



**Te Tāhuhu o
te Mātauranga**
Ministry of Education

Consultation feedback report

Additional Tranche 2 proposals of the Early Learning Regulatory review
(adding new conditions to provisional licences, defining ‘permanently ceased to operate’, allowing for temporary service closures)

Defining locally-based persons responsible in licensed home-based education and care services)

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Introduction

Review of the Early Learning Regulatory System

The Ministry of Education (the Ministry) is currently undertaking a review of the early learning regulatory system (the Review). The purpose of the Review is to ensure that the regulatory system for the early learning sector is clear and fit for purpose to support high quality educational outcomes. The Review is timely due to the significant changes in the sector since the current regulatory system was established in 2008, as well as proposed changes under *He taonga te tamaiti - Every child a taonga: Early learning action plan 2019-2029* and the Review of Home-based Early Childhood Education.

The Review is being undertaken in three tranches. This consultation report covers the following further Tranche 2 proposals that were identified for inclusion in the review. These proposals seek to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:

- expressly allow the Secretary for Education (the Secretary) to add conditions to a service provider's provisional licence in cases where subsequent compliance issues are identified
- provide a definition of 'permanently ceased to operate' for the purpose of cancelling a service provider's licence, and
- allow for the Secretary, at their discretion, to grant a service provider the ability to temporarily close their service for a period of up to three months on application.

In addition to the proposals above, a separate consultation was run in parallel on a proposal to amend the Regulations to provide a definition for 'locally based' for persons responsible in licensed home-based education and care services.

Consultation and submissions

Consultation for both the additional Tranche 2 proposals and the definition for locally based opened on 16 January 2023 and closed on 17 February 2023.

Respondents could provide feedback on the proposals via an online survey in English or Te Reo Māori, which included the questions for both consultations. Feedback could also be given sending a written submission via email to the Early Learning Regulatory Review mailbox, or postally. There was a public online information session to further engage with the sector, and an online meeting with the Ministry's Early Learning Regulatory Review Advisory Group in April 2023.

Online survey submissions

The survey on proposals one to three (adding new conditions on provisional licences, defining 'permanently ceased to operate', and allowing for temporary service closures) received 43 submissions.

The survey on the proposal to define 'locally based' for persons responsible in licensed home-based services received 40 submissions. Information was collected about these survey respondents' ethnicity, region in which they reside, the stakeholder group, and service type they were affiliated with.

Demographic information on proposals that seek to strengthen service licensing and enforcement requirements

Ethnicity

Survey respondents were asked to select their ethnicity or ethnicities*. Most respondents were Pākehā (86.05%), with the second largest population group being Māori (16.28%). The full breakdown of survey responses to this question is below.

**This is multi-response question, enabling respondents to choose multiple categories. As a result, the sum of all data is greater than 100%.*

Ethnicity	Total	Percent
Asian	2	4.65%
European/Pākehā	37	86.05%
Māori	7	16.28%
Middle Eastern/Latin American/African	0	0.00%
Pacific peoples	1	2.33%
Prefer not to say	2	4.65%
Other	2	4.65%

Stakeholder group

Survey respondents were asked to select the category that best described them in terms of their relationship to ECE. Early learning teachers/kaiako/educators were the greatest proportion of respondents (39.53%), and early learning service owner/managers were the second largest group (37.21%). The full breakdown of survey responses to this question is below.

Stakeholder group	Total	Percent
Early learning service owner or manager	16	37.21%
Early learning teacher or Kaiako or educator	17	39.53%
Other worker at an early learning service	1	2.33%
Parent or whānau	0	0.00%
Representative of non-governmental organization	3	6.98%
Member of the general public	1	2.33%
Prefer not to say	0	0.00%
Other	5	11.63%

Service type

Survey respondents were asked to select the type of service that they were associated with. Home-based services were the most selected service type (51.16%). Education and care services were the second largest service type (23.26%). The full breakdown of survey responses to this question is below.

Service type	Total	Percent
Playcentre	0	0.00%
Kōhanga Reo	1	2.33%
Kindergarten	1	2.33%
Home-based	22	51.16%
Education and care	10	23.26%
Playgroup	0	0.00%
Hospital-based	0	0.00%

None	2	4.65%
Prefer not to say	1	2.33%
Other	6	13.95%

Region

Survey respondents were asked which region they lived in. Auckland, Bay of Plenty, and Wellington were the most commonly selected regions. The full breakdown of survey responses to this question is below.

Region	Total	Percent
Northland	3	6.98%
Auckland	7	16.28%
Waikato	2	4.65%
Bay of Plenty	6	13.95%
Gisborne	0	0%
Hawke's Bay	1	2.33%
Taranaki	1	2.33%
Manawatū – Whanganui	4	9.30%
Wellington	5	11.63%
Otago	3	6.98%
Canterbury	3	6.98%
Tasman-Nelson	3	6.98%
Marlborough	1	2.33%
West Coast	0	0%
Southland	3	6.98%
Multi-purpose response	1	2.33%

Written submissions

Four written submissions were received for these proposals. These were sent by the New Zealand Educational Institute Te Riu Roa (NZEI), Auckland Kindergarten Association, Te Rito Maioha, and the Office of Early Childhood Education. The submission from the Office of Early Childhood Education included comments on both the additional tranche two proposals and the proposal to provide a definition for 'locally based' for persons responsible in home-based services.

There were no postal submissions received.

Demographic information on the proposal to define 'locally based' for persons responsible in licensed home-based services

Ethnicity

Survey respondents were asked to select their ethnicity or ethnicities*. Most respondents were Pākehā (87.5%), with the second largest population group being Māori (17.5%). The full breakdown of survey responses to this question is below.

Ethnicity	Total	Percent
Asian	2	5%
European/Pākehā	35	87.50%
Māori	7	17.50%
Middle Eastern/Latin American/African	0	0%
Pacific peoples	1	2.50%
Prefer not to say	1	2.50%
Other	2	5.00%

**This is multi-response question, enabling respondents to choose multiple categories. As a result, the sum of all data is greater than 100%.*

Stakeholder group

Survey respondents were asked to select the category that best described them in terms of their relationship to ECE. Early learning teachers/kaiako/educators were the greatest proportion of respondents (42.50%), and early learning service owner/managers were the second largest group (35.00%). The full breakdown of survey responses to this question is below.

Stakeholder group	Total	Percent
Early learning service owner or manager	14	35%
Early learning teacher or Kaiako or educator	17	42.50%
Other worker at an early learning service	1	2.50%
Parent or whānau	0	0%
Representative of non-governmental organization	3	7.50%
Member of the general public	1	2.50%
Prefer not to say	0	0%
Other	4	10%

Service type

Survey respondents were asked to select the type of service that they were associated with. Home-based services were the most selected service type (55.00%). Education and care services were the second largest service type (20.00%). The full breakdown of survey responses to this question is below.

Service type	Total	Percent
Playcentre	0	0.00%
Kōhanga Reo	1	2.50%
Kindergarten	1	2.50%
Home-based	22	55.00%
Education and care	8	20.00%
Playgroup	0	0.00%
Hospital-based	0	0.00%
None	2	5.00%

Prefer not to say	1	2.50%
Other	5	12.50%

Region

Survey respondents were asked which region they lived in. Bay of Plenty was the most commonly selected region (15%), followed by Auckland, and Wellington with 12.5% each. The full breakdown of survey responses to this question is below.

Region	Total	Percent
Northland	3	7.50%
Auckland	5	12.50%
Waikato	2	5.00%
Bay of Plenty	6	15.00%
Gisborne	0	0.00%
Hawke's Bay	1	2.50%
Taranaki	1	2.50%
Manawatū – Whanganui	4	10.00%
Wellington	5	12.5%
Otago	3	7.50%
Canterbury	2	5.00%
Tasman-Nelson	3	7.50%
Marlborough	1	2.50%
West Coast	0	0.00%
Southland	3	4.50%
Multi-purpose response	1	2.50%

Written submissions

There were 12 written submissions received in this consultation. This included five submissions from the following organisations: NZEI, Auckland Kindergarten Association, PAUA, Te Rito Maioha, and the Office of Early Childhood Education. Most of these organisations had also included separate, written submissions on the additional tranche two proposals.

Seven further submissions were received from individuals. There were no postal submissions received.

