

In Confidence

Office of the Minister for Education

Chair, Cabinet Social Wellbeing Committee

Review of home-based early childhood education: Release of discussion document

Proposal

- 1 I seek Cabinet's agreement to release the discussion document on the Review of Home-based Early Childhood Education (the Review), and to start public consultation on the options for change.

Executive Summary

- 2 I believe there are opportunities to strengthen home-based early childhood education (ECE) because of the following issues:
 - 2.1 uncertainty about the quality of home-based ECE;
 - 2.2 government funding not being used to pay educators;
 - 2.3 service providers externalising much of the cost of providing home-based ECE, impacting on educators' working conditions.
- 3 In April 2018, Cabinet approved the terms of reference for the Review of Home-based ECE (the Review) [SWC-18-MIN-0004 refers]. The purpose of the Review is to ensure the policy settings for home-based ECE support quality educational outcomes.
- 4 I am now seeking your agreement to consult on proposals for change and the release of the discussion document to support this consultation. The Ministry of Education has developed proposals through targeted engagement with stakeholders. If you agree, the Ministry of Education will undertake wider consultation between mid-August and late-September.
- 5 The consultation will test options for supporting higher quality home-based ECE by:
 - 5.1 introducing qualification requirements;
 - 5.2 strengthening the oversight role of the teacher-qualified coordinator;
 - 5.3 improving health and safety requirements; and
 - 5.4 including an educator's school-aged children in the limit of children in a home.
- 6 It will also test options to ensure funding is delivered appropriately and allow government more oversight by:
 - 6.1 improving working conditions for educators;
 - 6.2 introducing new requirements to improve transparency regarding the use of government subsidies;

- 6.3 increasing the Education Review Office's role in relation to evaluating curriculum implementation; and
 - 6.4 altering the current licensing regulations to improve oversight.
- 7 It is critical that these proposals are subject to wide and timely consultation. These proposals carry with them potential operational and fiscal impacts on service providers, parents and government. I expect that they will generate debate across the home-based sector and that there will be a range of different views to consider.
 - 8 Following consultation, I intend to seek approval for substantive policy changes from Cabinet in December, with some changes flowing through into the wider Early Learning Strategic Plan.

Background

- 9 Home-based early childhood education (ECE) is an education and care service for children aged 0-5, provided in a home rather than a centre. Education and care is delivered by an educator, who is responsible for up to four children at a time. Educators are not required to have qualifications and can include grandparents, au pairs and nannies. A registered and certificated ECE teacher, called a coordinator, oversees the educators and children through home visits and phone calls. Home-based ECE represents approximately 9% of enrolments (18,440 children) in the ECE sector.
- 10 Home-based ECE service providers are directly responsible for ensuring that the education and care provided by educators is meeting minimum regulatory standards. The Ministry of Education checks whether providers meet these standards through the licensing process. A service provider can hold multiple licences, and each licence is associated with a network of up to 80 children and their educators.
- 11 On 3 April 2018, Cabinet approved the terms of reference for the Review [SWC-18-MIN-0004 refers]. The purpose of the Review is to ensure the policy settings for home-based ECE support quality educational outcomes. The terms of reference included the following focus areas:
 - 11.1 qualification requirements for home-based educators and quality criteria for funding;
 - 11.2 pedagogical leadership and the role of the coordinator in home-based ECE;
 - 11.3 employment conditions for home-based educators;
 - 11.4 curriculum implementation and monitoring in home-based ECE;
 - 11.5 adult-to-child ratios for home-based ECE and out-of-school care in one home;
 - 11.6 transparency for parents of any government subsidies;
 - 11.7 how the regulatory framework can support quality educational and health and safety outcomes in home-based ECE.
- 12 As part of Budget 2018, I announced that the cost adjustment for home-based ECE subsidies will be held in a contingency. This was because I wanted to wait for the outcome of this Review, when there will be more certainty about the quality of education provided.

