

# Regulatory Impact Statement: Use of Childcare Subsidy for compulsory top-up fees charged by home-based ECE providers

## Coversheet

Purpose of Document	
Decision sought:	This analysis has been done to enable the Childcare Subsidy to be paid where there are compulsory top-up fees charged by home-based ECE providers for hours covered by 20 Hours ECE funding.
Advising agencies:	Ministry of Social Development
Proposing Ministers:	Minister for Social Development and Employment
Date finalised:	10 August 2023
Problem Definition	
<p>The Minister of Education proposes to allow home-based ECE educators to charge compulsory top-up fees (from 1 March 2024) for childcare that is funded under 20 Hours ECE. This is to ensure that home-based educators, many of whom are on low incomes themselves, do not have to give up income for the hours funded through 20 Hours ECE and the home-based ECE sector remains viable.</p> <p>Under current settings, this increased childcare cost will be passed directly and in full onto parents and caregivers*. The Ministry of Social Development provides the Childcare Subsidy to support low and middle-income families with childcare costs. However, current settings do not allow the Childcare Subsidy to be paid for any hours of childcare funded under 20 Hours ECE, as currently providers are unable to charge compulsory fees for these hours.</p> <p>*For brevity, hereafter referred to as parents.</p>	
Executive Summary	
<p>The Minister of Education proposes to create a new category of allowable payments for hours of ECE funded by 20 Hours ECE from 1 March 2024, to enable home-based educators to maintain their income during those hours. This will require parents using home-based educators to pay a compulsory hourly fee to bridge any gap between the 20 Hours ECE funding and the educator’s hourly wage. These fees are hereafter referred to as top-up fees.</p> <p>The Childcare Subsidy (administered by the Ministry of Social Development) helps low- and middle-income parents with the cost of childcare for children under 5 years of age. Under current settings, parents would not be able to access the Childcare Subsidy for the new top-up fees because regulation 23 of the Social Security Regulations 2018 prohibits the payment of the Childcare Subsidy for hours of childcare that are funded under 20 Hours ECE. This is</p>	

because providers are currently unable to charge compulsory fees for these hours.

The Minister for Social Development and Employment is seeking Cabinet agreement to amend the Social Security Regulations 2018 to allow the Childcare Subsidy to be used for the new top-up fees. This is a consequential change resulting from the Minister of Education’s proposal to allow home-based educators to charge a new category of compulsory fees.

The proposed regulatory change ensures that the Childcare Subsidy continues to be available to low and middle-income parents to assist with all compulsory childcare fees. Enabling Childcare Subsidy to cover these new compulsory fees is the only feasible option that can be implemented by 1 March 2024 that does not result in low and middle-income parents having to cover the full cost of the new fees.

**Limitations and Constraints on Analysis**

No other options were substantively considered (other than the status quo) given that there was no other option that could be implemented by 1 March 2024 that does not result in low and middle-income parents having to cover the full cost of the new fees.

There is also no rationale for creating a new payment to cover these fees when an existing subsidy could do so at a lower cost and within its current policy intent (ie. covering compulsory childcare fees for low- to middle-income families) and would also not increase the complexity of the system.

As the proposed option is the only feasible option able to be implemented by 1 March 2024, no multi-criteria analysis has been done, as agreed with Treasury’s RIA team.

No consultation or stakeholder engagement has been done due to the short time between MSD becoming aware of the issue and the date that the Minister of Education intends to lodge the Cabinet paper (17 August 2023). However, the Ministry of Education consulted with groups representing home-based educators through the development of their policy advice that recommended the introduction of compulsory top-up fees for home-based educators.

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

Polly Vowles  
Manager, Income Support Policy Team, Ministry of Social Development



10 August 2023

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

Reviewing Agency:	Ministry of Social Development
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Panel Assessment & Comment:

The Review Panel considers that the information and analysis summarised in this Statement does not meet the Quality Assurance criteria. The Panel recognises the limitations on the analysis available, including timeframes and the scope of options considered particularly as this is a flow-on impact from a wider decision about 20 Hours ECE. The Panel recognises that while the analysis in the paper is as good as could be expected in the circumstances, it does not meet the criteria.

