

Changing the person responsible requirements in teacher-led, centre-based services

Section 1: General information

Purpose

The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

Key Limitations or Constraints on Analysis

Teacher-led, centre-based services

The options put forward in this paper are limited to teacher-led, centre-based services (teacher-led centres). It does not extend to ngā kohanga reo, playcentres, and home-based and hospital-based services.

Impact of relaxing the person responsible requirements

There has been some anecdotal information from the sector that relaxing the person responsible requirements to allow primary qualified teachers to be the person responsible would ease teacher supply pressure on teacher-led centres. This is why the government consulted sector stakeholders on whether to allow primary qualified teachers to be the person responsible in teacher-led centres.

Given data constraints, we do not know the extent of the problem and cannot estimate the number of teachers and teacher-led centres affected by the change.

Workforce composition

Teacher-led centres would still be required to have 50% or more ECE qualified teachers.

Responsible Manager (signature and date):



Damian Edwards
Associate Deputy Secretary
Education System Policy
Ministry of Education

27/11/19

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Compliance with the person responsible requirement

Sector stakeholders have told us that teacher-led, centre-based services are finding it difficult to comply with the person responsible requirements as defined in the Education (Early Childhood Services) Regulations 2008. The Regulations only allow ECE qualified teachers to be the person responsible in teacher-led centres. This prevents primary qualified teachers from being the person responsible despite counting as certificated teachers for funding purposes.

For this reason, centres are reliant on ECE qualified teachers to be the person responsible. This limits roster flexibility for teacher-led centres because they need to ensure an ECE qualified teacher is present at all times when children are in attendance. The effect of this is that ECE qualified teachers may need to work longer hours, with limited non-contact time.

The Ministry of Education is unable to quantify the extent of the problem for both teachers and teacher-led centres. Primary qualified teachers only comprise 4.5% of certificated teachers in teacher-led centres (1,221).¹ However, the Ministry has received some reports that it would be useful if primary qualified teachers could perform the role as it would ease pressure on centres and enhance roster flexibility.

Teacher supply

Over the past couple of years, there have been numerous reports of tight teacher supply in ECE, particularly in Auckland and rural areas.

There is limited data to demonstrate that there is a shortage of ECE qualified teachers. There are some indications that teacher-led centres are finding it more difficult to recruit new ECE qualified teachers. For example, demand for ECE services has grown steadily over the past 20 years. In 2000, 90 percent of children had regularly participated in ECE in the six months prior to starting school, a figure which had increased to 96.9 percent by March 2019. The Ministry also expects funded child hours to increase by three to four percent annually over the next five years. Teacher-led centres (i.e. education and care services and kindergartens) are also projected to supply 86 percent of funded child hours by 2022-23.

The number of teacher vacancies listed in the Education Gazette, including vacancies that have been re-advertised, have also increased significantly since 2012. This data suggests that there is more demand for teachers in Auckland compared to the rest of the country. In 2018, there were 379 re-advertisements compared to 1,079 in 2019.

ECE ITE enrolments have also declined substantially over the 2010 to 2019 period. In 2010, there were 2,985 ECE ITE enrolments compared to 1,310 in 2018.

Altogether, this suggests that teacher-led centres are likely to find it difficult to use an ECE qualified teacher at all times and therefore, may struggle to comply with the person responsible requirement.

2.2 Who is affected and how?

¹ This data is taken from the 2018 ECE Census.

The preferred option is to amend the Education (Early Childhood Services) Regulations 2008 to allow primary qualified teachers to be a person responsible at all times.

This change is designed to ease pressure on teacher-led centres. It should make it easier for centres to comply with the Regulations because they would not be limited to using ECE qualified teachers in the person responsible role. This should benefit centres located in areas where there is limited supply of ECE qualified teachers. It would also give centres more flexibility when rostering teaching staff.

It is possible that the change could result in more primary qualified teachers entering the sector because they would not be precluded from taking on the person responsible role. This could further reduce pressure on centres which have difficulty accessing 80%+ funding rates. However, as more primary qualified teachers enter the ECE sector, there is a risk of depleting the number of qualified teachers available to work in primary schools. There is also a risk that this change would discourage enrolments in ECE ITE over time.

