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Tranche One

Early Learning Regulatory Review

Introduction

1. About the Teaching Council

The Teaching Council (the Council) is the independent professional body for registered teachers from early childhood education through to primary and secondary schooling in English and Māori medium. There are currently around 136,000 registered teachers in New Zealand. The statutory purpose of the Council, set out in section 479 of the Education and Training Act 2020 (ETA 2020), is “to ensure safe and high-quality leadership, teaching and learning ... through raising the status of the profession”.

The Council acts in the interests of registered teachers to:

- enable and support leadership to teachers and direction for the profession
- enhance the status of teachers and education leaders
- establish and maintain criteria for teacher registration, standards for ongoing practice and criteria for the issue of practising certificates
- monitor and maintain the requirements relating to teacher conduct and competence
- establish and maintain the Code of Professional Responsibility and Standards for the Teaching Profession | Ngā Tikanga Matatika mō te Haepapa Ngaiotanga me ngā Paerewa mō te Umanga Whakaakoranga (the Code | Ngā Tikanga Matatika and the Standards | Ngā Paerewa)
- establish and maintain standards for qualifications that lead to teacher registration and approve teacher education programmes.

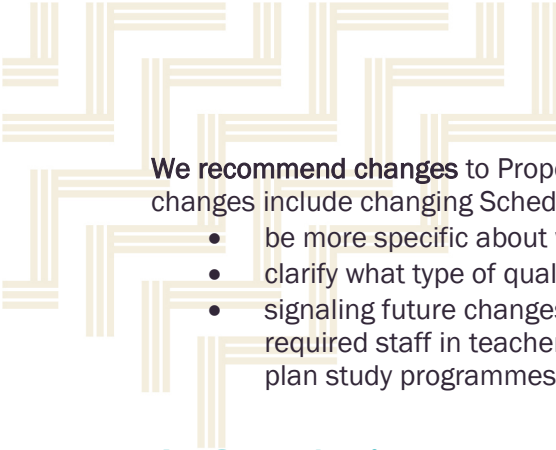
2. Process

The Council acknowledges this submission will become public information.

3. Executive summary

We generally support the changes recommended in proposals 1 to 9 and 11

- we note where relevant the links to *He Taonga te Tamaiti (Early Learning Action Plan) 2019-2029* – it is important the strategic direction agreed for the early learning sector is reflected in any legislative changes
- we consider provision should be made to require ECE management to inform staff and parents / whānau when license changes are proposed or actioned – the reasons for this are discussed more fully under Proposal 6.



We recommend changes to Proposal 10 to clarify even further the qualification requirements. These changes include changing Schedule 1 to:

- be more specific about who recognises the qualifications
- clarify what type of qualifications will be recognised
- signaling future changes to the qualification requirements for home-based educators and required staff in teacher-led centre-based services so those services have time to discuss and plan study programmes with their staff.

4. Consultation process

The Teaching Council notes the release of Tranche One coincided with the holiday season – this may impact on the feedback received.

The Teaching Council notes this is the first of three consultation tranches. We acknowledge Tranche One is focussed on prioritising urgent issues related to children’s health, safety and wellbeing, and therefore Tranche One discusses a narrow range of issues proposed for regulatory amendment in 2021.

We hope however, the design of tranches Two and Three provides the opportunity for the early learning sector to identify and share with the Ministry of Education those areas of the regulations that the sector considers would benefit from changes, rather than the sector responding to priority areas as assessed by the Ministry.

We believe there are currently some misalignments between the ECE regulations and other parts of the system, including the Council’s registration and certification requirements. We intend to initiate discussions with you and others for consideration for future tranches.

Discussion of proposals

5. Proposals 1 – 9 and 11

Through the Council’s website we invited the profession to complete the survey and/or submit comments directly to the Early Learning Regulatory Review.

However, although some of these proposals relate to licensing requirements that do not fall directly within the Council’s functions, we do have an interest in the overall operation of the ECE sector. We have included comment from our advisory groups who provide the Governing Council of the Teaching Council with research and advice in respect of any of the Teaching Council’s vision, functions or responsibilities relating to teachers/kaiako, learners/ākonga and others in the field of future-focussed early childhood education and inclusive education.

Proposal 1: creating a cancellation pathway based on a service’s provisional history

We agree with this proposal.

We note the relationship of this proposal to Action 5.1 of *He Taonga te Tamaiti (Early Learning Action Plan) 2019-2029* which aims to introduce a managed network approach to ensure high quality, diverse and sustainable early learning provision.