Considering each of the four criteria:

*Complete – partially meets*

- While the problem, preferred option and benefits and risks are clearly articulated, the Statement does not contain all the material necessary for a RIS. However, the limitations of analysis are set out clearly in the paper, including agreement with Treasury RIA team not to undertake multi-criteria analysis within the RIS.

*Convincing – does not meet*

- Because this is a flow on from another decision about 20 hours ECE for home-based providers, the proposals are constrained.
- There are significant limitations on the analysis available, as only the proposed option and status quo were considered.

*Consulted – does not meet*

- There has been no consultation on the specific options, nor is it clear what level of consultation would be appropriate for this type of proposal.
- While this is somewhat mitigated by consultation occurring on the proposal to allow home-based ECE to charge top-up fees, the views of impacted parties are not known.

*Clear and concise – meets*

- The paper is well written and concise.

## Section 1: Diagnosing the policy problem

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

The Budget 23 initiative extending 20 Hours ECE to two-year-olds has brought to light an existing problem with the 20 Hours ECE policy in home-based ECE settings. Under current 20 Hours ECE funding rules, ECE providers are not able to charge compulsory fees for the hours covered by 20 Hours ECE funding. Home-based educators do not receive the full 20 Hours ECE subsidy, as a portion is retained by the home-based service provider (which provides co-ordination and other services to their home-based educators). The amount of subsidy that is passed through to the educators may be lower than their usual hourly fee, meaning that they must either accept lower pay or seek voluntary top-up payments from parents. The lower pay may be substantially less than the minimum wage, but as home-based ECE educators are independent contractors, they do not have the protection of minimum wage legislation.

The Minister of Education proposes to allow home-based ECE educators to charge top-up fees from 1 March 2024 for childcare that is funded under 20 Hours ECE. This is to ensure that home-based educators, many of whom are on low incomes themselves, do not have to give up income for the hours funded through 20 Hours ECE and the home-based ECE sector remains viable. However, the change will require parents to pay a compulsory hourly fee to home-based educators to bridge any gap between the 20 Hours ECE funding and the educator's hourly wage.

The Childcare Subsidy helps low- and middle-income parents with the cost of childcare for children under the age of 5. Under current settings, the Childcare Subsidy cannot be paid for hours of ECE funded through 20 Hours ECE, because current settings do not allow for compulsory fees to be charged for these hours.

If no action is taken, low- and middle-income parents who use home-based ECE will have to cover the full cost of the new fees which may negatively impact their participation in employment, education or training and/or impact material wellbeing by increasing the pressure on household budgets. Home-based ECE is an important source of childcare for Māori and Pasifika parents who want childcare aligned to their cultural values, parents working non-standard hours, and people living in rural areas where there are fewer centre based ECE providers.

### What is the policy problem or opportunity?

A regulatory barrier exists because regulation 23 of the Social Security Regulations 2018 prevents the Childcare Subsidy from being paid for hours of childcare that are funded through 20 Hours ECE. This means that low- and middle-income parents will not be able to access the Childcare Subsidy to help cover the cost of the new compulsory top-up fees that home-based ECE educators will be able to charge from 1 March 2024. MSD estimates that the parents of around 560 children will be affected.

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

The primary objective of Childcare Assistance is to improve the affordability of childcare by reducing the cost of compulsory fees for low and middle-income

families. This improved affordability supports parents to participate in the labour market.

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

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

The proposal is to amend regulation 23 of the Social Security Regulations 2018 to allow the Childcare Subsidy to be used to help with the new compulsory top-up fees. Currently, regulation 23 prevents the payment of the Childcare Subsidy for ECE hours funded through 20 Hours ECE as there are no compulsory fees allowed for these hours.

This is a consequential change resulting from the Minister of Education's proposal to allow home-based ECE educators to charge top-up fees as it ensures that Childcare Subsidy continues to be available for all compulsory fees. As it is the only feasible option able to be implemented by 1 March 2024, no multi-criteria analysis has been done, as agreed with Treasury's RIA team.

