

# Final Regulatory Impact Statement: Definition of locally based for persons responsible in licensed home-based services

## Coversheet

| Purpose of Document  |  |
|--|--|
| Decision sought:   | This RIS supports final Cabinet decisions on proposals amend the Education (Early Childhood Education) Regulations 2008 to provide a definition of 'locally based' for persons responsible in licensed home-based early childhood education and care services. |
| Advising agencies:   | Ministry of Education  |
| Proposing Ministers:   | Minister Jan Tinetti, Minister for Education   |
| Date finalised:  | 5 May 2023   |
| Problem Definition   |  |
| <p>The 'person responsible' is expected to play a key role in licensed home-based early childhood education and care (ECE) services. This includes, having primary responsibility for overseeing the education and care, comfort, and health and safety of children and providing professional leadership and support to educators.</p> <p>However, there is a lack of clarity around the supervisory and support aspects of this role in relation to home-based services. This is because the Education (Early Childhood Education) Regulations 2008 (the Regulations) are not explicit as to how the person responsible must provide supervision or support to educators and children when the person responsible is not ordinarily present in the home where care is provided. At present, there is no requirement for persons responsible in licensed home-based ECE services to reside locally to the place they oversee. This lack of clarity about what is expected so that they can perform their role satisfactorily means that, in practice, persons responsible may be only actually providing very limited supervision or oversight to the children and educators in the service.</p> <p>Currently, the Government intends to amend the Regulations to require persons responsible to be locally based for home-based services, to better support their existing supervision and oversight functions [CAB-22-MIN-0581 refers]. This will create a requirement for persons responsible in home-based services to be locally based in relation to the homes of the educators that they supervise and support, and the children whose education, care and comfort they oversee. However, although there will be the requirement for persons responsible to be locally based, there is no proposed definition for this in the Regulations. This is because previous consultation on a definition resulted in no consensus. If what it means to be 'locally based' remains undefined in the Regulations, the definition would need to be determined by the Ministry through the development of operational policies and practices. To address this issue, Cabinet agreed that the Ministry would undertake further consultation on a new definition of 'locally based'.</p> |  |

There is a risk that not having a definition of 'locally based' in the Regulations could lead to a lack of certainty and transparency for service providers, persons responsible, educators and parents and whānau about what it means in practice to be 'locally based'. It could also result in some inconsistency in the interpretation of 'locally based', and challenges regarding the Ministry's interpretation and enforcement practices. Ultimately, this could undermine what the Government wants to achieve through strengthening the person responsible requirements, which is to ensure we lift the quality of supervision and care for educators and children.

## **Executive Summary**

### **The early learning regulatory review**

The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care ('the Review'). The Review is being undertaken in three tranches. The proposals outlined in this paper are part of Tranche Two of the review and focus on amending the Regulations to strengthen the person responsible (also known as 'co-ordinator' or 'visiting teacher') requirements for licensed home-based ECE services. The Government agreed to strengthen these requirements as part of the 2018 Review of Home-based Early Childhood Education.

### **Issue with current requirements around persons responsible in home-based settings**

Under the Regulations, the home-based person responsible is responsible for overseeing the education and care, comfort, and health and safety of children, and provides that oversight or supervision at the same ratio as for teacher-led centres. However, despite this, their supervisory role can be unclear, because it does not specify whether they should be providing supervision in relation to a particular area or location. This is likely because they are not ordinarily present in the homes in the service, unlike the educators that have a greater day-to-day role in the education and care of the children. In the Regulations, there is also currently no requirement for persons responsible in licensed home-based education and care services to reside locally to the place they oversee.

Under regulation 28(2), the home-based person responsible also holds specific responsibilities to contact and visit each educator in the service, fortnightly and monthly, and take all reasonable steps to observe each child each month. Because these responsibilities are more specific than the general ones relating to supervision or oversight, home-based services and the person responsible can adopt narrow understandings of what is required based solely on regulation 28(2). For example, where services have a person responsible that travels extensively just to fulfil the regulation 28(2) requirements. These approaches, in turn, reduce the time the person responsible has to support and work with educators.

To prevent this practice and ensure that children and educators receive appropriate levels of supervision and oversight, we consulted on a proposal to require home-based persons responsible to be locally based.

### **Initial consultation on home-based locally based proposal**

Between September and October 2021, the Ministry of Education (the Ministry) consulted on proposals to strengthen the person responsible requirement for teacher-led centre-based services (centres), hospital-based services and home-based services. There was strong support for the proposals consulted on as part of this package, including the proposal to require persons responsible for licensed home-based education and care services to be locally based in relation to the homes of the educators they supervise and support, and the

children whose education, care, comfort and health and safety they oversee. However, there was less agreement on how 'locally based' should be defined for this service type.

We consulted on whether the definition for locally based should be based on reasonable travel time (i.e., being under four hours) or geographic boundary. During post-consultation analysis, we concluded that a definition of 'locally based' that relies solely on a reasonable travel time (or a geographic boundary) will not achieve the outcomes we want from this proposal.