Proposal 1 recommends Regulation 32 is amended to insert (e) (ii) (B) ‘the qualifications, ratios, and service-size standard: general as set out in regulation 44’ as one of several non-compliant requirements. Consideration needs to be given to services struggling to meet this requirement if the Ministry is continuing to issue new licences in a region struggling to find qualified teachers. We note this proposal also relates to Action 5.2 about identifying options to address supply of early learning services to under-served communities.

We recommend that to cater for the needs of children, especially those requiring learning support, that the regulation include a clause that ECE management be transparent with parents / whānau about these provisional licences and what they are doing so that in the event of a centre closing tamariki and whānau are well informed and are prepared for the transition. An onus should also be placed on the Ministry of Education to provide support for the centre, staff and parents / whānau of children with additional needs to ensure smooth transitions should a centre temporarily or permanently close.

Proposal 2: issuing a provisional licence to carry out an investigation in the event of an incident involving a child

If the Secretary can already move a licence to provisional due to a complaint, then it makes sense it can happen for an incident that the Secretary considers warrants an investigation. However, this proposal seems to contradict Proposal 3, which gives the Secretary powers to 'address a health and safety matter without needing to reclassify the licence as provisional or suspend the licence'.

We recommend that provision is made for parents / whānau and staff to be informed of the changes in license, and aspects of the investigation as permitted by privacy and confidentiality laws/regulations.

Proposal 3: creating written directions for health and safety matters that require immediate attention

We agree with this proposal.

We note the relationship of this proposal to Action 5.5 of *He Taonga te Tamaiti (Early Learning Action Plan) 2019-2029* which sets out the Ministry's intention to introduce a consistent and rigorous programme of monitoring and licensing. This includes the Ministry and ERO working closely to ensure there is timely information sharing where a service is at risk of non-compliance. The regulation should ensure and include, that any written directions for health and safety matters requiring immediate attention must be recorded as part of the licensing history of a service, and considered in the future when contemplating cancellation or a change in the status of a service's license.

Proposal 4: clarifying the provisions for licence amendments when the service provider changes

We agree with this proposal.

Proposal 5: removing the 21-day minimum notice period for suspensions for change of control

We agree the 21-day minimum notice period should be changed if Proposal 4 is in place.

We recommend there be at least a 48-hour notice as this will allow for time to give warning to parents / whānau of tamariki with learning needs and/or those tamariki who are anxious about change, that arrangements are changing.

Proposal 6: removing the 21-day minimum notice period for suspensions for not returning an invalid licence

Discussion under Proposal 6 says:

“Services must prominently display the current licence (GMA1 Display of information licensing criteria). If the invalid licence is still on display, parents and whānau may not have the opportunity to avoid the risks listed on the provisional licence.”

We recommend the regulations should make it mandatory for license owners to inform parents / whānau and staff when their license has been suspended or changed from full to provisional. This is important so staff and parents / whānau are aware of the risks and issues that they and tamariki may be exposed to. Relying on the display of a licence is not sufficient to ensure staff and parents / whānau are appropriately informed.

While 21 days' notice of suspension may be too long, having no notice period of suspension with an immediate impact on funding and attendance may hamper a service's ability to address the issues raised in the provisional licence. A shorter period may be more appropriate.

Proposal 7: clarifying the information used to assess an application for a probationary licence

We agree with this proposal.

We note the relationship of this proposal to Action 5.1 of *He Taonga te Tamaiti (Early Learning Action Plan) 2019-2029*, which states under Step 1 of the proposed two-step licensing approach that "Decisions on whether to grant the licence would be based on the Ministry's assessment of whether the proposed new service would meet an existing or future need, as well as on the demonstrated quality of an applicant's existing services".

Proposal 8: increasing the minimum room temperature from 16 degrees to 18 degrees Celsius

We agree with this proposal.

We note that research supports both minimum and maximum room temperatures, especially for sleep rooms and sleep spaces.

Proposal 9: clarifying that the fee for a new licence is payable upon application and is non-fundable

We query how this proposal relates to Action 5.1 of *He Taonga te Tamaiti (Early Learning Action Plan) 2019-2029*, which sets out the Ministry's intention of introducing a two-step licensing approach. We presume the intention will be for the licensing fee to apply at step 2.

Proposal 11: amending the licensing criteria for philosophy statements, self-review and annual planning, requiring services to demonstrate regard for the *Statement of National Education and Learning Priorities (NELP)*

We agree with this proposal.

