

Regulatory Impact Statement

Enabling licensed home-based early childhood education and care (ECE) services to simultaneously provide ECE and out-of-school care

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education.

The RIS considers options to address the need for more flexible provision of out-of-school care.

It concludes that the option of simultaneous provision with additional regulation is the most effective practical option to meet this need.

Specifically, the preferred option allows home-based ECE providers to simultaneously provide out-of-school care services. It would enable education policy settings to better support wider welfare/workforce goals.

It would also put home-based services on a more comparable footing with other ECE services, which are able to offer out-of-school care in limited circumstances.

The proposal increases choice for up to 95,000 families, and creates up to 9,380 places in licensed home-based services for out-of-school care. The uptake is likely to be much smaller in practice (given the number of providers who might not choose or might not be able to offer such services, and because of parental preferences, fee structures, or other factors) and it is not possible without considerable further work to provide more precise estimates.

We have consulted with home-based services (the key parties affected) and some further consultation with wider ECE groups and the out-of-school sector is proposed. The Ministry has consulted with the Ministry of Social Development.

The overall effect is to provide for a small and cautious expansion of childcare options. It does not impact on current subsidy rates, is unlikely to have any fiscal implications, and does not compromise safety or quality.



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Executive Summary

1. The proposal permits the simultaneous provision of ECE and out-of-school care within a licensed home-based ECE service (“home-based simultaneous provision”).
2. The lack of home-based simultaneous provision leads to difficult choices and unsatisfactory outcomes for some families, and it therefore frustrates the government’s education, workforce and child welfare objectives.
3. In particular, the lack of home-based simultaneous provision means that in some cases:
 - parents are not able to take up paid employment opportunities (because they need to stay at home);
 - parents face longer travel times and higher costs when they are forced to use different care services for younger and older children;
 - parents in rural areas (where options are more limited), and parents of children with special needs, are unable to access the kinds of care arrangements they need;
 - children miss out on early learning opportunities, where younger siblings are not enrolled in early childhood education.
4. Clear examples of such problems have been identified and reported. The existing policy setting which prevents home-based simultaneous provision is very difficult to justify. It also means home-based services cannot provide services which other providers can.
5. The proposal would remove this restriction by means of a change in a legal definition, supported by regulatory changes to prescribe the limited circumstances in which home-based simultaneous provision could occur.
6. The proposal represents a minor liberalisation that is straightforward and cost-effective to implement. It is hard to know how many families might benefit from the change - and the number may not be significant on a national basis - but for some families the benefit will be significant.
7. No additional funding is sought. Any marginal increase in ECE participation would be met within Vote Education baselines and subject to future update processes for demand driven items. MSD advises that there would be minor impact upon MSD childcare subsidy uptake that can be met within current programme budgets.
8. Existing safeguards are in place. For example, adult-to-child ratios in home-based ECE services are stringent; and the licensing system, including the mandated probationary period, ensures services provide safe and quality learning/care environments.

Status Quo and Problem Definition

Status quo

9. Home-based ECE services are organisations that provide early childhood education in a home environment through a network of homes. Home-based ECE services can be licensed, requiring them to comply with the Education (Early Childhood Services) Regulations 2008. Government ECE subsidy funding is available to licensed home-based ECE services.
10. Home-based ECE services are playing an important role in achieving the Better Public Services target of 98% of children starting school having participated in quality ECE by 2016. They also contribute to other government priorities such as helping beneficiary parents fulfil the social obligation to take all reasonable steps to enrol their three and four year old children in ECE, and supporting parents' continued participation in the workforce.
11. According to 2013 census data: there are approximately 350 licensed home-based ECE services in New Zealand; and enrolments in home-based ECE services were 18,820, accounting for approximately 8.5% of total enrolments, and for 7% of total ECE funding subsidies.
12. For out-of-school care and recreation, information is only available on subsidised children and subsidised providers. The main subsidised programme is MSD's Out of School Care and Recreation (OSCAR) programme. Of the approximately 3,500 providers, MSD funds 910, caters to around 12,000 to 15,000 subsidised children a month, with an annual budget of around \$42 million.
13. Simultaneous provision is currently only permitted for non-home-based (ie, larger institutional or centre-based) ECE services provided there is appropriate separation (as between ECE and out-of-school care children) given the generally large numbers of children in one setting.