Rather, we considered that a definition of locally based that focuses on clarifying the types of outcomes we want to achieve from the person responsible role in the home-based sector would be more useful. Ultimately, we want to ensure that educators and children in home-based services receive appropriate oversight and supervision from a suitably qualified person in a timely manner, which includes the person responsible being able to be there in person if and when they are needed.

### **Cabinet agreement to undertake further consultation**

On 12 December 2022, Cabinet agreed to amend the Regulations to require the person responsible for licensed home-based ECE services be locally based. Cabinet also agreed that the Ministry would undertake further consultation on a new definition of 'locally based', due to the results from earlier consultation which indicated that more work was required to develop a definition for locally based [SWC-22-MIN-0232 refers].

### **Further consultation on home-based locally based definition**

Between January and February 2023, we undertook a further round of public consultation on the proposal to define locally based for home-based persons responsible. We consulted on a proposal to define 'locally based' for licensed home-based education and care services as when the person responsible must:

- a. either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible.
- b. be in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children.
- c. be contactable by the educator(s), for whom they are responsible, at all times those educators are providing education and care during the operating hours of the licensed early childhood service.
- d. be able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency.

Feedback on the proposed definition of locally based for licensed home-based person responsible showed varying degrees of agreement and disagreement, but it still received majority support. Key concerns related to the clarity and flexibility of the proposed definition, and that the cost for some licensed home-based service providers to comply would not be financially viable.

### **Preferred option**

9(2)(f)(iv)

This option will provide greater certainty for service providers on what it means for the person responsible to be locally based. It will also help to ensure there is some degree of consistency in the approach the Ministry takes to defining 'locally based' as it applies to different service providers and in different parts of the country. 9(2)(f)(iv)

#### **Impact of proposed option**

Providing a definition of 'locally based' in the Regulations will improve certainty and clarity for service providers, persons responsible, educators, and parents and whānau about what it means in practice to be 'locally based'. It will also help to ensure there is some degree of consistency in the approach the Ministry takes to defining 'locally based' as it applies to different service providers and in different parts of the country.

Consultation feedback raised concern that the preferred option may have a significant impact for some home-based services who would have to change their practice to ensure that they have persons responsible located close to the educators and children in their care. These services may struggle to comply with these new requirements, as it would make services financially unsustainable, risking service closures. Respondents to the consultation cited that introducing these requirements will increase operational costs through needing to employ more staff, as well as increase other costs such as petrol, travel and vehicle maintenance.

The 2018 Review of Home-based Early Childhood Education highlighted the need to strengthen the person responsible role in home-based services in order to improve quality

and ensure consistency in these services. Requiring persons responsible for home-based services to be locally based will contribute to these improvements. However, to undertake this change and improve the current standard around oversight and supervision of home-based educators and the children in their care, we anticipate that there will be some additional costs to services. In particular, there will be costs for service providers who employ persons responsible that are not already locally based (e.g., live in other towns or parts of the country). However, this requirement is necessary to ensure the person responsible can effectively fulfil the duties of their role, including overseeing the education and care, comfort, and health and safety of the children.

### **Implementation and monitoring**

Cabinet agreement to the proposals outlined in this paper will be sought in May 2023. Drafting of the regulations by the Parliamentary Counsel Office is expected to take place in June 2023. The new regulations are expected to be gazetted around August 2023.

9(2)(f)(iv)

The Ministry will assess compliance with the new regulations as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review. The Ministry works closely with ERO to understand issues or concerns regarding regulatory compliance across the sector.

### **Limitations and Constraints on Analysis**

This RIS supports the cabinet paper on proposed amendments for Tranche 2 of the Early Learning Regulatory Review, which includes the proposal to seek Cabinet agreement to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to provide a definition of 'locally based' for persons responsible in licensed home-based education and care services.

### **Impacts and limitations of prior consultation on the problem definition**

The options considered in this RIS were influenced by prior consultation on a proposal to require home-based persons responsible to be locally based. Feedback from the earlier consultation and the subsequent analysis of this feedback highlighted that the definition consulted on (that 'locally based' be based solely on either travel time or geographic boundary) would not achieve the outcomes desired by the Ministry.

In amending this proposal, we sought to avoid being overly prescriptive (i.e., using geographic boundaries and/or travel distance or time) to ensure it is applicable in a range of settings, including both rural and urban areas, and in different types of urban settings (e.g., those that are more or less populated and congested). We have tried to balance this by being clearer about what locally based means (e.g., they reside or have a permanent place of business in the same local area and can attend in person in an emergency) in order to do their job adequately. This aims to address concerns raised during previous consultation and to ensure the definition supports persons responsible to perform their duties and responsibilities.

**Overall impact of these constraints**

The overall impact of the above constraints is not expected to substantially impact on the integrity of the analysis outlined in this Regulatory Impact Statement.