Method of analysis

In the online survey, respondents were asked to express the extent to which they agreed with each aspect of the four proposals consulted on. They could select 'strongly agree', 'agree', 'neutral', 'disagree', or 'strongly disagree'. After each question there was a box where those who disagreed were asked to provide a reason for their response.

Survey participants were not required to answer every question, and participants who did not respond to a question were excluded from the denominator to provide a more accurate representation of the views of the respondents.

The online survey submissions and the written submissions were analysed using a coding framework that organised survey data by question, level of agreement, and, if there was disagreement, theme. Most written submissions followed the structure of the online survey which allowed these submissions to also be analysed thematically. The submission excerpts presented for each question (see below) come from responses to the online survey and written submissions. The most common themes are outlined in this report. However, in some cases, more minor themes are included to enhance the understanding of other themes or add nuance to sector views. Feedback outside the scope of consultation has not been included in this report.

This consultation report sets out the key themes and responses from the survey questions on the four proposals.

Proposal to allow new conditions to be added to provisional licences

Background information on the proposal

The Secretary may reclassify a full or probationary licence as provisional for several reasons, including if the service isn't complying with the regulations or conditions on its licence, or a complaint is lodged against the service provider that warrants investigation. Services remain on a provisional licence until the Secretary either returns the service provider to a full or probationary licence or cancels the service provider's licence if a compliance issue is not addressed by the specified deadline.

We proposed to amend the Regulations to expressly allow the Secretary to add new conditions to an existing provisional licence, at the Secretary's discretion, provided the Secretary considers this to be a fair and appropriate response to the non-compliance.

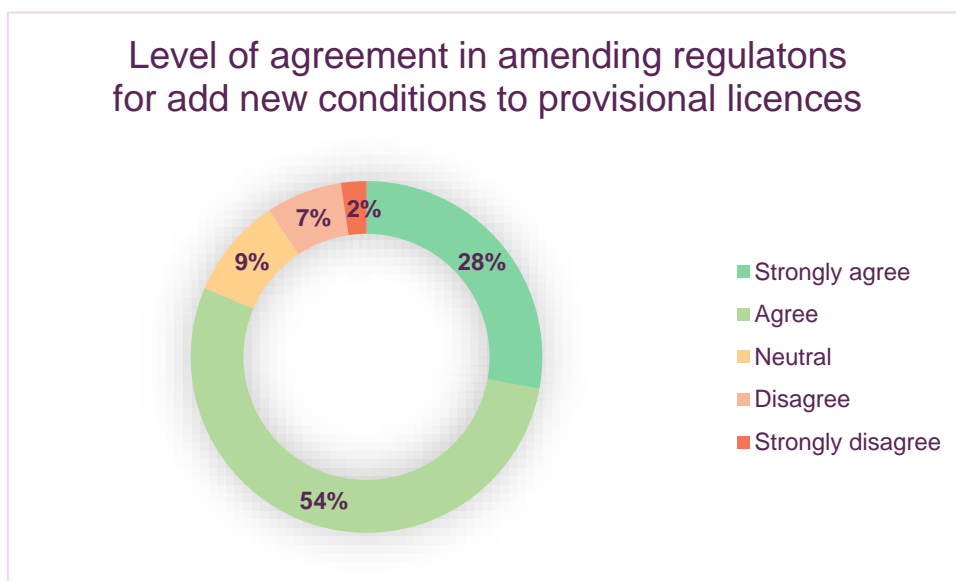
As part of this proposal, service providers would be able to seek an extension to the timeframes for new conditions in the same way that providers can seek extensions to existing conditions on provisional licences at present. However, as currently provided for in the regulations, no extension would be able to be granted beyond 12-months from when the provisional licence was first issued.

In cases where services are notified of further compliance issues, and this is close to the 12-month period from when the provisional licence was issued, the Secretary may decide to wait until the current provisional licence period ends, before issuing a new provisional licence.

Providing the Secretary with discretion to determine whether to add conditions to an existing provisional licence would help to ensure that enforcement action is considered, effective, and proportionate to the situation.

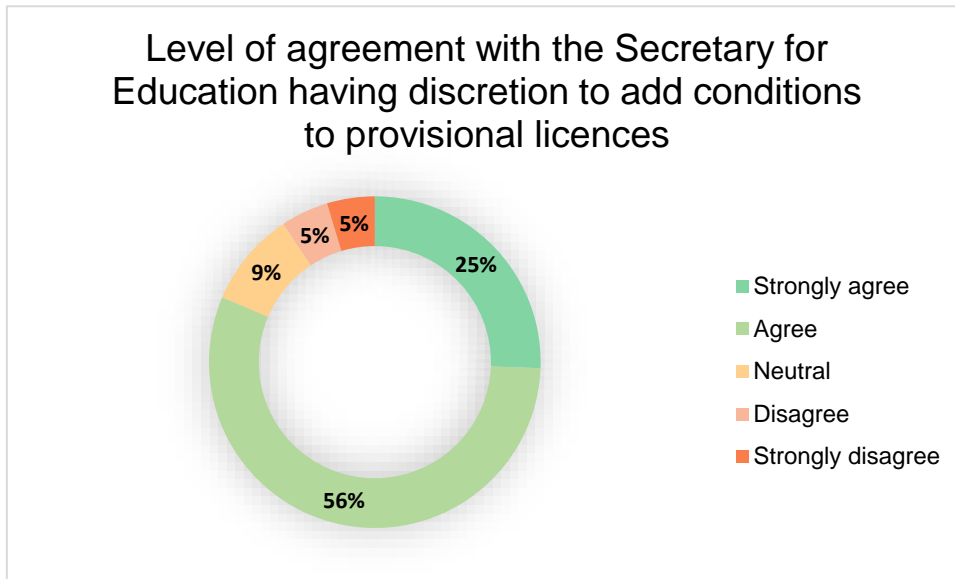
Responses to survey questions

Question 1: Do you agree that the regulations should be amended to allow the Secretary to add conditions to an existing provisional licence where further non-compliance is identified?



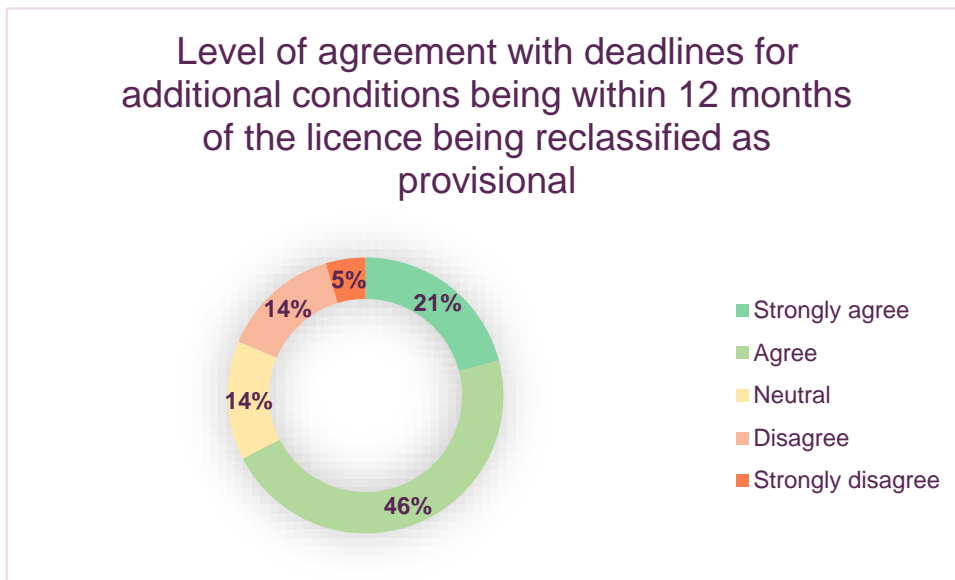
There were 43 survey responses to this survey question. There were high levels of support for the proposal, with 82 percent of respondents agreeing with this proposal (54% agreement and 28% strong agreement) and nine percent of respondents disagreeing (7% disagreement and 2% strong disagreement).

Question 2: Do you agree that the ability to add conditions to provisional licences should be at the discretion of the Secretary and where it is considered fair and appropriate?