We consider under the Appendix, the proposed new wording for "Self-Review – GMA6 / GMA5" under "Documentation required:" point 2 reads as if the recorded outcomes are solely about NELP.

We recommend it is amended to read:

"2. Recorded outcomes from the review process, including identification of how the service has regard for the *Statement of National Education and Learning Priorities (NELP)* in its operation."

We recommend Regulation 3 "Interpretation" include a NELP definition.

To highlight the importance of inclusion as a core and essential element of all early childhood education, we recommend the following changes to the proposed wording in the Appendix (as underlined):

Philosophy Statement – GMA5/GMA4

"Documentation required:

A written statement expressing the service's beliefs, values, and attitudes about the provision of inclusive early childhood and care."

Self-Review – GMA6/GMA5

"Criterion:

An ongoing process of self-review and internal evaluation helps the service maintain and improve the quality of its inclusive education and care."

Annual Planning – GMA8/GMA7

"Documentation required:

An annual plan identifying 'who', 'what', and 'when' in relation to key tasks the service intends to undertake each year, and how key tasks will have regard to the *Statement of National Education and Learning Priorities (NELP)* and ensuring equitable outcomes for tamariki and parents / whānau."



6. Proposal 10: Consolidating existing person responsible requirements

The Council has legislative responsibilities under the ETA 2020 associated with establishing, maintaining, and reviewing standards for qualifications that lead to teacher registration (s.479 (g) and (h)) and for conducting approvals of teacher education programmes (s.479 (i)). We also have legislative responsibilities for functions associated with registering teachers and issuing and renewing practising certificates (Schedule 3).

The Council agrees clarifying the practising certificate requirements for the person responsible is of value.

The proposed changes to Schedule 1 are a start but the Council believes further changes can improve the understanding of the practising certificate requirements and especially the qualification requirements that apply to different early childhood services.

The highlighted changes in the following table are recommended.

Schedule 1 Qualification requirements

r 44(1)(a)

Service	Person responsible requirement	Other staff requirement
Licensed education and care centres affiliated with Te Whānau Tupu o Aotearoa - Playcentre Aotearoa	Person responsible must hold an early childhood teaching qualification recognised by the Secretary of Education (by notice in the Gazette)	
Licensed education and care centres affiliated with Te Kōhanga Reo National Trust Board		
Licensed home-based education and care services	Person responsible must hold an early childhood teaching qualification recognised by the Teaching Council for registration purposes, be a registered teacher and hold a current practising certificate	<p>1 January 2022 - 10% of educators must have a required qualification #</p> <p>1 January 2023 - 30% of educators must have a required qualification #</p> <p>1 January 2024 - 60% of educators must have a required qualification #</p> <p>1 January 2025 - 80% of educators must have a required qualification #</p>
Licensed education and care centres not affiliated with either of the following: <ul style="list-style-type: none"> Te Whānau Tupu Ngātahi o Aotearoa - Playcentre Aotearoa: Te Kōhanga Reo National Trust Board 		
All services recognised as a teacher led service (as defined in regulation 44(4))	Person responsible must hold an early childhood or primary teaching qualification recognised by the Teaching Council for registration purposes, be a registered teacher and hold a current practising certificate	50% of required staff must hold an early childhood teaching qualification recognised by the Teaching Council for registration purposes.
Licensed hospital-based service	Person responsible must hold an early childhood qualification recognised by the Teaching Council for registration purposes, be a registered teacher and hold a current practising certificate	50% of required staff must hold an early childhood teaching qualification recognised by the Teaching Council for registration purposes.
Licensed teacher led, centre-based early learning service - excluding hospital-based or home-based services	Person responsible must hold an early childhood or primary teaching qualification recognised by the Teaching Council for registration purposes, be a registered teacher and hold a current practising certificate	<p>50% of required staff must hold an early childhood teaching qualification recognised by the Teaching Council for registration purposes.</p> <p>At a date to be advised - 80% of required staff must hold an early childhood teaching qualification recognised by the Teaching Council for registration purposes.</p> <p>At a date to be advised - 100% of required staff must hold an early childhood teaching qualification recognised by the Teaching Council for registration purposes.</p>

a required qualification is a grand-parented Level 3 ECE qualification (a Level 3 ECE qualification obtained before 1 January 2022), a Level 4 or Higher ECE qualification, a primary teacher qualification, Te Ara Tuarua (level 5 kōhanga reo qualification) or higher (Tohu Whakapakari).¹

¹ "What changes are being made?" in "Frequently asked questions about the five-year transition to a fully-qualified home-based workforce" from <https://conversation.education.govt.nz/conversations/review-of-home-based-early-childhood->