**Responsible Manager(s) (completed by relevant manager)**

Paul Scholey  
Senior Policy Manager  
ECE Policy  
Ministry of Education



5 May 2023

**Quality Assurance (completed by QA panel)**

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| Reviewing Agency:           | Ministry of Education  |
| Panel Assessment & Comment: | <p>The Ministry of Education’s Quality Assurance Panel has reviewed this Regulatory Impact Statement “Definition of locally based for persons responsible in licensed home-based services” produced by the Ministry of Education. The panel considers that it meets the quality assurance criteria.</p> <p>The Statement provides a clear and considered case for how greater certainty about the definition of ‘locally based’ while allowing flexibility for local circumstances to be recognised in the operationalisation of this definition. The revised approach reflects stakeholder feedback on the original proposal.</p> |

Proactively Released

## Section 1: Diagnosing the policy problem

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

#### The early learning regulatory framework

1. The Government sets minimum standards for licensed early childhood services and certified playgroups and ensures these standards are met. These standards are set out in the early learning regulatory framework. Strong regulatory standards are important to protect children's health, safety and wellbeing in education and care services, and because research shows that high quality early learning experiences provide a platform for children to succeed as lifelong learners.
2. There are three tiers to the regulatory framework for licensed education and care services, including:
  - a. the Education and Training Act 2020 ('the Act'), which defines service types and provides for regulations and licensing criteria to be developed;
  - b. the regulations, including the Education (Early Childhood Services) Regulations 2008 ('the Regulations'), which establish the licensing process and set minimum standards that all services must meet; and
  - c. the licensing criteria, which are used by the Ministry to assess compliance with the minimum standards set out in the regulations.

#### The early learning regulatory review

3. The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care ('the Review'). The Review is being undertaken in three tranches. The proposal outlined in this paper is part of Tranche Two of the review, and seeks to amend the Education (Early Childhood Services) Regulations 2008 ('the Regulations') to insert a definition of locally based for persons responsible in licensed home-based education and care services.

#### 2018 Review of home-based education

4. Home-based education and care services fulfil a unique role in the early learning sector. Licenced home-based early childhood education (ECE) is delivered in private homes by educators working with one to four children. In licenced home-based services a qualified, registered and certificated ECE teacher, called the co-ordinator or 'person responsible,' also visits homes to support these educators and oversee the education and care of the children.
5. Due to the changes in the sector and home-based education and care over the last decade, the Ministry undertook a Review of Home-based early childhood education (the Review) in 2018.<sup>1</sup> As part of the Review, we consulted on a package of proposals to strengthen the role of the home-based person responsible or 'co-ordinator' in home-based services. The Ministry decided to proceed with the following initiatives following

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<sup>1</sup> Review of Home-based Early childhood Education. 2018. URL: <https://conversation.education.govt.nz/conversations/review-of-home-based-early-childhood-education/>

this Review, which were then developed and further tested by the Home-based Sector Reform Advisory Group. These initiatives included:

- a. home-based persons responsible to hold a Category One or Two practising certificate;
  - b. home-based persons responsible to be “locally based”;
  - c. home-based persons responsible to be limited to a single service’s licence at a time, with an increased maximum licence size;
  - d. home-based persons responsible to support educators’ professional development when contacting and visiting them; and
  - e. home-based persons responsible to guide and observe the curriculum delivery during home visits.
6. For the purposes of this RIS, we are concerned with the proposal to define ‘locally based’ for persons responsible in licensed home-based education and care services.

#### **Regulations around the person responsible role**

7. The home-based person responsible is responsible for overseeing the education and care, comfort, and health and safety of children, and provides that oversight or supervision at the same ratio as for teacher-led centres. The home-based person responsible also holds specific responsibilities to contact and visit each educator in the service, fortnightly and monthly, and take all reasonable steps to observe each child each month.<sup>2</sup> Currently, it is possible for a person responsible to be based in another part of the country and to travel extensively to visit educators and children.

#### **First round of consultation on home-based person responsible role**

8. In September 2021, Cabinet agreed to publicly consult on proposals to amend the Regulations to regulate for 80 percent qualified teachers and to strengthen person responsible requirements [CBC-21-MIN-0087 refers]. One of these proposals was requiring the person responsible to be ‘locally-based’. This would ensure the person responsible resides near the homes that education and care is taking place in.
9. Between September and October 2021, we consulted on proposals to strengthen the role of persons responsible in home-based services.
10. Consultation feedback supported amending the Regulations to require persons responsible for home-based education and care services to be locally based in relation to the homes of the educators they supervise and support, and the children whose education, care, comfort, and health and safety they oversee (77 percent agreement). Only 12 percent disagreed that persons responsible should be locally based in home-based education and care services.