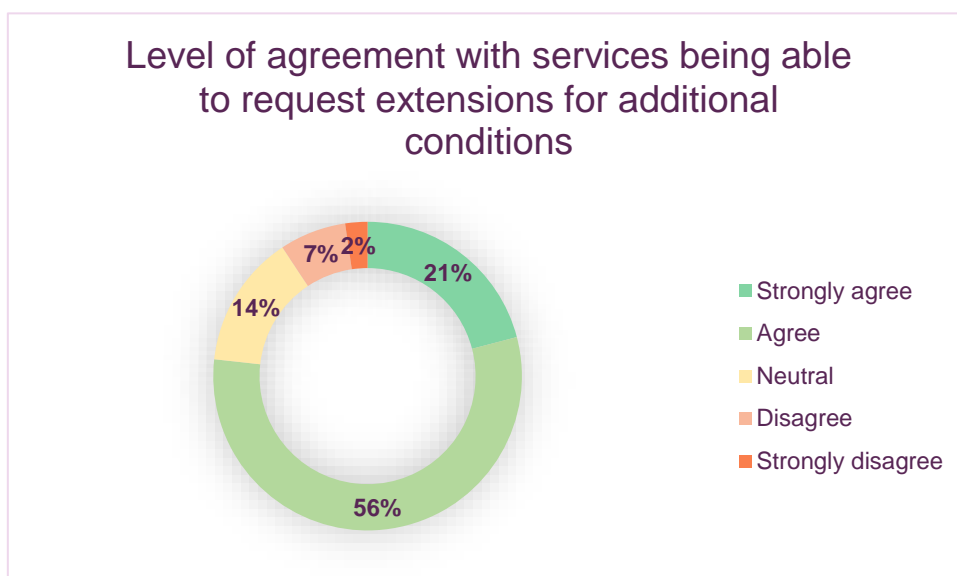
There were 42 responses to this survey question. There was a high level of agreement for this question, with 81 percent of respondents supporting this proposal (56% agreement and 25% strong agreement) and ten percent of respondents disagreeing (5% disagreement and 5% strong disagreement).

Question 3: Do you agree that any deadlines set for additional conditions should be within the 12-month timeframe from when the licence was first reclassified as provisional?



There were 43 responses to this survey question. Support for this part of the proposal was lower than the previous questions, but still had majority support at 67 percent (46% agreement and 21% strong agreement). Disagreement was slightly higher than with the previous questions, with 19 percent of respondents disagreeing with this proposal (14% disagreement and 5% strong disagreement).

Question 4: Do you agree that service providers should be able to request an extension to deadlines for any new conditions added to a provisional licence in line with the current provisions for requesting an extension to deadlines for meeting conditions?



There were 43 responses to this survey question. There was high support for this proposal at 77 percent (56% agreement and 21% strong agreement), with nine percent of respondents disagreeing (7% disagreement and 2% strong disagreement).

Support for amending the Regulations to add new conditions to provisional licences

There were high levels of agreement that the proposal to amend the Regulations to add new conditions to a service provider’s provisional licence would provide the Ministry with further tools to ensure high quality ECE and the safety of children in care. This idea is expressed in the feedback below.

“This proposal [is] a tool that will promote a high standard of service delivery across the sector and favourable outcomes for tamaiti.” – NZEI Te Riu Roa

“We support the proposed change to the regulations that will allow the Ministry to respond appropriately and in a timely manner if additional compliance issues are identified. This will not only remove ambiguity for services, it will give confidence to those who have made a complaint that the Ministry is investigating and taking action where needed.” – Te Rito Maioha | Early Childhood New Zealand

“Standards must be met for the benefit of our moko.” – Early learning teacher

“Cases of past licence breaches where a service has engaged in additional licence breaches and there has been no consequence in the form of additional conditions being added to the existing provisional licence and no justice for the children and families affected, show why this proposed regulation amendment is needed.” – Office of Early Childhood Education

Calls for additional support from the Ministry of Education to improve level of compliance

Some written submissions and survey responses asked for professional learning and development to be provided by the Ministry to support these services to regain full or probationary licences. This idea is expressed in the feedback below.

“These measures need to be supported through the provision of targeted professional learning and development opportunities, and local, in-person Te Mahau support for Kaiako at such services.” – NZEI Te Riu Roa

“Consider the type of support available to be able to provide to educate service providers.” – Early Learning Service Owner/Manager

*“Would it be possible for a support person to be attached to the centre? Something similar to commissioners in schools? This would help to get the centre to a full license more quickly.” – **Early Learning Service Owner/Manager***

Concerns over lack of trust in the Ministry of Education

Some respondents were unsure about this proposal due to an overall lack of trust in the Ministry and the Secretary’s ability to apply discretion when it comes to adding new conditions to a service provider’s licence, or they raised concern that the Ministry was already too harsh on services. This idea is expressed in the feedback below.

*“The proposal gives the Secretary full discretion whether to add new conditions to an existing provisional licence. I note that the Ministry has stated that this will be “based on an assessment as to whether it is considered fair and reasonable”, although there is no detail on what being fair and reasonable [is] or whether the service provider will be engaged in the process.” – **Early Learning Service owner/manager***

*“The Ministry need[s] to actually look at who is doing the complaint in the first place. Regulations and criteria are often very open to interpretation and sometimes the Ministry take[s] too strong [an] action when small things can be remedied or fixed usually overnight.” – **Early Learning teacher***

*“[I] do not have faith in the Ministry staff (advisors) particularly in the [local] region to be “fair and appropriate”. Accordingly, I don’t believe the advice the Secretary [...] will be impartial or fair and appropriate.” – **Early learning teacher***

Proposal to define ‘permanently ceased to operate’ for the purposes of cancelling a service licence

Background information on the proposal

We proposed amending the Regulations to insert a definition of ‘permanently ceased to operate’ that considers situations where:

1. Service providers notify the Ministry of Education that they have permanently ceased to operate; or
2. Service providers do not notify the Ministry, but the Ministry has become aware that a service is not operating.

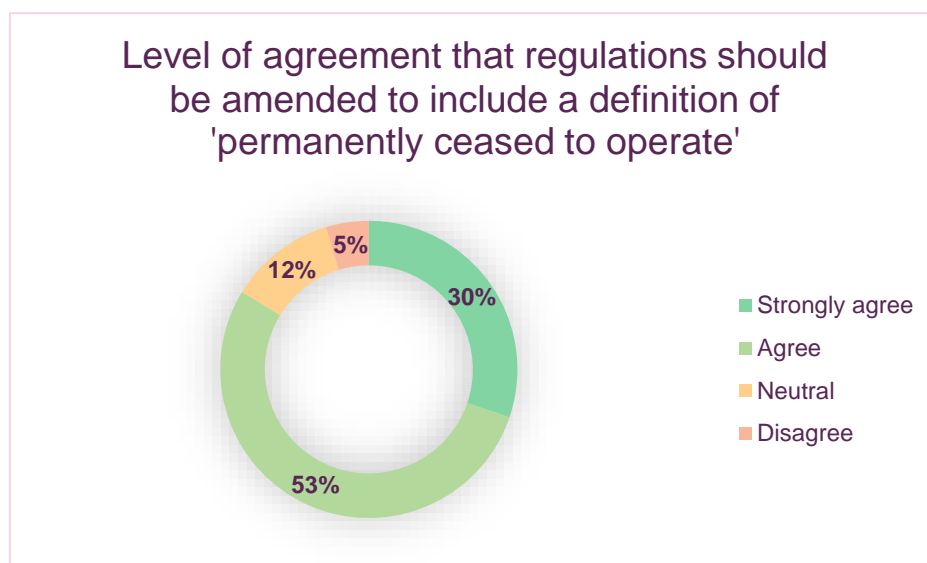
To determine that a service has permanently ceased to operate, we proposed that at least two of the following three criteria must be met:

1. There being no children enrolled and/or attending the service; and/or
2. There being no staff employed or engaged and working in the service; and/or
3. The service provider has not claimed early childhood education funding.

We also sought views on whether the above criteria provide an appropriate way for the Ministry to assess whether a service is still operating, as well as whether these criteria provide sufficient clarity about how the Secretary will determine if a service is operating or not. We also wanted to know whether people thought the above criteria should be met for a minimum period of three months or more, or six months or more, for a service to be deemed as having permanently ceased to operate.