Problem Definition

Legal restriction on choice

14. Parents are seeking care options that work for their family. This means having a wide range of choices about types of care and locations. When parents have a number of children it is often convenient and important to have all children cared for together in one location.
15. The significant majority of parents' needs in these respects are being met by the ECE sector as a whole.
16. There is, however, an exception: currently, ECE home-based services cannot be delivered alongside out-of-school care for school children because this is not permitted. Legal advice has confirmed that section 309 of the Education Act 1989 precludes pre-school and school children from the same family or whānau receiving simultaneous provision of out-of-school care and education and care in a licensed home-based ECE service.

Illustration of problem and impact of restricted choice

17. This restriction has led to a variety of unintended consequences. These affect parents with both pre-school and school age children. For example:
- parents may not have the range of choices that they need to be confident in their care decision (eg, where they prefer the children to be together, and/or to be under the supervision of a provider with whom there is already a relationship of trust);
 - parents may choose unlicensed (lower quality, less safe) provision;
 - parents may choose to stay at home instead of entering the workforce in order to look after a child (the law requires parents to exercise judgment in respect of children under 14 years of age: leaving them at home may or may not be reasonable depending on the circumstances);
 - the affordability and practicality of care may be reduced, especially if parents are required to access two different providers for the younger and older children (ie, there is additional cost and time involved in separate drop off and collection).

Evidence of problem

18. Evidence that the lack of simultaneous provision is causing difficulties for some families, includes:
- anecdotal and case study information reported in the media on the impacts for families in particular areas;
 - similar advice received from the Home Learning Organisation and the New Zealand Home-based Early Childhood Education Association, as well as advice on the benefits of allowing simultaneous provision;
 - information received directly by the Ministry of Education and the Ministry of Social Development that families are being frustrated by the inability of licensed home-based ECE services to provide simultaneous provision.

Scale and incidence of problem / potential gain from enhanced choice

19. We do not have precise data on the scale and incidence of the problem, and are not able to quantify the impacts of the proposal.
20. Nonetheless the range of information that is available points to a problem that is widespread, acute for some families, and a source of ongoing frustration (reflecting a perception of unnecessary bureaucracy).

Potential number of families affected

21. The current restriction on licensed home-based simultaneous provision potentially affects all families with both pre-school children and children at school (under, say, 14 years of age).

22. The number of families in this category is not able to be determined from publically available data. We commissioned a report from Statistics New Zealand on families with dependent children. Based on the 2013 Census of Population and Dwellings, the report states that the number of such *families* with children:
- aged 0-13 is 442,506; and
 - in the age groups “under 6” and “6-13” is 94,434.
23. Thus, the upper bound of the potential number of families affected is about 95,000. If necessary, further information might be obtained in order to provide insight into such factors as: numbers of children in each age group, national distribution, city/urban split, ethnicity, and SES status.

Concerns expressed

24. Organisations from the home-based ECE sector have indicated the continuing frustration of parents who are unable to have their school and pre-school children cared for by the same person in the same home. The frustration appears to be more acute for families:
- where there is only one parent;
 - in rural areas, where the choice of providers may already be limited;
 - on low incomes;
 - where a parent is seeking work.
25. These points are evident from reviewing a small selection of recent file notes made by MSD, summarising discussions with concerned parents and providers from regions throughout New Zealand. The notes include statements such as:
- “I have had a call from a distraught parent”
 - “I have had feedback... and they are not happy”
 - “She was stressed”
 - “I had another very upset mother on the telephone”
26. These highlight the stark consequences of the restriction – providers closing certain services, parents unable to find alternative care, parents facing high costs or inconvenience in having to make alternative arrangements – when it is unclear that the restriction, in the context of the circumstances on the individual cases, is necessary. This can undermine confidence in the fairness of the wider ECE licensing system, and may even encourage non-compliance and under-reporting of the problems being experienced.