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<sup>2</sup> Education (Early Childhood Services) Regulations 2008, reg 28(2) Additional requirements for licensed home-based education and care service



11. However, consultation feedback was mixed on what the definition of 'locally based' should be. We consulted on two options to define locally based as:
  - a. require that persons responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002; or
  - b. require that persons responsible live within 'reasonable travel time' of the homes, which could be defined as within up to four hours or a shorter time period.
12. Overall, 63 percent of respondents preferred locally based being defined as living within a reasonable travel time, as opposed to a definition based on the geographical boundaries of territorial authorities (25 percent). Only 12 percent didn't have a view how locally based should be defined. However, many submitters raised concerns that reasonable travel time is different for urban and rural areas and can vary significantly depending on the condition of the road, traffic and speed and mode of travel. A number of those providing feedback on this proposal considered that four hours is too long for a person responsible to respond in person to the types of situations that require them to exercise their supervision and oversight responsibilities.
13. Feedback suggested that neither a definition of locally based determined solely by travel time or geography will achieve the types of outcomes the Government wants to achieve from this proposal, which is to lift the quality of supervision and oversight provided by persons responsible to educators and children in home-based education and care services.

#### **Cabinet approval to consult on a new proposal to define locally based**

14. Following this first round of consultation feedback, we developed a new proposal to define locally based for persons responsible in licensed home-based education and care services.
15. In December 2022, Cabinet authorised the Ministry to undertake public consultation on a definition of 'locally based' for persons responsible in licensed home-based education and care services, which is that they must:
  - a. either reside, or have a permanent place of business from which they conduct their daily responsibilities, in the same local area as the educator(s) for which they are responsible.
  - b. be in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the education and care, comfort, and health and safety of the children.
  - c. be able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service.
  - d. be able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency [SWC-22-MIN-0232].

16. This proposal was consulted on from 16 January – 17 February 2023. Consultation feedback, and how this informs the preferred option (defining 'locally based' for home-based persons responsible) is outlined in section 2 of this RIS.

## What is the policy problem or opportunity?

### Nature, scope and scale of the problem

#### *Unique role of home-based persons responsible*

17. Licensed home-based early childhood education (ECE) is delivered in private homes by educators working with one to four children. In licensed home-based services a qualified, registered and certificated ECE teacher, called the co-ordinator or 'person responsible,' also visits homes to support these educators and oversee the education and care of the children in these services. This makes it unlike other parts of the early learning sector as the educators, rather than the teachers, have a greater day-to-day role in children's education and care.
18. Home-based services contribute to the diversity of providers in the early learning sector and provide benefits including greater flexibility for parents and whānau, low adult to child ratios, and smaller group sizes. This caters better to children and families where English is a second language, since it allows parents greater scope to choose an educator who shares their first language and culture.

#### *There is currently no requirement for home-based persons responsible to be locally based*

19. In the Regulations, there is currently no requirement for persons responsible in licensed home-based education and care services to reside locally to the place they oversee. This weakens the person responsible duty to oversee children's education and care as there is less ability to respond in-person if necessary.
20. This lack of clarity is partially due to the nature of the role, as home-based persons responsible are not ordinarily required to be present in the home or in a given area. This limits the level of supervision that they can provide. Additionally, the Regulations are not clear or explicit on how home-based persons responsible are expected to provide supervision, oversight, and support. Only Regulation 28(2) provides some clarity on the role of person responsible in the home-based context, through its contact and visiting requirements. Consequently, the expectations for the role are often open to interpretation, which in turn leads to inconsistent practice.
21. To improve this lack of clarity around the home-based persons responsible role and ensure that they are sufficiently fulfilling their supervisory functions, we consulted on a proposal to amend the Regulations to require persons responsible to be locally based for home-based services.

#### *Previous consultation on the locally based proposal showed support for the policy intent, but there was less clarity from consultation on how 'locally based' should be defined*

22. As previously covered, consultation on a range of proposals to strengthen the person responsible requirement in licensed home-based education and care services was held by the Ministry between September and October 2021, which included a proposal to require persons responsible to be locally.

23. Most respondents (77 percent) supported amending the Regulations to require persons responsible for home-based ECE services to be locally based and 12 percent disagreed.
24. We also consulted on whether the definition of 'locally based' should be based on reasonable travel time (i.e., being under four hours) or on a geographic boundary. Consultation feedback on this aspect of the proposal received varied support. Overall, 63 percent of respondents preferred locally based being defined as living within a reasonable travel time, as opposed to a definition based on the geographical boundaries of territorial authorities (25 percent). Only 12 percent didn't have a view on how locally based should be defined.
25. Despite this preference for a definition based on travel time, many submitters raised concerns that what is considered a reasonable travel time differs for urban and rural areas and can vary significantly depending on the condition of the road, traffic and speed, and mode of travel. Some respondents also noted that a travel time of four hours is too long for persons responsible to be able to adequately respond to situations that require their supervision and oversight responsibilities.
26. This feedback suggested that having a definition of 'locally based' that is determined solely by either travel time or geographic boundary could become unduly restrictive for home-based providers and their persons responsible, as these definitions would not account for nuances across service locations. For example, what is considered a reasonable travel time in urban areas would differ from what is considered reasonable in rural locations.
27. This feedback not only established agreement to create a requirement for persons responsible in home-based services to be locally based, but also the need for further work to develop a definition for locally based.

