



Regulatory Review of Early Childhood Education



**Ministry for Regulation
Te Manatū Waeture**



Te Kāwanatanga o Aotearoa
New Zealand Government

ISBN: 978-0-473-73573-9 (Online)

This document is available on the Ministry for Regulation website: regulation.govt.nz

Crown copyright © 2024



This work is licensed under the Creative Commons Attribution 3.0 New Zealand licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to the Crown and abide by the other licence terms. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/nz/>. Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981. Attribution to the Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

Contents

Executive summary	5
Chapter 1: Introduction	11
Chapter 2: Context and challenges	14
Chapter 3: Setting it up right	38
Chapter 4: Leading it the right way	53
Chapter 5: Using the right tools	71
Chapter 6: Doing it the right way	97
Attachment A: Method and approach	106
Attachment B: Glossary of terms	109
Attachment C: References	111
Attachment D: Licensing Criteria	112

Foreword

New Zealanders deserve a thriving early childhood education (ECE) sector that offers the best quality of care and education to children. We trust ECE service providers to protect and educate our youngest children, and we rely on services being available and affordable so parents and whānau can participate in the labour market and contribute to the national economy.

Without government intervention, through both funding and regulation, the ECE market would not meet the safety and quality expectations of New Zealanders. It is essential that parents and whānau can be confident their children will be safe from harm and well educated while in the care of ECE service providers.

The ECE regulatory system is not up to the standard of other regulatory systems in New Zealand or ECE regulations in comparable countries. In this regulatory review, we found:

- outdated settings, tools and practices are limiting the supply of ECE services
- confusing regulatory requirements are imposing undue compliance burdens on providers
- weak pressure on low quality ECE service providers to improve quality above minimum standards, and
- insufficient incentive for high quality ECE service providers to expand or innovate.

ECE regulations need to be carefully balanced; they must function to educate and protect children while also supporting the ongoing viability of ECE service provision. Our response to this review also needs to balance finding ways to reduce compliance costs and administrative burdens on ECE service providers with protecting the quality of care and education for children that New Zealanders expect.

Taken together, the recommendations presented in this report chart a strategy for reforming regulatory design, leadership, capability, practices and requirements. They provide directions for how to:

- modernise the ECE regulatory approach and its tools
- simplify the ECE regulatory requirements, and
- improve support for the ECE sector.

The recommendations will lift ECE regulatory capability in ways that would give clarity and practical support to ECE service providers. We need ECE service providers to have greater confidence in their ability to comply with regulatory requirements as this confidence could result in more services entering and expanding in the market. More competition in the ECE market could also drive more ECE service providers to lift their service quality above the regulated minimum standards to enhance safety and education for children in their care.

We would like to thank all those who contributed to this work including all those who submitted feedback. We would also like to thank officials from across agencies, in particular the Education Review Office and the Ministry of Education, who have worked constructively and professionally with us through this regulatory review.

December 2024

Executive summary

Purpose of this summary

1. This summary:
 - a. explains how important early childhood education (ECE) is for New Zealand and notes the **purpose and scope** of the Ministry for Regulation’s regulatory review of ECE
 - b. presents themes in the **findings** about problems in the ECE market and answers questions from the Terms of reference¹, and
 - c. discusses **recommendations** to improve the government’s approach to ECE regulation to reduce compliance costs and ease administrative burdens for ECE service providers.

Key points

- Government has a role to regulate early childhood education (ECE) service providers to protect and educate children and to prevent a large-scale undersupply of ECE services which would harm parents and whānau, society and the economy.
- We are concerned that risks to children are not being well managed due to the setup of the ECE regulatory system. ECE service providers have told us they face unnecessary compliance costs and barriers to innovation due to confusing regulatory requirements.
- We found two key market failures that are contributed to by the ECE regulatory system: information asymmetry and undersupply.
- The current ECE regulatory system is out of date and is causing a range of problems for ECE service providers, parents and whānau and children, and staff in regulatory roles.
- The regulatory tools are not well-suited or proportionate to the risks they are trying to manage, and the biggest risks in the ECE sector are not being adequately monitored.
- We recommend the ECE regulatory system be both modernised and simplified. We also recommend the ECE sector be better supported by regulatory agencies to understand the requirements and to implement regulatory changes when they arise.
- Our recommendations target problems across many aspects of the regulatory system, from system design flaws and blunt tools, to poorly communicated requirements.