Overview of issues in home-based ECE

- 13 While there is limited research that specifically focuses on home-based ECE, research in other types of ECE settings strongly indicates that the benefits of ECE are dependent on quality. Research shows that structural conditions, like educator qualifications and working conditions, have a direct effect on quality in ECE. This is because these variables influence the educator's sensitivity and responsiveness to children.
- 14 While home-based ECE offers some structural conditions associated with quality, like low adult to child ratios and small group sizes, I believe other settings could be strengthened to better support quality education and care for children.
- 15 This Ministry has undertaken initial engagement with stakeholders including government agencies with an interest in the focus areas of the Review, home-based ECE peak bodies and service providers. Along with the use of Ministry data and international research, this process has raised the following issues:
 - 15.1 uncertainty about the quality of home-based ECE;
 - 15.2 concerns that government funding is not being used to pay educators;
 - 15.3 service providers are externalising much of the cost of providing home-based ECE, impacting on educators' working conditions.
- 16 Where possible, the Ministry has used data to illustrate the extent of the issues identified. Some of the issues have been identified through initial engagement with the sector but cannot be quantified because of information gaps. Given this, the proposed consultation is needed to develop a broader picture of the issues identified.

Uncertainty about the quality of home-based ECE

- 17 Seventy percent of all educators have no ECE qualification and deliver education without another adult present. As research shows that qualifications are linked to quality interactions and better educational outcomes for children, this creates uncertainty about the quality of home-based ECE.
- 18 Although services can receive a higher 'quality' rate if they have ECE qualified educators, the proportion of services on this rate have declined over time - from 37% in 2005 to 26% in 2017. This contrasts with centre-based ECE, where the proportion of services on the equivalent quality rate have increased substantially from 41% to 98% over the same period.
- 19 International evidence suggests that regulatory settings surrounding the ECE teacher-qualified coordinator may not be ensuring quality and consistent contact with educators. The coordinator is expected to provide professional development to ECE unqualified educators, but is not required to have any experience coaching or teaching adults. The expectations for the role are also open to interpretation, which may be leading to inconsistent practice.
- 20 Ministry data suggests home-based services are less likely to maintain minimum licensing standards, across every type of licensing standard - whether it relates to the curriculum, health and safety or specific regulated standards like adult to child ratios. This is reflected in the higher percentage of home-based services that have interventions in place. As at

23 July 2018, 13% of home-based services had provisional or suspended licences, compared with other ECE services types which had approximately 3%.

- 21 Regulations have not kept pace with the changing market of provision. When home-based ECE was first regulated in the early 1990s, home-based providers typically had one or two licences. However, providers have grown substantially since then - one of the larger providers has in excess of 60 licences across the country. In order to operate their businesses as efficiently as possible, larger providers swap homes and coordinators between their licences even if they are not in the same area.

Government funding is not being used to pay educators

- 22 The Ministry of Education has observed that larger providers are retaining all of the ECE subsidy, the primary form of government funding, and are not passing any of it on to educators. This means educators rely solely on parent fees for their income in these settings.
- 23 For 20 hours ECE funding, the Ministry has observed and received complaints of parents being asked to cover the shortfall between the discretionary amount of funding that is passed on and the educator's fees. This is not the policy intent of 20 hours ECE funding, as there should be no compulsory fees for parents.
- 24 The Ministry also became aware that parents may not know that their child is generating a Government subsidy, resulting in instances of parents bearing a disproportionate share of the cost of ECE. The Ministry has observed that some providers do not generally make parents aware of the ECE subsidy, nor the level of subsidy their child generates across both 20 hours ECE and the ECE subsidy.
- 25 Ministry funding audits show that home-based services are over three times more likely to over-claim government funding than other ECE service types. The Ministry has little oversight of what government funding is being used for, and whether the use of government funding matches the policy intent.