2.3 Are there any constraints on the scope for decision making?

Constraints

Teacher-led, centre-based services

The Education (Early Childhood Services) Regulations require at least one person responsible in each licensed service. The options put forward in this paper are limited to teacher-led centres, which can already use primary qualified teachers for funding purposes. It does not extend to ngā kohanga reo, playcentres, and home-based and hospital-based services. The proposed change has been designed to alleviate teacher supply pressure in teacher-led centres.

Scale of the problem

Due to data constraints, it is unclear how many teacher-led centres employ primary qualified teachers and want to use them as a person responsible. Similarly, we do not know how the change will encourage primary qualified teachers' behaviour. It is possible that it would encourage more primary qualified teachers to enter or remain in the sector, but we do not know the extent to which this change would encourage primary qualified teachers to enter the ECE sector. It is also unclear how much this change would affect the sustainability of teacher-led centres.

Workforce composition

Teacher-led centres must still continue to have 50% or more ECE qualified teachers. No options in this paper consider amending this requirement. This ensures that there would continue to be a high presence of ECE qualified teachers in centres.

Evidence

The majority of evidence used to support the proposals is anecdotal information from the sector.

Interdependencies and connections to ongoing work

The government has committed \$4 million for the 2019/20 period to increase teacher supply in ECE. This includes:

- A targeted marketing campaigns to attract people into ECE as a career.
- A recruitment campaign targeted at overseas trained ECE teachers wanting to move to New Zealand to teach; and New Zealand trained ECE teachers wanting to return home to teach.
- A Relocation Support Grant (RSG) to assist with the actual and reasonable costs associated with relocation.

The Early Learning Action Plan also recommends regulating for more qualified teachers (increasing the minimum from 50% to 80%). The Plan also commits to addressing inconsistencies between regulatory and funding requirements to ensure that regulatory and funding rules align when changes to the proportion of qualified teachers are introduced. This commitment will require consideration of how to align requirements while ensuring that qualified teachers working in ECE have a strong base in ECE pedagogy.

Section 3: Options identification

3.1 What options have been considered?

The government consulted on two proposals to change the person responsible requirements in teacher-led centres:

1. Allow primary qualified teachers to be the person responsible in ECE centres for designated periods (i.e. the first and last 90 minutes of licensed operating hours)
2. Allow primary qualified teachers to be the person responsible in ECE centres at all times

While these were the two proposals that were being explicitly consulted on, survey feedback and written submissions provided some other options, including maintaining the status quo.

During consultation, one peak body recommended removing the person responsible requirement from the Education (Early Childhood Services) Regulations 2008 and changing the Licensing Criteria so that the person responsible duties are shared amongst all staff. This option was ruled out of scope because while all staff members, particularly teaching staff, are responsible for the education and care of children, sharing the responsibilities amongst all staff would dilute the intent of the person responsible role. This is mainly because the person responsible leads the teaching and learning environment and is the central point of contact for staff that need advice and support.

During consultation there was also some support for variations on the length of time for the designated period option. The alternative option that received that most support was allowing primary qualified teachers to be a person responsible at the start and end of every day (90 minutes each) and adding an extra period to cover ECE qualified teachers on their lunch breaks. Ultimately, this option was not considered as part of the final options analysis because it would allow a primary qualified teacher to be a person responsible for most of the day (similar to the all times option), including some of the busiest times, whilst adding an administrative burden for teacher-led centres to actively monitor the different qualification levels of the person responsible.

By comparison, the all times option would relax the administrative burden and enhance roster flexibility for centres. The designated period option (90 minutes) would enable centres to use primary qualified teachers at the beginning and end of the day – typically periods where there are fewer children present than during the middle of the day.

Some respondents also suggested allowing primary qualified teachers to be a person responsible to cover ECE qualified teachers on their lunch breaks. While this option has the potential to ease pressure on some centres, it did not form part of the options analysis because centres would need to more carefully monitor lunch breaks taken by ECE qualified teachers, without standing to benefit much from the change. The alternative options were considered more likely to ease pressure on centres, which is why they were included in the options analysis.

Criteria

The options are to be tested against the following criteria:

- quality of education and care for children, and the health and safety of children
- impact on parents and whānau. The analysis centres on how the proposals affect the affordability and accessibility of centres for parents
- impact on educator workforce. When discussing the impact, the analysis will centre on how the proposals affect the capability of the workforce, and whether retention will be affected
- ease of implementation for centres
- affordability for government and ease of implementation.