New Zealand's ECE sector

2. New Zealand's ECE sector supports both children's learning and development and parent and whānau participation in the workforce. New Zealand has a diverse range of ECE services, including education and care centers, kindergartens, kōhanga reo, home-based services, and playgroups and playcentres. The sector serves a high proportion of all children under five, with over 96 percent of preschool-aged children attending ECE services at some point.² However, access and quality vary significantly, particularly in rural areas, and many ECE services have lengthy waitlists.
3. ECE services are considered a 'merit good' which means they offer benefits to society beyond the benefits to individual users.³ The government supports the sector with subsidies and regulations that aim to ensure safety, quality, and accessibility. In this review, parents and whānau have raised concerns about rising fees, limited availability in many regions, and information gaps that make it difficult for them to assess service quality. We have also heard from the ECE service providers that compliance costs and administrative burdens are making it hard to operate efficiently.
4. The ECE regulatory system is primarily managed by the Ministry of Education, as the lead regulator and steward. The Ministry is responsible for licensing, certifying playgroups, monitoring, and evaluating compliance with minimum standards. The Education Review Office has a regulatory role through conducting reviews to evaluate ECE service performance and assess whether the service complies with regulatory standards and associated licensing criteria, and that they are meeting the learning, safety and wellbeing needs of children in their care.
5. The complexity of ECE regulatory requirements and the evolving needs of the sector highlight the need for a modernised regulatory approach that aligns with the realities of today's ECE environment. This modern approach should keep the needs of children at the center and ensure parents and whānau have the choice to participate in the labour market.

Purpose and scope of the review

6. This report presents findings and recommendations from the Ministry for Regulation's review of the ECE regulatory system. We assessed how effectively the current regulatory approach addresses challenges and supports a thriving ECE market. Key areas of focus included regulatory impacts on market function, compliance costs for providers, and the role of regulation in safeguarding and ensuring good education of children and supporting parental choice.

Themes in the findings

7. In the review, we have found several problems and market failures that the current ECE regulations are not addressing properly. There are two main market failures:
 - a. **Information asymmetry:** Parents and whānau often lack access to clear, comparative information about the quality and safety of ECE services. This creates a reliance on government oversight to ensure minimum standards, as market forces alone are insufficient to drive quality improvements.
 - b. **Undersupply of ECE Services:** Despite strong demand, the market is not meeting the need for parents to be able to choose accessible and affordable ECE services that suit their preferences across all regions. Barriers to entry include compliance complexity, and regulatory requirements are a contributing factor limiting the capacity of new providers to enter the market and of existing providers to expand services, particularly in rural and underserved areas.
8. The Terms of reference set the scope of the ECE regulatory review and posed a series of questions for the review to answer.⁴ Brief answers to the questions are provided in this summary. The answers are expanded on at length in Chapter 2: Context and challenges, and in the four substantive chapters on findings and recommendations, Chapters 3 – 6.

What are the problems in the ECE market?