Responses to survey questions

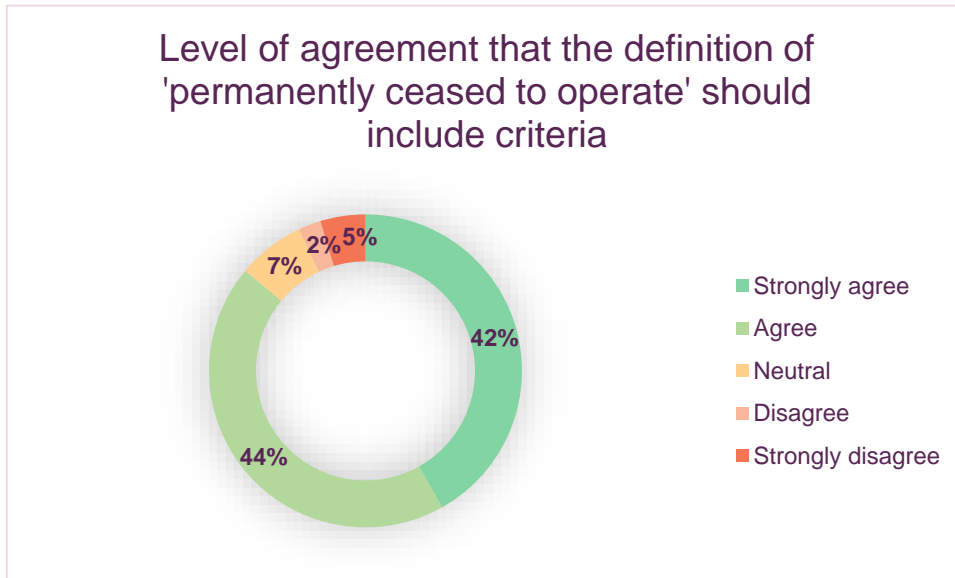
Question 1: Do you agree that the regulations should be amended to include a definition of ‘permanently ceased to operate’?



There were 43 responses to this survey question. There were high levels of support with 83 percent of respondents agreeing with this proposal (53% agreement and 30% strong agreement). Only 5 percent of respondents disagreed with this proposal, and no one strongly disagreed with the proposal.

Question 2: Do you agree that a definition of permanently ceased to operate should include the following criteria, in which two out of three must be evidenced to be considered as having permanently ceased to operate?

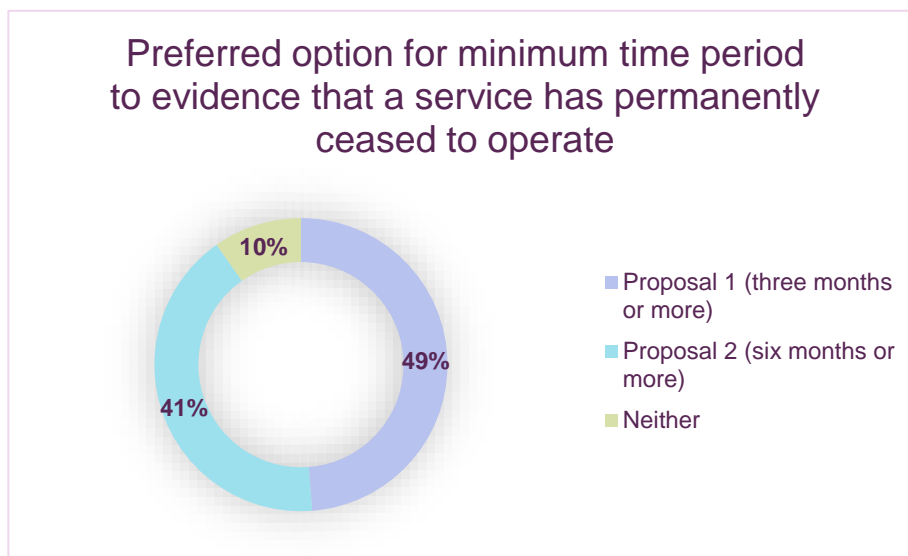
1. There being no children enrolled and/or attending the service; and/or
2. There being no staff employed or engaged and working in the service; and/or
3. The service provider has not claimed early childhood education funding



There were 43 responses to this survey question. There was a very high level of agreement, with 88 percent of respondents agreeing with this proposal (44% agreement and 42% strong agreement). Only seven percent of respondents disagreed with this proposal (2% disagreement and 5% strong disagreement).

Question 3: Which proposal do you support for the minimum time period for evidence to be shown that a service has permanently ceased to operate?

Note: This question provided respondents with two options for the length of time a service must meet the above criteria before it is considered permanently ceased to operate. Option one was for at least three months, and option two for at least six months. There was also an option to select neither proposal.



There were 41 responses to this survey question. Of these, slightly more respondents (49 percent) supported the shorter minimum time of three months to meet the criteria for permanently ceased to operate, while 41 percent supported the longer option of at least six months. The remaining 10 percent of respondents opted for neither option.

Support for amending the Regulations to provide a definition for ‘permanently ceased to operate’ for the purposes of cancelling a service licence

The proposal to provide a definition for ‘permanently ceased to operate’ for the purposes of cancelling a service licence saw high levels of support from respondents, as feedback considered this proposal closes a regulatory gap and would allow the network to more accurately reflect the number of ECE services that are available to parents. These ideas are expressed in the feedback below.

*“Having the criteria mitigates the risk that a service m[a]y “close” in order to avoid regulatory action as the result of a complaint or incident.” – **Te Rito Maioha***

*“We support the new network management requirements and agree that when a service is closed it should be removed from the network.” – **Auckland Kindergarten Association***

*“Both proposals will improve the overall quality of Education and Care for our most vulnerable tamaiti and will give the Ministry of Education greater monitoring powers that improve quality of Early Childhood Education and allow for more accurate and active Network Management.” – **NZEI Te Riu Roa***

Concern that the proposed definition will lead to accidental service closures

Some respondents raised concerns that in situations where services need to close for a long period of time, such as due to major weather events or delays in construction/renovation of premises, that services would technically be captured in the criteria for permanent closure, meaning these services are at risk of their licences being cancelled accidentally. This idea is expressed in the feedback below.

*“If a centre has been flooded or earthquake damaged then it could well [take] more than 6 months to get up and running.” – **Early Learning teacher***

*“With a natural disaster it takes time to get the service up and running and that takes longer than 6 months. Could there be a hold situation available that services can apply for if it’s going to be longer than 6 months?” – **Early learning owner/manager***

Feedback that the Ministry should have a robust notification process before service licences are cancelled

A number of respondents suggested that the Ministry should have a notification process in place, so service providers are contacted before their service licence is cancelled, even if the criteria has been met. This idea is expressed in the feedback below.

*“The Ministry should take all reasonable steps to contact the service provider to discuss before giving notice of the Secretary’s intention to cancel the licence.” – **Auckland Kindergarten Association***

*“The proposal should also require the Ministry to take all reasonable steps to contact the service provider. If this is unsuccessful, then the service can be considered as having permanently ceased to operate if the criteria is met.” – **Owner of multiple early learning services***

*Other criteria option: “Agreement with owners that they are not selling or starting again.” – **Kōhanga reo kaiako***

Opinions were split regarding time period to determine permanent service closures

There was no large majority on the preferred option for the length of time that the proposed criteria needed to be evidenced before a service is considered as permanently closed – either three months or more, or six months or more – with the proposal of three months or more being slightly more popular. Below are some examples from the feedback on reasoning for either the three- or six-month options.