Service providers are externalising much of the cost of providing home-based ECE, impacting on educators' working conditions

- 26 During initial engagement, home-based peak bodies told the Ministry that most educators are treated as self-employed contractors. This means the provider avoids costs associated with meeting most employment-related laws such as the provision of annual leave, sick leave and KiwiSaver employer contributions. As contractors, educators are responsible for their own tax. The use of their home and other associated costs like electricity and heating are able to be claimed as a tax deduction.
- 27 Educators typically receive a rate per child and depending on the rate, it is possible for them to earn less than the minimum wage unless they are caring for four children. Furthermore, there have been instances where educators have received vouchers instead of money.
- 28 While au pairs and nannies are usually employees rather than contractors, there are also minimal costs borne by providers in these settings. This is because they are employees of the family rather than the provider. While some providers provide a payroll service, the Ministry understands that this typically involves an additional fee.

- 29 The Ministry has also observed instances of service providers attempting to push GST obligations onto educators in relation to the portion of subsidy they receive from government but pass onto the educator. In one instance, the service provider argued that they are not responsible for GST on these payments as they are merely an 'arranger' of education and care. Although the Education Act 1989 defines home-based service providers as arrangers of education and care, the service provider's responsibilities in the Act and associated regulations are consistent with the responsibility for delivering education and care.
- 30 Peak bodies have also told the Ministry that service providers differ in terms of their level of involvement in administering parent payments to the educator, which may complicate where GST responsibilities for these payments lie.

Consultation on the Review

- 31 Based on international and domestic evidence of best practice in home-based ECE and concerns raised during initial engagement, the Ministry has developed proposals for change.
- 32 I seek your approval to start public consultation in order to test these proposals, and the concerns they are seeking to address. Widespread consultation is crucial in order for the Ministry to understand the impacts of these proposals. While the proposals are intended to support consistent quality across home-based ECE and ensure more effective use of government's investment in this area, they represent a more costly model of provision. Introducing additional requirements could prompt some providers and educators to exit the market, thereby reducing the availability of home-based ECE for parents. This may affect parents' labour market participation if no alternative services are available.
- 33 Stakeholders will be able to offer their perspective on the Education Conversation website, through completing a short survey or making a detailed submission. The short survey will provide additional background information, to take into account that participants may not have read the discussion document beforehand. I expect that parents and educators will prefer to complete the short survey.
- 34 Online feedback will be supplemented by regional hui that are open to the public, but are primarily aimed at home-based service providers and tertiary education providers. The Ministry intends to hold two hui in Auckland (Central and South), with further hui held in Tauranga, Christchurch and Hamilton. Areas have been chosen due to their high number of educators and service providers, as well as their proximity to diverse population groups including Māori, Pacific people and migrant groups. In addition, there will be tailored face-to-face engagement with key stakeholders in these areas.
- 35 Insights from consultation will inform other work programmes, including the Early Learning Strategic Plan (Strategic Plan). Consultation on the Strategic Plan is scheduled for September/October. The Strategic Plan will set the direction for the whole early learning sector, including home-based ECE. The Strategic Plan will consider issues such as equity of access to early learning for children with disabilities and children from low socio-economic backgrounds.

Review discussion document

- 36 I seek your approval to release the discussion document on 21 August to begin public consultation on the Review. I also seek your approval to make minor editorial changes to the discussion document, before it is publicly released.
- 37 The attached discussion document outlines the two broad aims of the Review, with proposals grouped within these aims:
- 37.1 Supporting quality in home-based ECE;
 - 37.2 Ensuring government investment is directed towards education and care.

Supporting quality in home-based ECE

Introducing qualification requirements

- 38 I propose testing through consultation a requirement that all educators have at least a level 4 ECE qualification. The level 4 certificate is preferred over the level 3 because, while both can be completed within the same timeframe, the level 4 has a stronger practice-based focus with an emphasis on effective communication with children.
- 39 Under this proposal, services that have all educators with a level 5 qualification or higher would attract a quality rate.
- 40 I also propose seeking feedback on establishing a lower funding rate for au pairs. Au pairs are unlikely to be able to meet these qualification requirements, as they are only in New Zealand for a short period of time.