The yellow highlighted text is additional wording designed to more clearly communicate the qualification requirements detailed in the Regulations. The proposed changes more clearly specify:

- who recognises the qualification – the Council or the Secretary of Education (clause 3 of *Education (Early Childhood Services) Regulations 2008*)
- the type of qualification that may be recognised – primary teaching qualifications may be recognised for the person responsible in teacher-led services (clause 3 of *Education (Early Childhood Services) Regulations 2008*)
- the difference in qualification requirements between ‘the person responsible’ and ‘other staff’ in teacher-led services
- the signalled changes to the qualification requirements for home-based educators arising from the “*Review of Home-based Early Childhood Education*”²
- the signalled changes for legislating first 80% then 100% qualified teachers in teacher-led centre-based early learning services (excluding hospital-based or home-based services) as detailed in action 3.1 in the “*Early Learning Action Plan 2019 to 2029*”.³

We consider it is important to signal now the pending changes to the qualification requirements for other staff in home-based education and care services and teacher-led services. This will ensure centre owners and professional leaders have maximum notice of the changes, can discuss the changes with their staff and can work with their staff to start planning for study to be undertaken and supported.

Terminology around qualifications needs to be carefully considered. “Recognised qualification” is defined in the Education (Early Childhood Services) Regulations 2008 under section 3 “Interpretation”. Under this definition, a person responsible at a teacher-led service must hold a primary or an early childhood teaching qualification that is recognised by the Teaching Council for the purposes of registration. The definition also requires that 50% of required staff at a teacher-led licensed service must hold an early childhood teaching qualification recognised by the Teaching Council for registration purposes. These requirements should be mentioned in the Schedule 1 table to help more clearly distinguish who can or cannot hold a primary qualification.

We note the definition of “required qualification” described in the frequently asked questions relating to the review of home-based services, is a specific list of qualifications that does not specify who the qualification needs to be recognised by. We also note the definition of a “required qualification” for a home-based educator includes a primary teacher qualification. For required staff in a teacher-led service only an ECE qualification is recognised. This may create confusion.

Licensing criteria GMA1 ‘Display of information’ requires that the full names and qualifications of each person counting towards regulated qualification requirements must be prominently displayed at the early childhood service for parents and visitors. We have anecdotal information that suggests upon qualification some teachers are recorded as a ‘person responsible’ on the displayed information but are not formally advised by their centre management of their change in status.

In summary, we acknowledge the point of proposal 10 is to ‘consolidate’ the existing person responsible requirements. However, we think there is an excellent opportunity to clarify the requirements even further.

[education/five-year-transition-to-a-fully-qualified-home-based-workforce/qualification-requirements/](#), accessed 26 January 2021

² “What are the timeframes for implementation? – Requirements for the standard rate for home-based services” from <https://conversation.education.govt.nz/conversations/review-of-home-based-early-childhood-education/five-year-transition-to-a-fully-qualified-home-based-workforce/qualification-requirements/>, accessed 26 January 2021

³ Actions 3.1 “Incentivise for 100% and regulate for 80% qualified teachers in teacher-led centres, leading to regulations for 100%”, *Early Learning Action Plan 2019-2029*, page 23, 2019.

7. Tranche Two and Three considerations

The purpose of the Review, as described in the Tranche One material, is “to improve the regulations in order to enhance the quality of provision and children’s health, safety and education”.

A function of the Teaching Council is to “enhance the status of teachers and education leaders” (s.479 (1)(b)). Objective 3 of the *Early Learning Action Plan 2019-2029* focuses on ‘quality teaching and leadership make the difference for learners and their whānau’.

The Council has previously signalled in discussions with Ministry officials our view that there is an underlying misalignment of the ECE regulations with other parts of the system, including the Council’s registration and certification requirements.

The different terminology used across the ECE regulatory framework adds complexity. Terms such as ‘certificated teacher’, ‘registered teacher’, ‘qualified teacher’, and ‘educator’ do not provide a coherent understanding of the roles within the early learning sector. Similarly, terms such as ‘recognised qualification’ and ‘required qualification’ have the potential to create confusion.

The Council is interested in considering at a more fundamental level the co-regulation responsibilities of different agencies and current misalignments to help inform Tranche Two and Three consultation processes. This includes reviewing the rationale for the types of qualifications recognised within the ECE sector, who recognises them, and how the professional responsibilities the teaching profession are required to uphold apply to early childhood teachers.