*“Three months is too short to meet the required procedures.” – **Early learning service owner/manager***

*“We consider that if there is sufficient justification to include a definition of “permanently ceased to operate” it should include a provision to contact the service provider in the first instance, and the timeframe should be 6 months as opposed to 3 months.” – **Auckland Kindergarten Association***

*“Six months is too long for families for an inoperable service to be sitting there, when another service could be permitted to open to provide ECE.” – **Office of Early Childhood Education***

*“I don’t think the network should allow a service to have no children and remain open for longer than three months, that clearly shows there is a problem or no need for their service.” – **General manager of multiple Early Learning Services***

*“We think the three-month closure period would be sufficient for providers to make decisions about the future of their service and notify the Ministry of their intentions.” – **Te Rito Maioha***

*“3 months is not long enough as there could be a recruitment issue with teacher shortages, by 6 months this should be resolved.” – **Home-based early learning educator***

Proposal to provide for temporary service closures

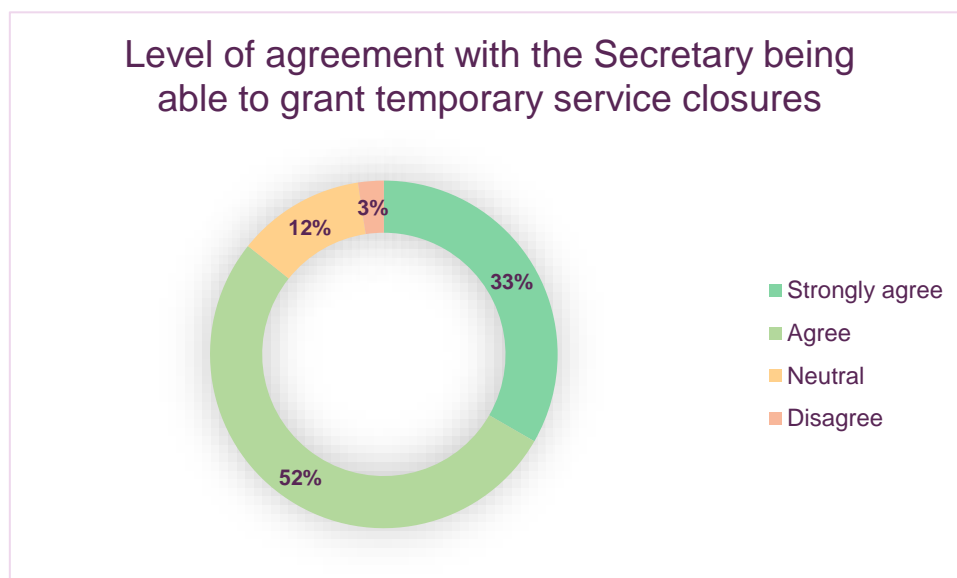
Background information on the proposal

We proposed to amend the Regulations to allow the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months with the possibility of an extension, on request. The decision to allow a temporary closure would be at the discretion of the Secretary and subject to an application being received from the service provider.

This regulatory change would expect to provide greater certainty and transparency for both service providers and the Ministry around the process for allowing temporary service closures. This is currently achieved through Ministry operational policy but is not in regulations.

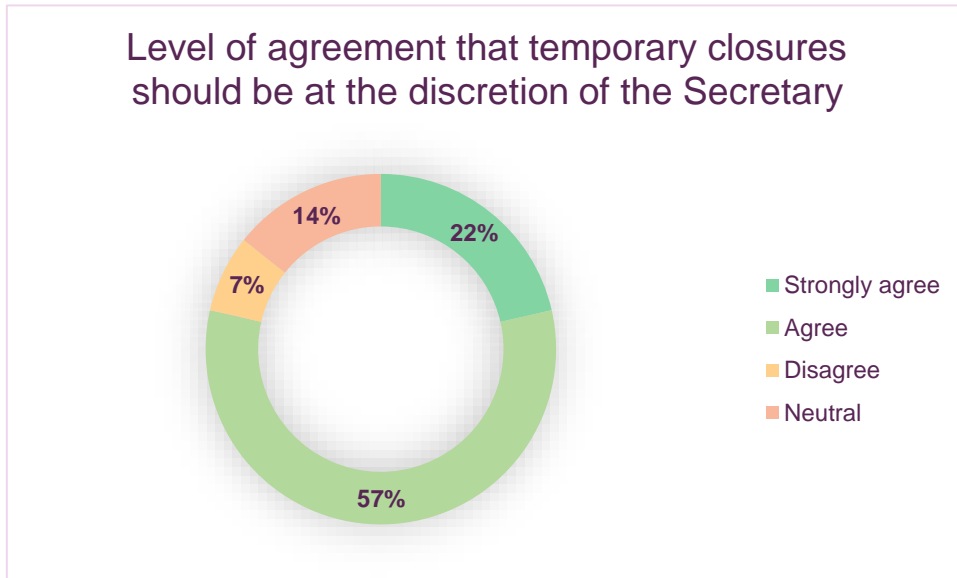
Responses to survey questions

Question 1: Do you agree that regulations should be amended to clarify that the Secretary may grant service providers, upon application, approval to temporarily close their service?



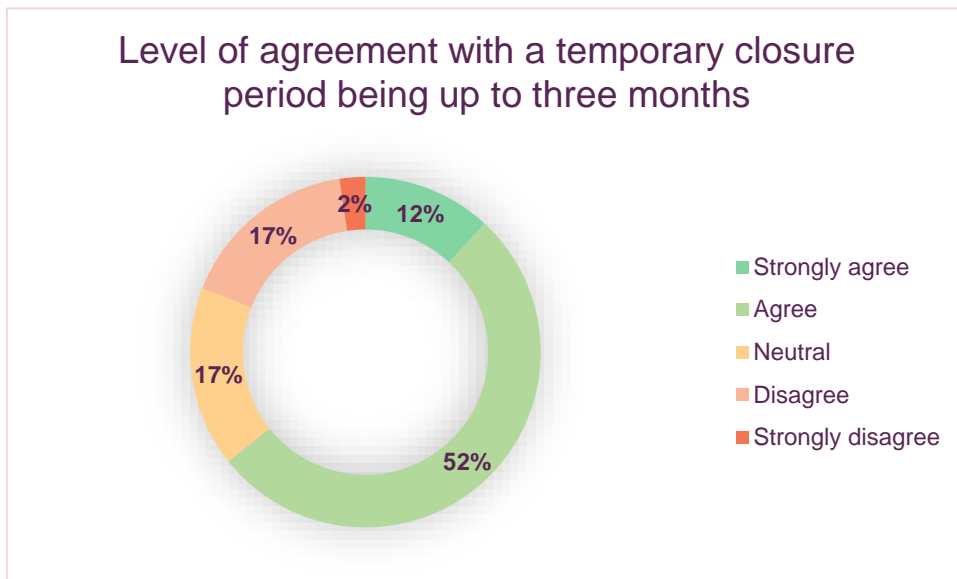
There were 42 responses to this survey question. There was high support for this proposal, with 85 percent agreement (52% agreement and 33% strong agreement). Only 3 percent of respondents disagreed with the proposal, with no respondents strongly disagreed with the proposal.

Question 2: Do you agree that the granting of a temporary closure should be at the discretion of the Secretary?



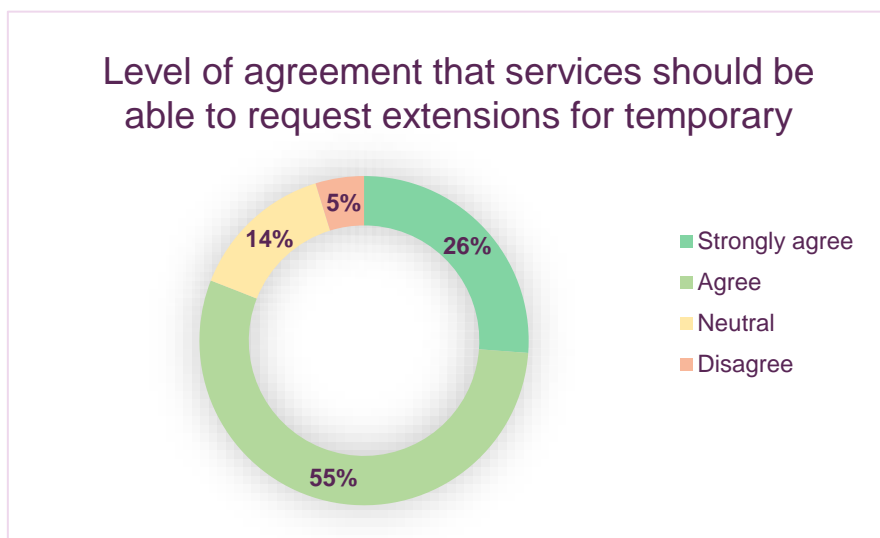
There were 42 responses to this survey question. There was a high level of support for this proposal with 79 percent of respondents in agreement (57% agreement and 22% strong agreement), while 14 percent of respondents disagreed. No respondents strongly disagreed with the proposal.