Strengthening the oversight role of the teacher-qualified coordinator

- 41 I propose seeking feedback on changing the coordinator role to better align with what we know about high quality education and care. This includes redefining the role to reflect the importance of training and professional development and ensuring the coordinator has experience with adult education. I also suggest changes to encourage stable and supportive relationships between coordinators and educators, including requiring coordinators to visit educators more frequently than currently prescribed in the regulations.

Improving health and safety requirements

- 42 I propose testing options to strengthen health and safety in home-based ECE environments. This includes testing that service providers be required to provide training for coordinators and educators about understanding and applying the health and safety regulations and associated criteria.
- 43 I also suggest amending the Education Act 1989 to require police vetting on all adults that may reside and/or be present in the home. This would capture people that are not currently being vetted in a home-based setting, such as an educator's flatmates.

Including educator's school-aged children in the limit of children in a home

- 44 I propose seeking feedback on including an educator's school-aged children (aged 6-13) in the limit on the number of children that can be present in an educator's home while they are delivering home-based ECE. This would ensure that there are low adult-to-child ratios at all times. There is a risk that some educators are no longer able to provide home-based

ECE or may only be able to provide home-based ECE during school hours and school terms.

Proactively Released

Ensuring government investment is directed towards education and care

Improving working conditions for educators

- 45 Educator wages and working conditions influence quality. Poor working conditions can increase stress and turnover, limiting an educator's ability to form quality relationships with children. I therefore propose testing two options to improve working conditions for educators:
- 45.1 requiring providers to engage educators as employees; or
 - 45.2 ensuring funding flows through to educators.
- 46 Respondents can provide feedback on both options. Both seek to improve working conditions for educators, with differing levels of operational complexity. The options would also provide more clarity around GST obligations.
- 47 As employees, educator working conditions may improve through earning at least the minimum wage as well as the provision of annual leave and sick leave. However, this option may be costly to service providers, which could result in higher fees for parents. It may mean educators will have to increase the number of children in their care (to a maximum of four) in order for the model to be cost effective. This may impact on children with additional needs who may benefit from a lower ratio.
- 48 The alternative option is to put conditions on government funding to ensure funding flows through to educators. This could be through requiring providers to pay educators a certain rate through a contract for services. This option would help to ensure educators receive a higher wage although they would not receive other benefits associated with becoming an employee, such as annual leave.
- 49 The Education Act 1989's definition of service provider is problematic. It frames the provider as being responsible for arranging education and care, not its provision or delivery. I therefore also propose seeking feedback on changing the definition of 'service provider' and 'home-based education and care service' in the Act. Similarly, the definition of home-based education and care service could also be redefined. The use of the term 'gain and reward' may be contributing to educators receiving minimal payments for their work, such as vouchers.

New requirements to improve transparency regarding the use of government subsidies

- 50 I will seek feedback on the proposal to make funding conditional on services disclosing to parents the level of government subsidy each child generates as part of invoicing.
- 51 I also propose testing the requirement that all services, whether community-based or private, report on income and expenditure per licence as part of their annual financial reports.

Increasing the Education Review Office's role in relation to evaluating curriculum implementation

- 52 To improve the oversight of government into the quality of curriculum implementation, I propose testing whether the Education Act 1989 should be amended to enable the Education Review Office (ERO) to have right of entry to homes. This would be to verify

the quality of educator practice, and matters to do with health and safety. The Ministry of Education already has right of entry.

- 53 I also propose seeking feedback on whether ERO's role should be widened to have the power to conduct an ERO evaluation before the Ministry grants a full licence, but after the Ministry has granted a probationary licence to new services.