9. New Zealand's economy benefits from parents and whānau accessing early education for children if they then choose to either be employed in the labour market, operate a business, undertake academic study or vocational training, among other economic pursuits. New Zealand's economy also benefits from ECE enhancing the learning outcomes of those children who attend ECE services, including by supporting them to be ready for school.
10. However, we have found that the combination of the ECE market failures and the current regulatory settings are putting undue limits on the abilities of all parties in the system to exercise choice and are imposing compliance burdens caused by excessive and confusing requirements.
11. Parents and whānau have limited access to information about their ECE service provider options. This means they cannot accurately judge any ECE service by factors such as health and safety risk for their child(ren) or educational quality in comparison to other available ECE services. Also, given the undersupply, parents and whānau often have little practical choice about which local ECE service to access.
12. There is weak pressure on low quality ECE service providers to improve or leave the market. Similarly, there is less incentive for high quality ECE service providers to expand in the market as we would expect in a highly functioning market. This lack of visibility and market pressure means that parents and whānau need to rely on the government to set and assure minimum standards of quality and care for ECE services.
13. Regulation is not well suited to solving the undersupply of ECE services as it is not feasible to require ECE providers to provide services in areas that they do not want to. Fiscal levers, such as targeted subsidies, are a more suitable tool. Regulation can inadvertently make the undersupply worse by making it harder for new ECE services to enter the market and for existing providers to stay in the market.

Is regulation of ECE the best way to address these problems?

11. Parents and whānau have limited access to information about their ECE service provider options. This means they cannot accurately judge any ECE service by factors such as health and safety risk for their child(ren) or educational quality in comparison to other available ECE services. Also, given the undersupply, parents and whānau often have little practical choice about which local ECE service to access.

¹ Ministry for Regulation, "ECE Review Terms of reference" on the "[ECE regulatory sector review](#)" webpage.

² Ministry of Education, "[Early learning participation indicator report](#)", (May 2024).

³ A 'merit good' is defined as "Goods or services whose consumption is believed to confer benefits on society as a whole greater than those reflected in consumers' own preferences for them. A good may be classed as a merit good if it causes positive externalities." Oxford Reference, "[Merit goods](#)" webpage.

⁴ Ministry for Regulation, "ECE Review Terms of reference" on the "[ECE regulatory sector review](#)" webpage.

What are the costs and benefits of the ECE regulations?

	Costs of ECE regulation	Benefits of ECE regulation
Children	Children who are not attending ECE services miss out on the care and education offered by those services	Those children who do attend, receive education and care that improves their social and economic outcomes over their lifetime
Parents and whānau	Fees (pushed up higher by the need to cover ECE compliance costs) Limited service offerings in some locations	Able to entrust the safety, care and education of their preschool aged children to an ECE service Able to participate in labour market
ECE service providers	High barriers to entry expansion and innovation Operating costs to demonstrate compliance	Risk in the ECE sector is shared between providers and regulators Minimum standards prevent ECE service providers undercutting each other by reducing quality
ECE workforce	Costs and time of gaining qualifications they may not gain if they were not required Limited role workers can have in the sector if they do not have a bachelors degree Time spent on compliance activities	Regulations include minimum standards such as teacher-to-child ratios which prevents unreasonable working conditions

Are the ECE regulations working?

14. We consider the current ECE regulatory system is out of date and is causing a range of problems for ECE service providers and parents and whānau, as well as staff in regulatory roles. The main problems are that the regulatory tools are not well-suited or proportionate to the risks they are trying to manage, and the biggest risks in the ECE sector are not being adequately addressed.

Recommendations

15. The recommendations in this report form a strategy for how to improve regulation in the ECE sector to achieve better outcomes for children, their parents and whānau and society as a whole. The review proposes 15 key recommendations that would:
- modernise the ECE regulatory approach and its tools to enhance the integrity of the ECE regulatory system
 - simplify ECE regulatory requirements to reduce the compliance burden on ECE service providers, and
 - improve support for the ECE sector to communicate requirements more clearly and ensure they support ECE services to comply with regulatory changes.
16. Protecting the safety, quality of care and education for children has been the paramount consideration for this regulatory review. Quality is not something we have considered trading off with any other factor. Instead, we consider there is a necessary trade-off between increasing costs for government and reducing compliance burdens for ECE service providers.