Potential reach of simultaneous provision

27. The number of out-of-school care children whose parents or whānau would take up the option of licensed home-based out-of-school care if it were available depends on both supply and demand factors.
28. The maximum short-term supply response by licensed home-based services is 9,380 out-of-school care places. This reflects the multiplicative effect of:

- the number of licensed home-based services (ie, 350);
 - the average number of homes within such a service (ie, 13.4);
 - the assumed maximum number of places for out-of-school care per home that would become available as a result of the proposal (say, 2).
29. The take-up of out-of-school care places within home-based services is likely in practice to be much lower than this maximum supply response suggests. Relevant influences will include:
- preferences of those families for home-based ECE service relative to other out-of-school care services;
 - the geographical proximity between families and the nearest licensed home based services;
 - the fees charged by home-based services for out-of-school care relative to other competing services (including non-licensed services).
30. In the longer-term, supply has the potential to increase, but this will depend on the level of take-up and on the evolution of the out-of-school care sector (eg, in response to changes in subsidy programmes, in provider competition).

Implications for ECE participation

31. The effect of the simultaneous provision proposal on quality ECE participation is expected to be positive and small given that:
- The additional places permitted in a licensed home-based service will only be available for out-of-school care.
 - Simultaneous provision might encourage parents to enrol children in ECE who might otherwise be at home (where there is spare capacity in a home-based ECE service, or where home-based supply increases in response).
 - ECE participation rates are already high (ie, 96.1% overall as at March 2015), and close to the BPS target of 98%. This suggests that the potential for further participation gains is clearly limited across the whole licensed ECE sector (of which home-based services represent a small minority).

Implications for out-of-school care

32. The effect of the simultaneous provision proposal on improving out-of-school care options (and therefore child well-being and workforce participation outcomes) is expected also to be positive and small given the following:
- There will likely be new demand as parents and carers (who have not been able to before) respond to the opportunity of out-of-school care in a licensed home-based service not previously possible.

- There will be some switching. This may include switching from unlicensed to licensed provision, and switching from specialist OSCAR providers to new home-based providers.
 - The response is assumed to be small on the basis that the out-of-school care sector is relatively mature, with a range of options, and most parents and carers would have already been able to access both subsidised and unsubsidised programmes where possible. For some, however, it will only be the advent of simultaneous provision by home-based services that will enable them (because of their particular circumstances and preferences) to benefit from such programmes.
33. Thus, although it is hard to know specifically how many families might benefit from the change, for some families the increased choice of options for out-of-school care provision will be important.

Objectives

34. The Government's strategic objectives include lifting the level of participation in quality ECE (the Better Public Services target is 98% of children starting school having participated in quality ECE by 2016), enhancing workforce training and participation, as well as protecting and enhancing the well-being of children.
35. Allowing the simultaneous provision of ECE and out-of-school care within a licensed home-based service will address the problems identified above, and help to achieve the Government's strategic objectives/outcomes, because:
- It will allow a parent to participate – or to participate to a greater extent - in the workforce.
 - It will allow more children to be left under the care and protection of a trusted person when otherwise they might be left at home alone or in a situation that is not ideal for the parent or family/whānau.
 - It will allow more siblings to receive education and care together and not be unnecessarily separated.
 - It will benefit parents in terms of reduced travel times and costs.

Options and Impact Analysis

Feasible Options

Status quo

36. The status quo involves a continuation of current settings in which simultaneous provision is not permitted by licensed home-based ECE services.

Simultaneous provision without additional regulation

37. Under this option, licensed home-based ECE services would be permitted to simultaneously provide ECE and out-of-school care services. There would be no additional regulation constraining the basis on which those out-of-school care services were provided.

Simultaneous provision with additional regulation

38. Under this option, licensed home-based ECE services would be permitted to simultaneously provide ECE and out-of-school care services. In this case, however, there would be additional regulation constraining the basis on which those out-of-school care services were provided.

