact on a lift in overall quality of provision or the numbers of declined applications.

Due to the devolved nature of licensing decisions within the Ministry there is a risk that there will be some regional variation in the second stage of the licensing process. This will be mitigated by providing the regions with guidance on the application of the new regime.

There is also a risk that the Ministry may not be able to appropriately account for the role of parental choice in early learning when making network decisions, such as the type or philosophy of service required in a particular community, or when advising the Minister on preliminary licence applications. As the full implementation of the network planning approach is not until late 2021 or early 2022 (to allow time for the full regulatory change to take place) there is scope to look at ways to gather this parental preferences information. It is also anticipated that we would use local community intelligence to inform network decisions alongside the hard data.

# Section 7: Monitoring, evaluation and review

## 7.1 How will the impact of the new arrangements be monitored?

There is currently no systematic monitoring or evaluation of the operation of the network due to the open nature of the market. The Ministry does collect some information on occupancy and wait times through the ECE census which will be one of the inputs into the information to be provided to services under option one and could be used to monitor the impact on the network of the proposed changes.

The Ministry regularly monitors and reports on complaints and incidents in early learning which is one marker of the health, safety and wellbeing of children.

As part of the regulatory and operational policy design we will look at what new data requirements we have to be able to assess the full impact and delivery of the new network planning function.

## 7.2 When and how will the new arrangements be reviewed?

As part of the Ministry's work on our first regulatory stewardship strategy we will be looking at how improvement work across the systems can be prioritised, and resourcing implications for ongoing regulatory stewardship work. This work will include how we can build in effective monitoring and evaluation into our regulatory system.