Question 3: Do you agree that the period of temporary closure should be up to three months?



There were 42 responses to this survey question. There was a reasonably high level of agreement at 64 percent (52% agreement and 12% strong agreement), while 19 percent of respondents disagreed with this survey question (17% disagreement and 2% strong disagreement).

Question 4: Do you agree that service providers should be able to request an extension to the timeframe for the temporary closure?



There were 42 responses to this survey question. There was a high level of agreement at 81 percent (55% agreement and 26% strong agreement). Only 5 percent of respondents disagreed with the proposal, with no strong disagreement.

Support for amending the Regulations to allow for temporary service closures

There were high levels of support for the proposal to amend the Regulations to allow for service providers to be able to temporarily close, as it provides more clarity and certainty for services in cases where they need to temporarily close their services, without the risk of their service licence being cancelled by mistake. These ideas are expressed in the feedback below.

“This regulatory change will provide greater certainty and transparency for both service providers and the Ministry around the process for allowing temporary service closures and will enable more accurate and active Network Management.” – NZEi Te Riu Roa

“We support this regulation amendment. It is a sensible amendment and will allow service providers to have greater confidence that they can request temporary closure, and not feel compelled to stay open when it is not in the interests of children or there are safety concerns.” – Office of Early Childhood Education

“We agree that there is a need for temporary service closures and that the regulations should be amended to formalise the definition of and process of voluntary temporary closures.” – Te Rito Maioha

“There are valid reasons for temporary services closures and service providers need reassurance that they can temporarily close, without risking their licence being cancelled.” – Auckland Kindergarten Association

Concerns about services needing longer than six months to temporarily close

Some survey respondents expressed concern about the three-month closure period being too short as situations may arise which delays the opening of a service, such as renovations being delayed. Even with the option for extending a temporary closure for a further three months, some respondents thought that services should have the ability to close for longer than this. These ideas are expressed in the feedback below.

“We feel that 3 months is too short even with the possibility of extension. We suggest 6 months is a better timeframe, with the possibility to request extension as stated. This is particularly relevant for Home Base[d] services.” – Representative of non-government organisation

*“In the case of a renovation or re-build three months may not be long enough so extensions should be granted depending on the circumstances.” – **Early learning service owner/manager***

*“Why not make it up to six months with an extension period of three months?” – **General manager of multiple early learning services***

*“There are valid reasons where a temporary closure might be required for a longer period. If these are known at the outset, then why have an extra step to apply for an extension after 3 months? Is it just to check in that the conditions or intentions haven't changed? I think up to 6 months would be preferred (noting that this doesn't need to be the default setting).” – **Member of the general public***

Ensuring legitimate reasons for closures

There were concerns raised in the feedback that services could be granted temporary closures for illegitimate reasons, such as avoiding ERO reviews or to sell their licence. Respondents expressed a desire that the Ministry better monitor temporary service closure applications to ensure they are for legitimate reasons. This idea is expressed in the feedback below.

*“Temporary closure must be for straight forward reasons and certainly not what is good for business or profits of staff or owners.” – **Kōhanga Reo kaiako***

*“If this was to be enacted or decided then the evidence to support this request should be accurate data/facts that are measurable.” – **Education advisor***

*“There would have to be reasons. This cannot be used to stall an ERO review.” – **Professional learning facilitator***

Proposal to define ‘locally based’ for persons responsible in licensed home-based education and care services

Background information on the proposal

We proposed amending the Regulations to provide a definition of ‘locally based’ for home-based person responsible that focused on ensuring a person responsible would be able to perform their supervisory and oversight responsibilities effectively. We identified four components of the definition that we are seeking your feedback on. These are that the person responsible must:

1. *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.*

Persons responsible would be able to live outside the local area, provided they have a permanent place of business within the local area from which they conduct their day-to-day duties and responsibilities. The term ‘reside’ was proposed to ensure consistency with language and approach already used in regulations with respect to the contact person.

2. *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 home-based education and care, comfort, and health and safety of the children.*

Persons responsible must be close enough so that they can perform their duties and responsibilities effectively. This would aim to reduce the risk that ‘local area’ is interpreted as being an area larger than intended (e.g., being within New Zealand or within the same region). This requirement would make a direct connection between proximity and the ability of persons responsible being able to undertake their regulated duties.

3. *Can be contacted by the educator(s) for whom they are responsible at all times those educators are providing home-based education and care during the operating hours of the licensed early childhood service.*

Persons responsible would need to be contactable when services are open. This would make it clear that persons responsible should have a presence and be contactable when needed and the requirement isn’t just about being physically close to services.

4. *Can 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.*

Persons responsible would need to be able to physically get to the educators’ home at a reasonable time to respond to anything urgent that is within the scope of their duties and responsibilities. This proposal specifically referred to ‘health and safety’ and ‘event of an emergency’, rather than wider obligations of the person responsible to ensure this requirement was not unduly onerous and impractical.

Previous consultation on the requirement for persons responsible to be 'locally based'

We previously consulted on proposals to amend the Education (Early Childhood Services) Regulations 2008 to strengthen the 'person responsible' requirements for licensed home-based education and care services.¹

In September 2021, we sought feedback on proposals to give greater weight to existing regulatory requirements, particularly in relation to supervision and professional leadership. One of these proposals was that persons responsible must be 'locally based', along with two options for defining what it means to be 'locally based'.

While earlier consultation indicated strong support for the proposal that persons responsible for home-based education and care services should be locally based, there was less agreement on what locally based should mean. In light of this feedback, we did further work on the proposed definition of locally based for home-based persons responsible.

Responses to survey questions

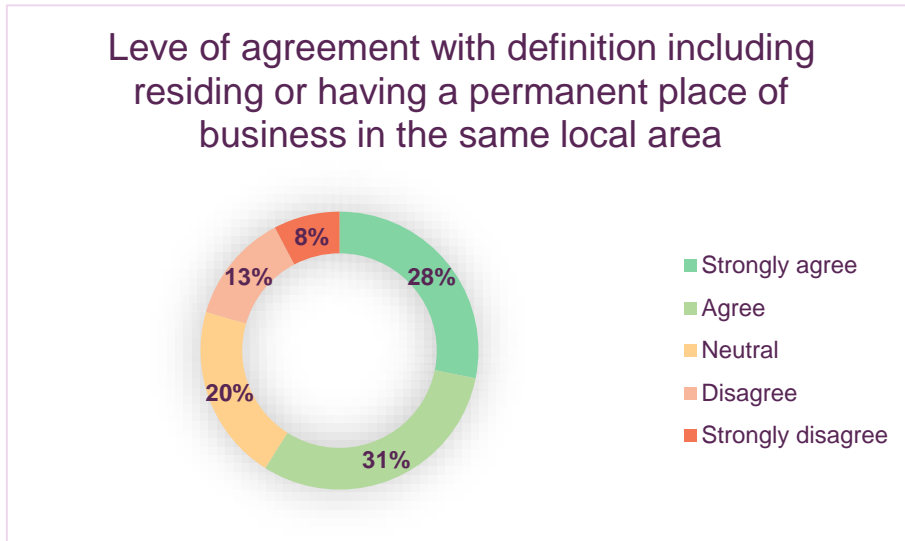
Question 1: Do you agree that the regulations should be amended to include a definition of 'locally based' for persons responsible for licensed home-based education and care services?



There were 40 responses to this survey question. There was a high level of agreement for this proposal at 75 percent (38% agreement and 37% strong agreement), while 20 percent of respondents disagreed with the proposal (10% disagreement and 10% strong disagreement).