Option one: Status quo

- There would be no change in the quality of education and care for children, including the health and safety of children under this option.
- There would be no change in the affordability and accessibility of ECE, including teacher-led centres, under this option. However, over time, centres could become less affordable if they need to employ more ECE qualified relievers.
- ECE qualified teachers would continue to be in high demand, with demand likely to exceed supply in areas that are difficult to staff, including Auckland and rural areas. Primary qualified teachers may be discouraged from working in teacher-led centres because they are unable to count as ECE qualified teachers or be the person responsible under the Regulations.
- Some service providers, including individual centres, would continue to find it difficult to recruit and employ primary and ECE qualified teachers. Individual centres would have limited roster flexibility and would continue to be heavily reliant on ECE qualified teachers. Over time, there is a risk that some centres would close, reduce rolls or operating hours if they cannot find enough qualified teachers.
- This option would have little to no impact on government.

Option two: Allow primary qualified teachers to be a person responsible for designated periods of the day (i.e. the first and last 90 minutes of licensed daily hours)

- There is unlikely to be a significant shift in the quality of education and care for children, including the health and safety of children under this option. The numbers of children attending at the beginning and end of the day are typically lower than in the middle of the day. At a minimum, ECE qualified teachers would be available for the majority of the day. This should ensure that for the majority of the day the person responsible has in depth knowledge of ECE pedagogical approaches and teaching practice, particularly for infants and toddlers.
- Some centres would find it easier to comply with the Regulations under this option, which could enhance accessibility for some parents, compared to the status quo. However, this change could be quite cumbersome for centres to monitor, as they would need to carefully monitor the times when a primary qualified teacher is acting in the role, and ensure an ECE qualified teacher is ready once that time period expires. For example, a centre would risk breaching the Regulations if an ECE qualified teacher needed to leave earlier than normal, leaving a primary qualified teacher to be a person responsible for the last 100 minutes of licensed daily hours, rather than the final 90 minutes.
- It is expected that there would continue to be high demand for ECE qualified teachers, particularly in areas that are difficult to staff. However, if ECE qualified teachers are unavailable, there may be increased demand for primary qualified teachers because they would count for funding purposes and could be the person responsible, albeit for limited periods of time. 50% of required staff would still need to be ECE qualified.

This change could also lead to some primary qualified teachers being offered 'split shifts', with primary teachers being offered hours at the beginning and end of the day.

- Some individual teacher-led centres would continue to find it difficult to recruit and employ primary and ECE qualified teachers. Individual centres would still have relatively limited roster flexibility and would continue to be heavily reliant on ECE qualified teachers. However, allowing primary qualified teachers to be a person

responsible at the start and end of the day could ease pressure on some centres using a high proportion of primary qualified teachers. Centres would also need to actively monitor the limited number of hours a primary qualified teacher can work as a person responsible. It could be difficult for centres to comply with the Regulations in circumstances outside of their control, such as when a person responsible needs to leave early because of an emergency.

This option would disproportionately benefit sessional centres and other centres licensed for shorter time periods. This is because these centres operate for four hour sessions or less, and could use primary qualified teachers as the person responsible 75 percent of the time.

- This option would have little to no impact on government, although it would be more difficult to monitor the person responsible requirements.

Option three: Allow primary qualified teachers to be a person responsible at all times.

- There is unlikely to be a significant change in the quality of provision. While a primary qualified teacher could be the person responsible at all times, 50% of teaching staff would still need to be comprised of ECE qualified teachers. Nevertheless, there is a risk that this option would reduce the proportion of ECE qualified teachers working in the sector over the long term. This is because prospective ECE teachers may choose to pursue a primary qualification because it could be seen to expand their long term career options, compared to completing an ECE qualification. If this risk materialises, over time it could impact on pedagogy used in centres and what is considered best practice.

However, there is no data indicating how many primary qualified teachers would switch from primary schools to teacher-led centres if this change was made.

- Some centres would find it easier to comply with the Regulations under this option, which could enhance the accessibility of centres for some parents, compared to the status quo. As such, parents and whānau may use centres for longer periods and extend their own working hours.
- It is expected that there would continue to be high demand for ECE qualified teachers, particularly in areas that are hard to staff. However, if insufficient ECE qualified teachers are available, there is likely to be increased demand for primary qualified teachers because they would count for funding purposes and could act as the person responsible.
- Some individual teacher-led centres may find it easier to recruit qualified teachers, particularly primary qualified teachers. Individual centres would have more flexibility when rostering staff and would not be as reliant on ECE qualified teachers. Allowing primary qualified teachers to be the person responsible at all times would ease pressure on centres which want to use primary qualified teachers in this role.