Altering the current licensing regulations to improve oversight

- 54 To help educators build a strong relationship with the same coordinator, while better managing multi-licence service providers as a whole, I propose seeking feedback on whether licensing regulations should be amended to require all homes, educators and coordinators to be listed on a licence. Service providers would then have to apply to amend these details. This proposal would help to improve government oversight of education and care in home-based environments, including the health and safety of children.
- 55 The current regulations set a ratio of coordinators to children, rather than educators. I propose testing setting a maximum ratio of educators to coordinators. This would limit the variability between the number of educators a coordinator can be responsible for. It may also strengthen the expectation of providing leadership to educators. This could be linked to the maximum licence size to remove the current inconsistency between licence size and the maximum number of children a coordinator can supervise at any one time.

Other options considered as part of the Review

- 56 Future advice on proposals will take feedback received during consultation into account, including whether to implement any proposals at all. I am open to considering other options that arise as part of the consultation process.
- 57 As part of the Review, the Ministry has looked at other options which were not considered viable. This includes allowing 50% of educators within a service to not have a qualification, as with centres, but increasing the frequency of visits by the coordinator for those educators. This option was not recommended as there was a risk it would lead to significant variability and quality within a home-based service.

Next steps

- 58 Following consultation, I intend to seek approval for substantive policy changes from Cabinet in December. This will enable draw down of the cost adjustment contingency by early next year.

Consultation

- 59 The Treasury, State Services Commission, Ministry of Social Development, Ministry of Health, Ministry of Business, Innovation and Employment, Oranga Tamariki–Ministry for Children, Ministry for Women, Inland Revenue, Te Puni Kōkiri, Ministry for Pacific Peoples, New Zealand Qualifications Authority and Education Review Office have been consulted on this paper.
- 60 The Department of Prime Minister and Cabinet has been informed.

Treasury comment

- 61 To ensure that Ministerial decision making and public debate are fully informed, the Treasury considers that this Cabinet paper and/or discussion document should include analysis of the regulatory and fiscal impacts of both the policy options being explored in addition to policy options that have been closed off, as outlined in CO(17)3: Impact Analysis Requirements. To manage sector and public expectations, the Treasury also considers that this Cabinet paper and/or discussion document should clarify that subsequent policy consideration and budget prioritisation may recommend not proceeding with, or deferring, the implementation of the proposals.
- 62 Should Cabinet request further information before this public consultation period begins, the Treasury considers that the consultation period could be shifted back to align with the Strategic Plan.

Financial Implications

- 63 There are no immediate financial implications from this paper. The outcomes of the Review are likely to have financial and operational impacts. The proposals represent a more expensive model of provision. Service providers are likely to expect higher funding rates from government, including additional financial support for larger proposals such as mandatory qualification requirements. I also anticipate higher administration costs for government.
- 64 The Ministry of Education will undertake costings in order to support any policy proposals I seek Cabinet's agreement to. Funding for these proposals will be considered as part of the standard Budget process. Home-based early childhood education services received around \$156 million in Ministry of Education funding in 2017.
- 65 Some proposals may have particular implications for children and their families. Additional requirements may mean that some providers and educators exit the market, thereby reducing availability of home-based ECE services. This may affect parents' labour market participation if no alternative services are available. Some proposals may also disproportionately affect educators, children and families who have English as a second language. The interests of children and their families is paramount. Every effort will be made to minimise disruption to children and their families when making decisions and implementing any change.
- 66 I will outline the financial implications of any proposals when I report back to Cabinet in December. If it is decided that changes will be made to the home-based ECE sector, I understand there would be a need for a transition period. The Ministry of Education will work with the Ministry of Social Development regarding this transition period for proposals that affect beneficiaries and people with low incomes.

Human Rights

- 67 There are no human rights implications arising from this paper.

Legislative Implications

- 68 Recommendations arising out of the Review may require changes to the Education (Early Childhood Services) Regulations 2008 and the Education Act 1989. I will provide Cabinet with an analysis of legislative implications in December.