*There is no requirement to define 'locally based' for home-based persons responsible*

28. In December 2022, Cabinet agreed to amend the regulations to require persons responsible to be locally based for home-based services, to better support their existing supervision or oversight functions [SWC-22-MIN-0232 refers].
29. This will create a requirement for persons responsible in home-based services to be locally based. As previously noted, feedback from and analysis following the 2021 consultation called for further work to establish a definition of 'locally based' that works for home-based services and persons responsible located in both urban and rural areas.
30. Therefore, to provide more clarity and to strengthen the initial proposal, we have now developed updated options for a new proposal to define locally based for persons responsible in licensed home-based education and care services.
31. In December 2022, Cabinet authorised the Ministry undertake further consultation on policy proposals to define 'locally based' for home-based early childhood education and care services [SWC-22-MIN-0232 refers]. Consultation on this definition was undertaken between January and February 2023.

### **Distribution of impacts**

32. It is anticipated that this proposal will prevent the practice of persons responsible travelling extensively around the country to visit educators in order to meet the minimum in-person requirements currently set in the regulations. However, as this was an issue identified in previous reviews, it is acknowledged that the proposed definition will likely require some service providers to change their current practice so that they will be able to provide the required support to educators and children, and in some cases these changes may be significant (e.g., employing additional persons responsible, employing persons responsible in different locations, or establishing an office where persons responsible can be based during working hours).
33. For some service providers, this proposal may have little or no impact on current practice. For example, the Regulations already require service providers to have a contact person that resides locally, and in some services, the contact person is also the person responsible.
34. The alternative to providing a definition of locally based in the Regulations is for the Ministry to develop a working definition through operational policy and practice. While this may be perceived as providing more flexibility, there is a risk that it would reduce certainty and transparency for service providers and parents and whānau about what locally based means and actual level of the supervision and oversight provided by the persons responsible.

## Key stakeholders and the nature of their interest

| Key stakeholders                    | Nature of their interests   |
|-------------------------------------|---|
| <b>Children, parents and whānau</b> | Setting clearer expectations for home-based persons responsible to be locally based is intended to improve the quality of service provision, particularly in relation to the supervision of children and other teaching staff. Parents and whānau will likely have greater confidence in the supervision and oversight of their children when they are attending ECE services if requirements are clear and robust. |
| <b>Service providers</b>            | Clear parameters about what it means for home-based persons responsible to be locally based vis-à-vis the service provider.   |
| <b>Person responsible</b>           | May affect their day-to-day duties and responsibilities, the overall status of their role, with the size of the impact depending on how they are currently performing their duties.   |
| <b>Teaching staff</b>               | Teaching staff are affected by any changes as they are supervised by the person responsible.  |
| <b>Ministry of Education</b>        | Needs to be able to assess compliance with the standards set in the Regulations effectively and efficiently, including having the ability to identify and respond to non-compliance in a timely and appropriate manner.   |

## What objectives are sought in relation to the policy problem?

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

- e. **Effective monitoring and enforcement** – changes to the Regulations must be able to be monitored and enforced effectively, efficiently and in a timely manner including being clear and giving certainty to service providers, teachers, and parents and whānau

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

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

36. The proposal has been assessed against the status quo in terms of its ability to achieve the policy following objectives:
- a. **Quality provision** – To what extent is the proposal expected to result in improvements to the quality of ECE services provided, and education and care outcomes for children?
  - b. **Affordable services** – To what extent is the cost of the proposal expected to impact the affordability of service provision, including access and participation for parents and whānau?
  - c. **Strong and capable workforce** – To what extent does the proposal support the development of a strong, sustainable, and capable teaching workforce?
  - d. **Diverse provision** – To what extent does the proposal impact the ability of parents and whānau to continue to have access to a choice of quality licensed ECE services that meet their diverse needs and aspirations for their children?
  - e. **Effective monitoring and enforcement** – To what extent can the proposals be monitored and enforced effectively, efficiently and in a timely manner by the Ministry, including being clear and giving certainty to service providers, teachers, and parents and whānau?

### What scope will options be considered within?

37. The proposal to require home-based persons responsible to be locally based and to define what this means falls within tranche two of the Early Learning Regulatory Review. The initial proposal was developed following the 2018 Review of Home-based early childhood education, which identified a lack of clarity in the Regulations around the supervisory and support functions of the home-based persons responsible role.
38. As previously noted, the options that are analysed in this RIS are further developments following the previous 2021 consultation on five proposals to strengthen the person responsible role in licensed home-based early childhood education and care services. This consultation included a proposal to require home-based persons responsible to be locally based. While this proposal was well supported, there was mixed feedback on how 'locally based' should be defined in the Regulations. We consulted on options for this definition in January - February 2023.