Criteria for Assessing Options

39. The key criteria are as follows:

ECE quality

- children experience early childhood education and care in a quality setting which means there is a demonstrated standard of education and care (eg, across the range of factors used to licence services)

Child well-being

- children experienced care in a setting in which they are protected, and are free or safe from risk and harm

Workforce participation

- the parent or guardian of a child has greater choice of quality childcare so that in turn they have more opportunity to undertake workforce training or to participate in the workforce

40. These high-level criteria allow us to distinguish the merits of the feasible options.

Summary of Effectiveness of Options

41. The relative effectiveness of the options may be summarised as follows:

	ECE quality	Child well-being	Workforce participation
Status Quo	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Simultaneous provision without additional regulation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Simultaneous provision with additional regulation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Explanation of Effectiveness of Options

Status quo

42. The status quo option gives rise to and reflects the issues identified in the problem definition. It does not address those issues.

43. This is because, under the status quo, there would be no change in the inability of licensed home-based services to provide out-of-care services simultaneously with education and care services. As a result:
- the kinds of unintended consequences illustrated in paragraph 17 above, will continue; and
 - the desired outcomes, illustrated in paragraph 35 above, will not be achieved.
44. These unintended consequences of the status quo are most evident in relation to child well-being (eg, where the choices of parents for safe, quality childcare is unnecessarily restricted) and in relation to workforce participation (eg, where parents do not take up employment opportunities because of the need to stay at home). On the other hand, the status quo rates well overall in terms of ECE quality.
45. The status quo option, however, does provide a benchmark. The challenge is to improve on it – to promote better outcomes for child well-being and workforce participation without compromising ECE quality.

Simultaneous provision without additional regulation

46. This option does not provide further regulatory limits for mixed ECE and out-of-school care in the home. Licensed home-based services would be required to exercise judgment, in their particular circumstances, as to whether and to what extent they engage in simultaneous provision, without additional license obligations.
47. This option relies on judgment by home-based services, unsupported by additional regulatory constraints. This option risks lower quality ECE as it does not specify, for example, minimum adult-to-child ratios for mixed provision. It may also result in poorer child well-being outcomes if the capacity of an educator to supervise and care for children in the home is over-stretched in a less regulated environment.

Simultaneous provision with additional regulation

48. For this option, the current rules applying to pre-school children in home-based care would be supplemented by further constraints or limits applying in respect of out-of-school care for school children.
49. These limits would provide the necessary safeguards to ensure that:
- the educator has the capability to manage the prescribed number of children (this safeguards quality and safety concerns);
 - an acceptable age range limit is established for out-of-school care (eg, children under 14 years of age) so that ECE quality is not compromised;
 - the relativity of adult-to-child ratios is broadly maintained as between different kinds of ECE services (home-based ratios would generally remain as stringent as - or more stringent than - those for other ECE services, depending on the number of children involved).
50. The overall effect of allowing limited simultaneous provision, as defined, would be to provide for a small and cautious liberalisation of childcare options, with safeguards

that support child well-being and safety, maintain ECE quality, and allow parents to take up more opportunities for training and participation in the workforce.

Preferred Option

51. The simultaneous provision with additional regulation option is preferred to the other two options because it is superior overall in relation to the ECE quality, child well-being, and workforce participation criteria.
52. Thus, the simultaneous provision with additional regulation option appears to be the most effective practical option to address the problem simply and effectively and without additional costs.
53. The impacts and effects discussed below refer to the impacts and effects of this option.

Impacts

54. Those positively affected would include:
 - children (eg, younger children can be cared for alongside older siblings; some older children will no longer be left home alone where logistically it can be difficult for a parent to make preferred alternative arrangements);
 - parents (eg, they can place their children with a preferred trusted provider; they can save on transport costs and time; they can participate in the workforce to a greater extent);
 - home-based ECE services (eg, they can offer a wider range of services, and are put on a more comparable footing relative to other ECE services);
 - businesses (eg, they can employ those parents who otherwise might have to stay at home to look after children).
55. A benefit is also noted for under-fives through a tuakana/teina relationship with older children. This links to *Te Whāriki*, the ECE curriculum. For example, *Te Whāriki* Strand 2: Belonging – Mana Whenua, where children and their families should experience an environment where connecting links with the family and the wider world are affirmed and extended.
56. There could be negative reactions from other services which might lose some business (ie, where parents choose to move school children to a home-based ECE service for out-of-school care). However, the change will allow parents' preferences to be accommodated (which is a central feature of the ECE system), and levels the playing field somewhat for home-based relative to other ECE services.