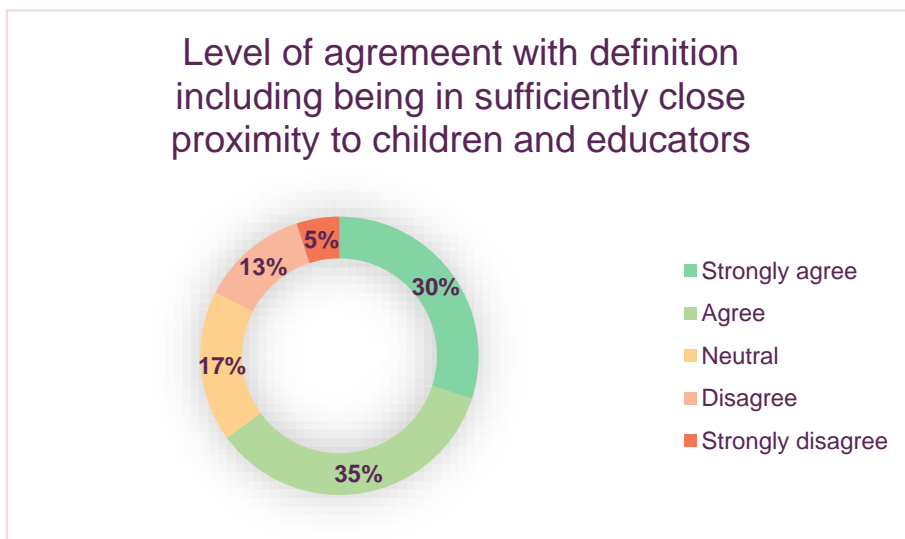
¹ 2021 consultation on proposals to strengthen the person responsible requirement for home-based services. URL: <https://conversation.education.govt.nz/conversations/early-learning-regulatory-review/>

Question 2: Do you agree that a definition of ‘locally based for persons responsible for licensed home-based education and care services should include that persons responsible must 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 are they are responsible?



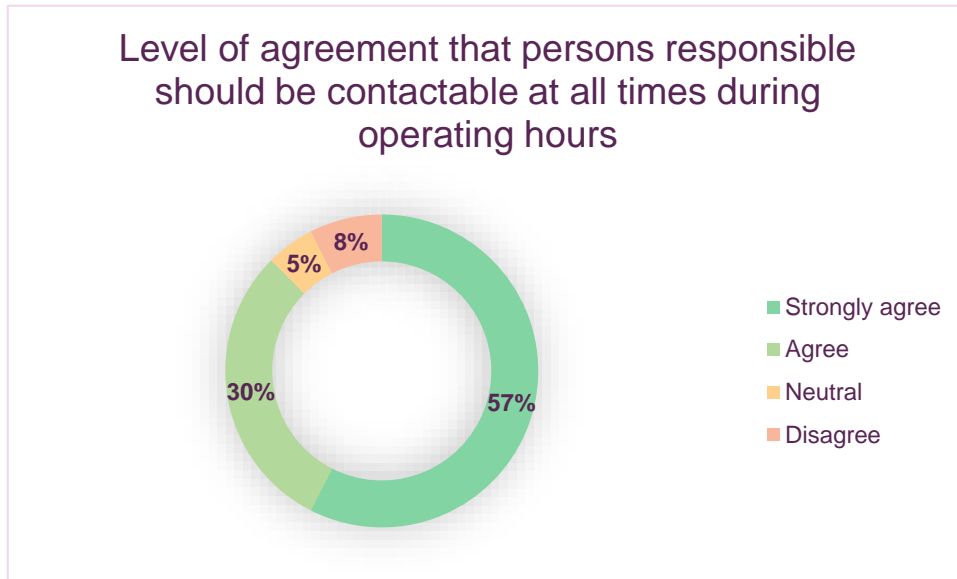
There were 39 responses to this survey question. There was majority support for this proposal at 59 percent (31% agreement and 28% strong agreement), while 21 percent of respondents disagreed (13% disagreement and 8% strong disagreement).

Question 3: Do you agree that a definition of ‘locally based’ for persons responsible for licensed home-based education and care services should include that persons responsible must be in sufficiently close proximity to the educator(s) and children for which they are responsible to 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?



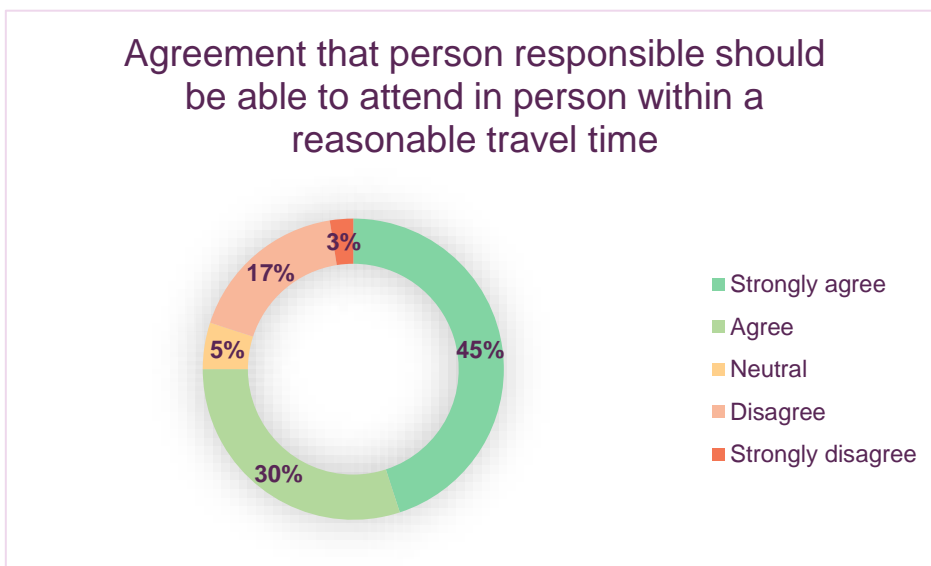
There were 40 responses to this survey question. There was reasonably high agreement for this proposal at 65 percent (35% agreement and 30% strong agreement), while 18 percent of respondents disagreed (13% disagreement and 5% strong disagreement).

Question 4: Do you agree that a definition of ‘locally based’ for persons responsible for licensed home-based education and care services should include that persons responsible must 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?



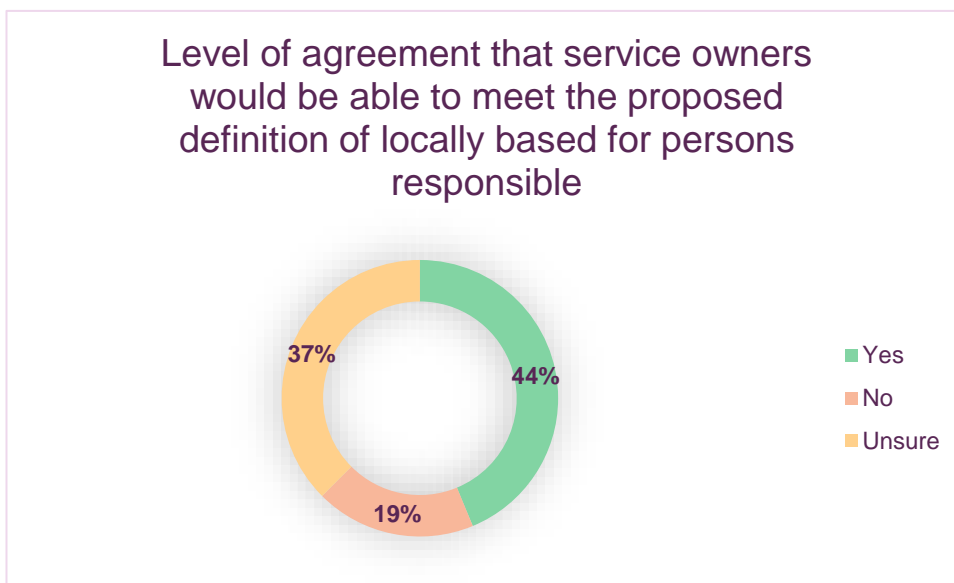
There were 40 responses to this survey question. There was a very high level of agreement for this proposal at 87 percent (30% agreement and 57 % strong agreement), with 8 percent of respondents disagreeing and no respondents strongly disagreeing.

Question 5: Do you agree that a definition of ‘locally based’ for persons responsible for licensed home-based education and care services should include that persons responsible must 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?



There were 40 responses to this survey question. There was a high level of agreement with this proposal at 75 percent (45% strongly agreed and 30% percent agreed), while 20 percent of respondents disagreed (17% disagreed and 3% strongly disagreed).