## What options are being considered?

39. In addition to the status quo (Option 1), the following options were identified for ensuring that persons responsible are within sufficiently close proximity to educators to support their existing oversight and supervisory functions.

### **Option Two – Require that persons responsible be in the same territorial authority as homes in the service**

40. This option would require that the person responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002.

### **Option Three – Require that persons responsible live within a ‘reasonable travel time’ of homes in the service**

41. This option would require that the person responsible live within ‘reasonable travel time’ of the homes, which could be defined as within up to four hours or a shorter time period.
42. Options 2 and 3 were consulted on in September 2021. This feedback is outlined in the preferred options section below.

### **Option Four – Require that persons responsible reside in the same local area, in close proximity to the educator(s) they are responsible for, including being contactable and able to attend in person in emergencies**

43. This option would require persons responsible to:
- a. Either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible;
  - b. are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children;
  - c. are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service; and
  - d. are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency.
44. Option 4 was developed following consultation feedback on options 2 and 3. Consultation feedback on option 4, undertaken in January - February 2023, is outlined in the preferred options section below.

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

|                              |   | Option One – Status Quo<br>(Person responsible may be based anywhere and travel extensively to fulfil their minimum regulated duties) | Option Two – Require that the person responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002 [Reg change]   | Option Three – Require that the person responsible live within ‘reasonable travel time’ of the homes, which could be defined as up to four hours [Reg change] | Option Four – (Developed following public consultation)<br>The person responsible must:<br>a. either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible<br>b. are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children<br>c. are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service, and<br>d. are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency [Reg change] |
|------------------------------|---|---|--|---|---|
| Quality provision            | 0 | +   | This option will help to ensure that persons responsible are within relatively close proximity to educators (i.e., so they don’t travel by air), although it is noted that some territorial authority boundaries are large so the actual impact on practice and quality provision is unclear. But it is unlikely that the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children. | +   | This option will help to ensure that persons responsible are within relatively close proximity to educators (i.e., so they don’t travel by air), although it is noted that it may be quicker for a person responsible to travel by air to an educator’s home than to travel four hours, so the actual impact on practice and quality provision is unclear. But it is unlikely that the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children.   |
| Affordable services          | 0 | -   | This option may increase costs for service providers if the person(s) responsible are not already located within these areas although the incidence of this is not expected to be high.  | -   | Depending on current practice, this option could impose additional costs on service providers by requiring them to change how they employ and use the person responsible. Services in isolated areas may find this particularly challenging if there is limited availability of teachers to fill the role of person responsible.  |
| Strong and capable workforce | 0 | 0   | This option is not expected to impact the workforce.   | -   | This option would give significantly more clarity to the role of person responsible in licensed home-based services and what it means to be locally based. There may be a negative impact on current persons responsible who do not meet the requirements and must therefore relocate or risk losing their role.  |
| Diverse provision            | 0 | 0   | This option is not expected to impact diversity of provision.  | 0   | This proposal could impact the provision of services in isolated areas if they are unable to employ a person responsible who can be located sufficiently close to the educators and children for which they are responsible.  |



|   |   |    |  |    |  |    |   |
|---|---|----|--|----|--|----|---|
| <b>Effective monitoring and enforcement</b> | 0 | +  | This option makes it clear that persons responsible must be locally based. Compliance with the definition of locally based should be relatively easy to monitor and enforce as it is based on established geographical boundaries. | -  | While this option makes it clear that persons responsible must be locally based, there may be a lack of clarity for service providers as to what is considered acceptable in practice because 4 hours is very broad. Compliance with the definition of locally based may also be difficult to monitor as what is considered reasonable will need to be determined on a case-by-case basis. | ++ | While there are aspects of this proposal that would need to be assessed by the Ministry on a case-by-case basis, this option provides much greater clarity and certainty about what it means for the person responsible to be locally based to enable effective monitoring and enforcement. |
| <b>Overall assessment</b>                   | 0 | +1 |  | -2 |  | +2 |   |

|  |   |
|--|---|
| <b>Example key for qualitative judgements:</b> |   |
| ++   | much better than doing nothing/the status quo/counterfactual  |
| +  | better than doing nothing/the status quo/counterfactual       |
| 0  | about the same as doing nothing/the status quo/counterfactual |
| -  | worse than doing nothing/the status quo/counterfactual        |
| --   | much worse than doing nothing/the status quo/counterfactual   |