Note: The Guaranteed Childcare Assistance Payment (GCAP) and the Early Learning Payment (ELP) are two other types of childcare assistance. Cabinet agreement is being sought to allow GCAP and ELP to be used for compulsory top-up fees, however this does not require regulatory change. These payments serve the same purpose as the Childcare Subsidy (to subsidise the costs of compulsory childcare fees) and are provided instead of Childcare Subsidy for particular population groups - GCAP is provided to young parents and ELP to children of families participating in Family Start and Early Start programmes provided by Oranga Tamariki.

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

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	Parents and caregivers eligible for Childcare Subsidy and who use home-based ECE providers	Low. MSD estimates that the parents of around 560 children will be impacted	High. Allowing Childcare Subsidy to be used for the new top-up fees will help to reduce childcare costs for affected families and will not create any new direct costs
Regulators	MSD – implementation costs to make required changes (IT, training, communications etc)	<b>Increased expenditure on subsidies:</b> \$2.529m over the forecast period <b>Implementation costs:</b> \$3.903m over the forecast period	<u>Medium confidence in expected annual expenditure.</u> Costs have been forecast to the best of MSD’s ability, however, are dependent on assumptions regarding the number of children in home-based care whose parents are eligible for Childcare Assistance <u>High confidence in implementation costs.</u>
Others (eg, wider govt, consumers, etc.)	N/A		
<b>Total monetised costs</b>	Costs for subsidies have been forecast, based on assumptions about the number of children in home-based care whose parents are eligible for Child Care Assistance. Costs for implementation costs have been determined by MSD.	\$6.432m over forecast period	High

<b>Non-monetised costs</b>	<p>New recipients of Childcare Subsidy will need to complete application forms and current recipients will need to advise MSD regarding childcare hours that they are using that have top-up fees applied and will continue to be required to advise MSD of any changes in their hours of employment, education, or training.</p> <p>Home-based ECE providers will need to advise MSD about: the amount of top-up fee they are charging parents per hour.</p>	Low. Overall system is already in operation	High
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Assisting eligible parents with the increased cost of home-based ECE resulting from the new fees could directly contribute to lower material hardship rates by reducing cost pressures on household budgets for low- and middle-income families. Without the ability to access the Childcare Subsidy, parents may stop using home-based care and leave their work, education or training; and parents considering entering employment, education and training may decide not to do so	Low - medium. MSD estimates that the parents of around 560 children will gain by an average of around \$19.60 a week per child once this is implemented on 1 March 2024	Medium. The number of affected children and the financial benefit to parents and caregivers have been forecast to the best of MSD's ability, however, are dependent on assumptions regarding the number of children in home-based care whose parents are eligible for Childcare Assistance, and the total amount that home-based providers charge as top-up fees
Regulators	Increased support with childcare costs could assist MSD with broader goals of supporting parents into sustainable employment	Low	Medium
Others (eg, wider govt, consumers, etc.)	Supports the Government's objectives to: Overhaul the welfare system; implement Employment Action Plans; deliver the Child and Youth Wellbeing Strategy.	Low - medium given the relatively small number of children impacted. Approximately 35,000 children currently receive the Childcare Subsidy.	Medium
<b>Total monetised benefits</b>	No costings available for monetised benefits		

<b>Non-monetised benefits</b>	Reduces costs for low- to middle-income households and supports labour market participation	Low - medium	Medium
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## **Section 3: Delivering an option**

### **How will the new arrangements be implemented?**

The changes can be made by the Governor General through amending regulation 23 of the Social Security Regulations 2018 by Order in Council pursuant to s424(2)(c) of the Social Security Act 2018. The system for paying the Childcare Subsidy to ECE providers on behalf of eligible parents already exists, and changes will be made to enable Childcare Subsidy to be paid for top-up fees for home-based educators for hours covered by 20 Hours ECE.

Changes to MSD's IT system will be made by 1 March 2024.

The main way of communicating the change will be via the Ministry of Education's Early Learning Bulletin to ECE providers. Home-based ECE providers will be encouraged to inform their clients. We will prepare messaging for the MSD website and staff to assist with communicating the change to eligible parents.

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

MSD will remain the overall steward of the Childcare Subsidy and other forms of Childcare Assistance and its enabling legislation.

Sufficient data is already collected regarding the usage of Childcare Subsidy to make monitoring the effects of this change possible if needed. Extra data collection will not be required.

There is no planned evaluation of the proposed change.