Compared to option two, it would be easier for services to comply with the Regulations because they would not need to actively monitor the limited number of hours a primary qualified teacher works in the person responsible role.

There may also be a risk that fewer prospective teachers would enter ECE initial teacher education. Over time, this could make it more difficult for centres to comply with the 50% ECE qualified teacher requirement. However, we do not know the extent of this risk because it is unclear how many prospective ECE teachers would choose to pursue a primary teaching qualification instead of an ECE qualification.

- This option would have little to no impact on government. It is possible that the

change could increase teacher supply, as more primary qualified teachers may enter the sector.

3.2 Which of these options is the proposed approach?

Option three is the preferred approach. This option should enhance centres' roster flexibility and ease pressure on centres and it could encourage more primary qualified teachers to remain in the sector. Conversely, under the status quo, centres could struggle to comply with the Regulations over time. Centres would also find it easier to comply with this option compared to option two. If centres were restricted to designated hours, they would need to actively monitor the limited number of hours a primary qualified teacher could work as the person responsible. This could be cumbersome, and the person responsible requirements would continue to be difficult to manage in unforeseen circumstances, such as when the person responsible needs to leave early because of an emergency.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts
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Additional costs of proposed approach, compared to taking no action		
Regulated parties	One-off cost for services to train primary qualified teachers, particularly new teachers, for the person responsible role. This is expected to be a low cost, as centres are already expected to do this for ECE qualified staff.	Low
	One-off cost for SMS vendors to update their systems to show that primary qualified teachers are now persons responsible. This cost of development would likely be passed onto service providers.	Low
	Ongoing cost – more demand for primary qualified teachers could change how the sector values ECE qualified staff, which could reduce salary levels for ECE qualified teachers.	Low
Regulators	Potential cost for ERO and the Ministry if curriculum implementation suffers due to lack of oversight by ECE qualified staff. In these circumstances, the Ministry would need to follow up and provide monitoring programmes and support for these centres.	Low
Wider government	-	Low
Children	Possibility that primary rather than ECE-specific pedagogy is used, which could marginally reduce the quality of provision. This could affect children's learning and developmental outcomes	Low
Total Monetised Cost		
Non-monetised costs		Low

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	Easier for centres to comply with the person responsible requirements, more roster flexibility	Low to medium
	Encourages primary qualified teachers to enter the ECE sector because they can take on more responsibility than they could previously.	Low to medium
Regulators	Increased teacher supply as more primary qualified teachers enter the sector – potentially less need for fresh teacher supply initiatives	Low
Wider	Possible increase in tax revenue because centres	Low

government	are more available for parents to use, which would increase labour force participation	
Children	This change will help some services operate more effectively. Consequently, these centres will be able to focus more closely on delivering a high quality service for children, as less time and energy would be spent on ensuring an ECE qualified teacher is present at all times and acting as the person responsible. The quality of provision is also expected to improve because centres would be able to use the teacher or teachers best suited to the person responsible role.	Low
Total Monetised Benefit		Low to medium
Non-monetised benefits		Low

4.2 What other impacts is this approach likely to have?

The proposal is designed to reduce pressure and enhance roster flexibility. However, some sector stakeholders believe it would reduce the quality of provision, particularly over time, as it reduces the proportion of ECE qualified teachers in the sector. There is also a risk that some peak bodies and ECE qualified teachers would view this change as a step towards allowing primary qualified teachers to be considered ECE qualified teachers for the purposes of the 50% requirement in the Regulations.

There may also be a risk that this change would encourage prospective ECE teachers to enter primary ITE rather than ECE ITE because it would improve their long term employment opportunities. This could affect pedagogy used in centres because primary qualified teachers may not have as robust an understanding of ECE pedagogy, *Te Whāriki* and the licensing requirements. ECE qualified teachers already in the sector may also oppose the change because it is seen to devalue the qualification.