Regulatory Impact Analysis

- 69 Cabinet papers seeking the release of discussion documents that include regulatory proposals must be accompanied by a Regulatory Impact Assessment (RIA) unless an exemption applies, as outlined in CO(17)3: Impact Analysis Requirements. This paper is not accompanied by a RIA and Treasury has not exempted the proposal from the Impact Analysis Requirements.
- 70 As such, the Treasury considers there is a risk that the value of the proposed consultation will be reduced given that the range of possible options for addressing the issues identified are not fully canvassed in the discussion document. The analysis of the limited range of options included in the discussion document focuses on the benefits and does not identify potential costs. The Treasury would recommend that these gaps be addressed, either with an expanded discussion document or through the provision of a supporting RIA or Supplementary Analysis Report (SAR). The RIA or SAR would set out the costs and benefits of alternative options and why these options have or have not been considered, in order to ensure that Ministerial decision making and public debate are fully informed.
- 71 While I agree with the importance of providing an RIA, I believe this analysis will provide more benefit after consultation when firm proposals have been developed. I am open to all options in addition to the proposals included in the discussion document. At this stage of the process, no decisions have been made. Furthermore, information gathered through the consultation process will allow the Ministry to better understand the costs of each proposal which cannot easily be estimated at this point in time.

Gender Implications

- 72 Ninety eight percent of home-based ECE educators are women. Any changes to policy settings relating to educators will have a greater effect for women.
- 73 There is also a potential impact on women's labour force participation. Home-based ECE can operate outside of standard centre hours. Policy changes might affect women disproportionately if women are unable to access education and care for their children. The Ministry will be seeking to limit any potential impacts on women's labour force participation.

Disability Perspective

- 74 The Ministry of Education will engage with groups representing children with disabilities and will also link in with consultation for the Learning Support Action Plan to understand how the proposed policy changes may affect children with disabilities. The Ministry will undertake analysis of what is or is not occurring for children with disability or learning support needs in home-based ECE, drawing upon feedback from early intervention teams¹.

Treaty of Waitangi implications

- 75 Māori children made up 17% of enrolments (around 3,000 children) in home-based ECE in 2017. This is lower than the average of 23% across all licensed ECE services and

¹ Early intervention teams work with families and early childhood education staff who ask for help when they are concerned about the learning and development of children aged 0-5. Early intervention teams are employed by the Ministry of Education.

kōhanga reo in 2017. The highest number of Māori children using home-based ECE live in Auckland, Hamilton and Tauranga. These cities will be visited as part of consultation. Engagement with Māori parents and Māori bilingual services will be a priority.

76 s 9(2)(i)



Publicity

77 I intend to publicly launch consultation through a press release.

78 I intend to proactively release this Cabinet paper and other key documents relating to the development of the discussion document. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Recommendations

79 The Minister for Education recommends that the Committee:

1. **note** that the Review of Home-based ECE (the Review) is intended to address concerns about home-based early childhood education (ECE) related to:
 - 1.1. uncertainty about the quality of home-based ECE
 - 1.2. government funding not being used to pay educators
 - 1.3. service providers externalising much of the cost of providing home-based ECE, impacting on educators' working conditions
2. **note** that Cabinet approved the terms of reference for the Review [SWC-18-MIN-0004 refers] in April 2018
3. **note** that the cost adjustment for home-based ECE subsidies is being held in a contingency, until after the conclusion of the Review
4. **note** that proposals for change have now been developed and it is critical that these proposals are subject to wide and timely consultation
5. **agree** to start public consultation on the Review on 21 August 2018
6. **approve** the release of the Review discussion document to support consultation
7. **agree** to delegate to the Minister of Education the power to make editorial changes and enhancements to the discussion document
8. **note** that I intend to seek agreement from Cabinet to any proposals for changes to the home-based sector in December 2018
9. **note** that, when I return to Cabinet in December 2018, I will also report on:

- 9.1. the outcomes of public consultation and how it will inform policy proposals
 - 9.2. the relative costs and benefits of the proposals that I intend to seek agreement to
 - 9.3. the estimated fiscal costs and regulatory impacts of the proposals.
- 10. note** that funding for any proposals will be sought through a Budget process alongside other Government priorities.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Proactively Released