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

45. Our initial assessment was that neither option 2 nor 3 were preferred, following the 2021 consultation feedback. 77% of respondents to public consultation agreed that licensed home-based person responsible should be locally based in relation to the homes in the service to better support their existing supervision and oversight functions (12 percent disagreed). However, only 25 percent thought the definition should be based on a geographic requirement (option 2) and 63 percent thought it should be based on travel time (option 3). However, many comments discussed the need to have different requirements to account for differences in rural and urban travel and that more flexibility for different situations. There were also comments that travelling four hours is too long to be considered locally based. The Home-based Sector Reform Advisory Group generally supported the proposal, that persons responsible be locally based although it is noted that they already tend to rely on a locally based person responsible.
46. Upon further analysis following the 2021 consultation, we did not consider that a definition of 'locally based' that relies solely on a 'reasonable travel time' or geographic boundary would achieve the policy objectives of this proposal. Additionally, it was highlighted that four hours is overly long for a person responsible to respond in person to the types of situations that require them to exercise their supervision and oversight responsibilities and is therefore too long to be considered locally based. Option 4 aimed to provide a definition of locally based that focused more on clarifying the types of outcomes required of the person responsible role (i.e., residing locally, be contactable, and being able to attend in person in cases of emergency or in the interests of child health and safety). The Ministry undertook further public consultation on option 4 in January - February 2023.
47. Consultation feedback on option 4 was supportive of the proposal (70% support), but there were strong levels of disagreement, particularly around the proposal that persons responsible reside in the same local area and be in close proximity to the educator(s) they are responsible for. The main concerns raised by those that did not support the proposed definition of locally based included that it did not provide sufficient clarity to ensure services could comply, it was not flexible enough to respond to services in rural and isolated areas, and the cost of compliance could make some services financially unviable.
48. 9(2)(f)(iv)
49. Given the above, we undertook further analysis of a revised option 4. Our assessment of this revised option, compared to the original option 4, is set out below.

|   | Option Four – (Developed following public consultation)<br>The person responsible must:   | Revised option Four - (Developed following second round of public consultation)   |
|---|---|---|
|   | <p>a. either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible</p> <p>b. are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children</p> <p>c. are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service, and</p> <p>d. are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency.</p> | 9(2)(f)(iv)   |
| <b>Quality provision</b>                    | <p style="text-align: center;">++</p> <p>This option could have a significant impact on quality of provision by ensuring the person responsible is always within sufficiently close proximity to the educators and children for which they are responsible, to ensure quality service provision. It will also ensure the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children.</p>   | Same as option 4  |
| <b>Affordable services</b>                  | <p style="text-align: center;">--</p> <p>Depending on current practice, this option could impose additional costs on service providers by requiring them to change how they employ and use the person responsible. Services in isolated areas may find this particularly challenging if there is limited availability of teachers to fill the role of person responsible.</p>   | Same as option 4  |
| <b>Strong and capable workforce</b>         | <p style="text-align: center;">+</p> <p>This option would give significantly more clarity to the role of person responsible in licensed home-based services and what it means to be locally based. There may be a negative impact on current persons responsible who do not meet the requirements and must therefore relocate or risk losing their role.</p>  | Same as option 4  |
| <b>Diverse provision</b>                    | <p style="text-align: center;">-</p> <p>This proposal could impact the provision of services in isolated areas if they are unable to employ a person responsible that can be located sufficiently close to the educators and children for which they are responsible.</p>   | Same as option 4  |
| <b>Effective monitoring and enforcement</b> | <p style="text-align: center;">++</p> <p>While there are aspects of this proposal that would need to be assessed by the Ministry on a case-by-case basis, this option provides much greater clarity and certainty about what it means for the person responsible to be locally based to enable effective monitoring and enforcement.</p>  | <p style="text-align: center;">+++</p> <p>This option provides much greater clarity and certainty for both services and the Ministry about service requirements that persons responsible be locally based (when compared to the status quo). Compared to option 4, this revised option will provide more certainty and clarity for services and the Ministry by defining what it means to reside, or have a place of business, in the same local areas as the educator(s) they are responsible for. This revised option also provides more consistency with the current regulations concerning the person responsible role.</p> |
| <b>Overall assessment</b>                   | +2  | +3  |