It is unclear how this change would alter the behaviour of prospective teachers. There was a similar decline in primary and ECE ITE enrolments in 2010/11 following the 2010 changes which allowed primary qualified teachers to count as certificated teachers in teacher-led centres.² That said, over the 2010 to 2017 period, there was a sharper drop in ECE ITE enrolments compared to primary ITE enrolments.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

The Ministry wrote a discussion document on options two and three and consulted on the options over the 23 September to 20 October 2019 period. Sector stakeholders were given the opportunity to complete a short survey or write a more detailed submission. This included centre managers, ECE qualified teachers, ECE educators, primary qualified teachers and parents.

In total, there were 802 survey responses and 25 written submissions. 81 percent of survey respondents (648) agreed that primary qualified teachers should be able to work as a person responsible, while 19 percent disagreed (153). All major groups, including ECE qualified teachers, were more likely to agree than disagree with the proposal. Of the survey respondents who gave an opinion on the two proposals (698), 84 percent believed primary qualified teachers should be able to act as a person responsible at all times (option three). Some respondents thought that as primary qualified teachers count as qualified teachers for funding purposes, they should be able to be the person responsible. Similarly, respondents noted that if primary teachers are considered capable of being the person responsible for some periods, they should be able to act in the role at all times.

Respondents who preferred allowing primary qualified teachers to be a person responsible for designated periods often believed that ECE qualified teachers are better suited to the person responsible role. They also noted that it would provide centres with more flexibility during the periods of the day that are the most difficult to staff.

Respondents who disagreed with the proposals entirely believed that primary qualified teachers lack the expertise and pedagogy required to carry out the person responsible duties effectively. Some respondents also indicated that softening the person responsible requirements would devalue ECE qualifications, reduce the quality of provision, and reduce

² <https://www.educationcounts.govt.nz/statistics/tertiary-education/initial-teacher-education-statistics>.

the proportion of ECE qualified teachers in centres over the long term.

Four peak bodies disagreed with the intent of the proposals, and outlined that it would impact on pedagogy and the quality of provision. They argued that the pedagogical differences between ECE and primary ITE would impact on individual teacher-child interactions and the learning and developmental outcomes of children.

One peak body also indicated that the current person responsible requirements ignore the reality of responsibilities being shared between all staff in teacher-led centres. They outlined that sharing the responsibilities amongst all staff would help lift the overall responsibility and performance of the teaching team.

One peak body which agreed with the proposal suggested allowing primary qualified teachers to be the person responsible for a limited period only, so that it eases pressure on centres while there is tight teacher supply.

Our approach changed after receiving sector feedback. Initially the government intended to allow primary qualified teachers to be the person responsible for designated periods only. After receiving sector feedback, this changed so that primary qualified teachers could act in the role at all times.

The Minister of Education considers allowing primary qualified teachers to be the person responsible at all times a temporary solution to ease teacher supply constraints in the short term. It is expected that the person responsible requirement in teacher-led centres will be reviewed again in due course.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

This approach would require changes to clauses 3, 44 and Schedule 1 of the Education (Early Childhood Services) Regulations 2008.

The Ministry would be responsible for ongoing operation and enforcement of the new arrangements. The arrangements would not affect the way the Ministry currently works in the sector, but it would give centres more flexibility when rostering ECE and primary qualified staff.

Assuming the government does not seek to waive the 28-day period typically required for new regulations to take effect, the change should come into force from 9 January 2020.

There are no major implementation risks, particularly given the person responsible regulations are set to be reviewed again in the next few years. In any case, the Ministry will continue to monitor the proportion of ECE and primary qualified staff working in centres from ECE Census data. This data will be used to understand the composition of the qualified workforce and whether there have been any shifts.

Section 7: Monitoring, evaluation and review

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

The Ministry would continue to collect ECE Census data about the number of teaching staff in centres which have an ECE or primary teaching qualification. This data would be used to understand how the composition of the teaching workforce changes over time. The Ministry may also amend Census questions to understand which staff (primary or ECE qualified) are used as the person responsible in during the Census week. Alternatively, a separate survey or questionnaire could be used to identify how frequently primary qualified teachers are used as the person responsible in teacher-led centres.

Another option would involve asking recruitment agencies for information about the number of teacher vacancies filled by primary qualified teachers, and how this changes over time.

7.2 When and how will the new arrangements be reviewed?

The Ministry would review the person responsible requirement in teacher-led centres in due course.

The easiest way to understand how the composition of the qualified teaching workforce is changing is by looking at ECE Census data, which is collected once per year. However, we will not be able to amend the ECE Census to include the qualifications of the person responsible before 2021.