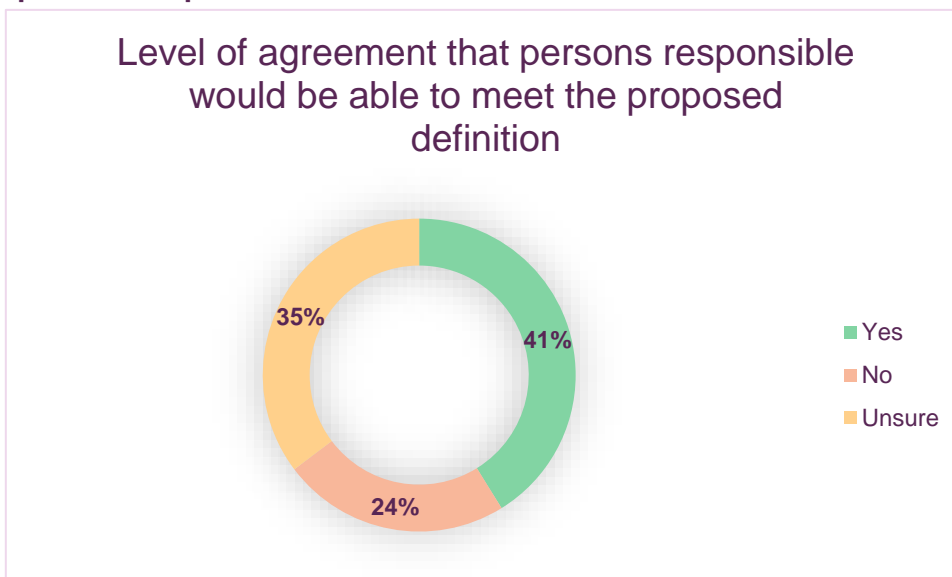
Question 6: As a service provider, would you be able to meet this definition of locally based for persons responsible in licensed home-based education and care services?



There were 16 responses to this survey question, noting this question was only applicable to home-based service owners. In total:

- 44 percent of service owners thought that they would be able to meet the proposed definition
- 19 percent of respondents thought they would not be able to meet this definition
- 37 percent of respondents were unsure.

Question 7: As a person responsible, would you be able to meet this definition of locally based for persons responsible in licensed home-based education and care services?



There were 17 responses to this survey question, noting this question was only applicable to persons responsible for home-based services. In total:

- 41 percent of the respondents thought they would be able to meet the proposed definition of locally based
- 24 percent of respondents thought they would not be able to meet the definition as a person responsible
- 35 percent were unsure.

There was support to amend the Regulations to provide a definition of 'locally based' for home-based persons responsible

Although support for the proposal to define 'locally based' for persons responsible in licensed home-based education and care services was less than support for proposals one to three, there was still majority agreement (75 percent of respondents were supportive of the proposal). Feedback from respondents that were supportive of this proposal noted that this change would improve clarity and certainty for services around person responsible requirements, and will lead to better safety, wellbeing and educational outcomes for children in care. These ideas are expressed in the feedback below.

"We agree that the regulations are amended to include a definition of 'locally-based' for persons responsible for licensed home-based education and care services. This will remove the current ambiguity for providers, especially those with homes in more rural / remote locations." – **Te Rito Maioha**

"I'm very happy to see something proposed that will stop fly in/fly out PRs and ensure it's easier for educators to get the support they need." – **Member of the general public**

"We support the Ministry's desire to amend the regulations to define 'locally based'. We agree that the P.R. must be able to support educators during the hours that they have children and be able to quickly reach the educator's home when there is an emergency" – **Office of Early Childhood Education**

"This is ultimately about the safety, wellbeing, care and education of tamariki which is naturally a huge consideration to ensure they, and Educators, get the support they need." – **Representative of a non-governmental organisation**

However, there was mixed support for the different aspects of the proposed definition. 87 percent of respondents were supportive of the proposal that persons responsible should be able to be contacted at all times during operating hours. But there was less support for the proposal that persons responsible should reside or have a permanent place of business in the same local area as the educator they are responsible for (59 percent).

Concerns that the proposed definition is not clear enough

Both written submissions and survey respondents expressed concern that the proposed definition is not clear enough, which could potentially lead to the Ministry and services having different interpretations when applying the requirements. Respondents noted that "local area", "close proximity", and "reasonable travel time" needed to be better defined. These ideas are expressed in the feedback below.

"There is not much clarity about "locally based" and whether time frame is expected for a Person Responsible to attend to their educator if need be. This grey area could be a point for not meeting the licensing requirement if Ministry and the provider have different time frames in their mind." – **Home-based early learning educator**

"The way the proposed regulation amendment is currently framed is open and will lead to varying interpretations [...]. Therefore, we recommend that a definition of 'close proximity' be included in the regulation amendment and that this definition be based on what close proximity means for the safety and welfare of children." – **Office of Early Childhood Education**

"Seeking clarity: What constitutes local? Same city? same suburb? Same town? Same region ie, Waikato, Canterbury? This also impacts the time to travel to be available in an emergency." – **Education and care early learning educator**

“Agree it need[s] to be made more clear, but What does local area mean? It could be interpreted differently by different people and so may be too broad” – Home-based early learning service owner/manager

“Again, defined time needed and bearing in mind cities with traffic where 20 mins of the educators can turn into an hour.” – Home-based early learning educator

Some respondents did not think this proposal was needed

For respondents who disagreed with the proposal or certain aspects of the definition, some credited this to the proposed definition not being needed in the Regulations, while other respondents wanted the person responsible role removed entirely. These ideas are expressed in the feedback below.

“We are unconvinced that there is a need to introduce, and define, a new requirement for the persons responsible in home-based services to be “locally based”. If the person responsible can fulfil their responsibilities under the current regulations and in the September 2021 proposals, we do not see the need for them to also be “locally based.” – Auckland Kindergarten Association

“We agree with the Early Childhood Council’s proposal from earlier consultation on the person responsible in centres, that the role should be removed altogether.” – PAUA

“We propose that no definition be included as there are sufficient safeguards about supervision in the other areas of the regulations.” – Owner/manager of multiple early learning services

“Overseeing the day-to-day education and care, comfort, and health and safety of the children is done by the person with the tamariki. No person should be looking after tamariki unless they are responsible and able to do so. When you are a classroom teacher you don’t have the principal or senior teachers spending time in your classroom during the week.” – Kōhanga reo kaiako

The proposal will create significant costs for rural and isolated services

The majority of respondents who disagreed with the proposal felt that the proposal will lead to significant financial costs for home-based services, especially in rural and remote areas. Both survey respondents and written submissions noted that home-based care provides flexible childcare to families in areas where it can sometimes be the only option, and the proposed definition of locally based will create requirements that are too difficult and costly to comply with, potentially leading to service closures and loss of ECE provision in these areas. These ideas are expressed in the feedback below.

“We are a small urban town with larger rural areas surrounding and we have educators that live and work as home-based educators in these rural areas. This would greatly [a]ffect these educators as the main office could not be spread around the surrounding rural areas especially without a significant funding increase to allow local person[s] of responsibility up to 4 hours apart. They are too far and wide to meet this criteria if it were to proceed.” – Home-based early learning educator

“There are concerns about the unintended consequences the introduction of the proposed changes may have – particularly on those communities that are rural and/or remote. For example, it may mean that rural and/or remote services are no longer viable, exacerbating inequities in communities already facing challenges.” - NZEI Te Riu Roa

“For homebased providers, the area which Educators are based can be widespread, especially in Northland. Single Educators need the support of the providers with Mentoring Teachers and other services. These are not financially viable with a single Educator in an area as the cost of supplying these services would be unsustainable. This would mean that Educators in areas without others would not be able to function, reducing ECE services and opportunities and choices for tamariki and their whānau.” – Mentoring teacher for home-based educators

“Rural areas would be affected where we have some of our most vulnerable children. There are no other options for them. some of our families are one hour away from the nearest Centre. So we need to balance keeping children safe in an emergency situation, providing physical back up and support with the right for these children to have an education.” – Home-based owner/manager

Next steps following consultation

Consultations on these proposals closed on 17 February 2023. Cabinet decisions on resulting changes to the regulations are expected to be made by August 2023.

Further updates will be posted on the Ministry's Early Learning Regulatory Review Kōrero Mātauranga webpage at <https://conversation.education.govt.nz/conversations/early-learning-regulatory-review/>



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