Fiscal and Other Effects

57. Potential fiscal effects include:
 - releasing latent demand for existing demand-driven ECE or OSCAR subsidies;

- marginal, additional licensing and monitoring caseload/obligations for the Ministry and MSD.
58. Such effects, however, are likely to be minor, and offset by other such effects as:
- an ECE switching effect as home-based is on average less costly than general ECE provision;
 - an OSCAR switching effect as home-based ECE provision will not attract foundation grants (which are provided to new OSCAR providers).
59. Any operational costs are likely to be minor and met within existing provisions for both OSCAR and ECE.
60. Further there will be positive economic and social impacts resulting from the initiative through:
- positive workforce participation effects (eg, productivity and tax effects); and
 - indirect positive effects arising from better childcare and education provision (ie, leading to better welfare and justice outcomes) for disadvantaged groups.

Consultation

61. To date, there has been consultation with the New Zealand Home-based Early Childhood Education Association and with the Home Early Learning Organisation. These are the organisations most affected by the initiative.
62. Both of these groups highlighted that the benefits of simultaneous provision include: continuity of care for children moving from ECE to school; and supported transition to school for ECE-aged children through familiarisation with school settings at pick-up and drop-off times for the older children.
63. The Ministry proposes to consult with the Early Childhood Advisory Committee (ECAC) which comprises representatives from eighteen ECE sector organisations. (ECAC is broadly representative of licensed ECE services and kōhanga reo, and its purpose includes assisting the ECE sector and government to achieve common goals.) Consultation with out-of-school providers will also be useful. These consultation processes will be helpful in communicating the change, in discussing the regulatory limits and thresholds that would accompany the change, and for gathering any other information which may be relevant.
64. In addition, there would be opportunity for these and other interested parties to contribute and be heard during the select committee process. No other additional public consultation is considered to be necessary.
65. The Ministry of Social Development has been consulted and involved in the development of the initiative.

Conclusions and Recommendations

66. Enabling home-based simultaneous provision by means of a changed legal definition, supported by limits and thresholds in regulations, will address the problem simply and cost-effectively while maintaining quality and safety standards.

Implementation Plan

Legislative and Regulatory

67. Implementation of the proposed legislative amendment will be achieved through an omnibus bill. The Bill will amend the Education Act 1989.
68. Associated changes to the Education (Early Childhood Services) Regulations 2008 will also be required to define (through limits and thresholds) the circumstances in which simultaneous provision may occur.
69. These changes will need to be appropriately co-ordinated or aligned to ensure that simultaneous provision by home-based services cannot commence until the thresholds and limits are in place.

Limits and Thresholds

70. These will be developed and specified in regulations, covering such aspects as: the maximum number of children who may receive education or care for gain or reward in a licensed home-based ECE service; limits on the number of children under the age of 6; the age limit for out-of-school care children; and the minimum adult-to-child ratios (with unchanged ratios for ECE children).

Operational Guidance

71. There is some operational policy needed to support practice changes resulting from these simultaneous provision changes. This policy would set out requirements for home-based ECE services to have plans in place outlining how they will meet both ECE licensing criteria and the standards of the out-of-school care programme.
72. Guidance will be developed outlining what is expected from the plan including supervision and management; child protection; the effective delivery of Te Whāriki; and the health and safety of children. It will also translate the legal requirements of providers into plain language to help support compliance.
73. Home-based ECE services will be required to ensure that parents are informed if the service is operating an out-of-school care programme. This includes information about a complaints procedure.
74. This work will be completed before the Bill is passed allowing this amendment to come into effect as soon as legislation and regulations come into force.