## What are the marginal costs and benefits of the option?

51. The table below outlines the costs and benefits of the preferred option against the status quo.

| Affected groups<br>(identify)   | Comment<br>nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.   | Impact<br>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.  | Evidence Certainty<br>High, medium, or low, and explain reasoning in comment column.  |
|---|---|---|---|
| <b>Defining locally based for persons responsible in home-based services</b>                |   |   |   |
| <p>Home-based early learning service providers (owners/managers)<br/>[Regulated groups]</p> | <p><i>Benefits</i></p> <p>While this option will impact how service providers run their business, we anticipate that the benefits of this option for children will be ongoing.</p> <p>Providing for a definition of locally based in the regulations will improve the clarity and certainty for services around the person responsible duties. The Ministry considers requiring the person responsible to be based near the homes that education and care is taking place in to be an important part of fulfilling their duties and responding in-person if necessary.</p> <p><i>Costs</i></p> <p>It is likely that there will be additional costs for services to comply with the new person responsible requirements. Consultation feedback from some submitters noted that these requirements will increase costs through needing to employ more staff, as well as increase other costs such as petrol, travel and vehicle maintenance. Thus, these submitters reasoned that complying with the requirements would be financially unsustainable, risking service closures.</p> | <p>Medium (<i>High for some home-based services</i>).</p> <p>So that the person responsible is located sufficiently close to provide the expected support, this option will likely create additional operational costs for some home-based services in complying with the new requirements. Operational costs include employing more staff, as well as increase in costs relating to travel – petrol and vehicle maintenance.</p> <p>9(2)(f)(iv)</p> <p>The Ministry will support the home-based sector through guidance on this proposal, to address the risk around non-compliance with the new requirements. However, it is also important to highlight that the intent of this policy proposal is to improve the quality of supervision and oversight of children in home-based settings. This will have positive outcomes for children's health, safety and wellbeing.</p> | <p>Low.</p> <p>Feedback from consultation is clear that some home-based services will face additional compliance costs as a result of these new requirements. However, it is difficult to estimate these costs and the magnitude of impact given the lack of data around the number of persons responsible in home-based settings, where they are in the regions, or how many services they are responsible for. The Ministry knows that home-based services account for approximately 6.7 percent of all ECE services.</p> <p>The 2018 Review of Home-based Early Childhood Education highlighted the need to strengthen the person responsible role in home-based services in order to improve quality and ensure consistency in the Regulations and across services. Requiring persons responsible for home-based services to be locally based will contribute to these improvements. However, to undertake this change and improve the current standard for oversight and supervision of home-based educators and the children in their care, we anticipate that there will be some additional costs to services. In particular, there will be costs for service providers who employ persons responsible that are not already locally based (e.g., live in other towns or parts of the country). However, this requirement is necessary to ensure the person responsible can effectively fulfil the duties of their role, including overseeing the education and care, comfort, and health and safety of the children.</p> |
| <p>Ministry of Education [Regulator]</p>  | <p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing. Providing for a definition of locally based for persons responsible in home-based services will ensure there is some degree of consistency in the approach the Ministry takes to defining 'locally based' as it applies to different service providers and in different parts of the country. It will also ensure a degree of flexibility to allow for different contexts.</p>   | <p>Low.</p> <p>This option will create administrative costs for the Ministry in developing operational guidance for the home-based sector. There may also be increased calls of inconsistency as there will be different rules for different contexts.</p>  | <p>Low.</p> <p>As above, there is a lack of data around persons responsible in home-based settings, meaning it is difficult to determine the level of impact or estimate costs on the Ministry of sector.</p> <p>There will be administrative costs associated with implementing these new requirements.</p>  |

|  |   |   |   |
|--|---|---|---|
|  | <p><b>Costs</b></p> <p>There will be administrative costs associated with this option. The Ministry will need to develop operational guidance as part of implementing the proposed amendment. However, it should be noted that there are already significant administrative costs due to the current regulations not being clear enough around persons responsible needing to be residing locally in order to undertake their duties.</p>   |   | 9(2)(f)(iv)   |
| Parents/whānau of children in care<br>[Interested group] | <p><b>Benefits</b></p> <p>We anticipate benefits of this option to be ongoing. Providing for a definition of locally based in the regulations will improve the clarity and certainty for parents and whānau around the person responsible duties. This proposal also seeks to improve the quality of supervision and oversight that is provided by persons responsible for educators and children in their care. This will have positive outcomes for children's health, safety and wellbeing.</p> <p><b>Costs</b></p> <p>There is the risk that there may be some additional costs for parents and whānau if increased operational costs for services are passed onto consumers.</p> | <p>Low.</p> <p>There is the possibility that there may be some additional costs for parents and whānau if increased operational costs for services are passed onto consumers.</p> | <p>Low.</p> <p>As noted above, there is the likelihood of increased operational costs for some home-based services in complying with the new requirements. However, it is less known whether these costs would then be passed onto parents and whānau, and if so, to what extent.</p> |
| <b>Total monetised net benefit</b>                       | Not applicable  |   |   |
| <b>Non-monetised net benefit</b>                         | Medium ( <i>High for some home-based services</i> ); Low ( <i>for the Ministry</i> )  |   |   |

## Section 3: Delivering an option

### How will the new arrangements be implemented?

#### Implementation timeframes

52. Subject to Cabinet agreement, the new regulations are expected to be gazetted during August 2023.
53. Consultation feedback raised a concern that the preferred option that ensures that the person responsible is located close to the home-based educator may have a significant impact for some home-based services who may struggle to comply with these new requirements, as it would make services financially unsustainable, risking service closures. Respondents to the consultation cited that introducing these requirements will increase operational costs through needing to employ more staff, as well as increase other costs such as petrol, travel and vehicle maintenance.

54. 9(2)(f)(iv)

#### Communicating these changes with the sector

55. The usual channels will be used by the Ministry to communicate the changes to the Regulations, including print and social media, and through professional learning and development material. The Ministry already has well established networks and communication channels with the sector to support the implementation of the proposed regulatory changes.

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

56. The Ministry will assess compliance with the new regulations as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review. The Ministry works closely with ERO and sector stakeholders to understand issues or concerns regarding regulatory compliance across the sector. Operational guidance will be developed to support implementation of these changes.