Reform	Recommendation
Establish Clear Objectives and Principles	Recommendation 1: Define clear outcomes, objectives and principles for ECE regulation in legislation, aligning with government priorities for early childhood education.
Clarify Regulatory Roles	Recommendation 2: Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required.
Strengthen Compliance Monitoring	Recommendation 3: Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector.
Improve Decision Review Mechanisms	Recommendation 4: Improve the pathways for providers to appeal regulatory decisions, ensuring fairness and encouraging trust in the regulatory process.
Enhance Leadership and Stewardship	Recommendation 5: Strengthen regulatory oversight to foster trust, transparency, and effective sector stewardship.
Develop a Regulatory Strategy	Recommendation 6: Establish a strategic, long-term approach to ECE regulation that supports innovation, quality, and growth.
Build Regulatory Capability	Recommendation 7: Invest in workforce training across agencies to improve regulatory effectiveness and consistency.
Introduce Graduated Compliance Tools	Recommendation 8: Update regulation to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk.

Reform	Recommendation
Adjust Licensing Criteria	Recommendation 9: Revise licensing criteria to ensure they are proportionate, effective, and support quality without overburdening providers.
Increase Flexibility in Qualification Requirements	Recommendation 10: Allow greater flexibility in workforce qualifications to support access and quality across all areas and service types.
Revise 'Person Responsible' Standards	Recommendation 11: Ensure the person responsible requirements are practical, appropriate to meet the needs of children and purpose of the requirements, and responsive to service needs, including home-based services.
Plan for Viable Home-Based Services	Recommendation 12: Work with stakeholders to develop a strategic plan for home-based services, including provisions for rural areas and whānau with diverse needs.
Improve Provider Engagement	Recommendation 13: Strengthen government communication and support for prospective and current ECE providers to streamline compliance processes.
Support Providers with Regulatory Changes	Recommendation 14: Strengthen the support to help providers implement new regulatory requirements effectively.
Enhance Support for Regulatory Staff	Recommendation 15: Invest in resources and training to support sound, consistent regulatory decision-making.

Chapter 1: Introduction

Purpose of this chapter

18. The purpose of this chapter is to outline the purpose and scope of the early childhood education (ECE) regulatory review, and the purpose and scope of this report (which is narrower), explain how Te Kōhanga Reo featured in the review, note the recent regulatory changes in the ECE sector and describe the next steps following this report's publication.

Purpose and scope of the ECE sector regulatory review

19. This independent regulatory review has been undertaken within the Ministry for Regulation's establishment role to provide leadership across government for improvements in the quality of regulation and the performance of regulatory systems.⁵ The aim of this review is to create a suite of recommendations which form a strategy for adjusting the government's approach to regulation in the ECE sector. The review commenced on 5 June 2024.⁶ Limits to this scope were explained in the Terms of reference.⁷ It is important to note ECE funding levels are out of scope; this report notes where funding mechanisms create regulatory impacts.

20. The Ministry of Education and the Education Review Office have been thoroughly engaged in the review. The review team also consulted other agencies on specific topics. The review team has applied consistent efforts to achieve consensus on the findings and recommendations with the Ministry of Education and the Education Review Office. These agencies retain the right to disagree with any of the findings and recommendations.

Purpose and scope of this report

21. The purpose of this report is to explain the findings and recommendations of the ECE regulatory review. Taken together, the findings diagnose the current risks and issues resulting from the regulatory system design. Again, taken together, the recommendations chart a strategy for improving regulatory design, leadership, capability and practices to better support the desired outcomes from the market for ECE services.

22. This report references what we have heard from stakeholders through direct engagement and through a submissions process. It does not explain in detail the wide range of insights drawn from submissions analysis because that information is published in a separate report titled "What Submitters told the Early Childhood Education Regulatory Review."⁸

23. This report does not summarise the body of knowledge about the social benefits of ECE for children and society. The Ministry for Regulation has considered this body of knowledge while applying an economic lens to consider the market incentives for ECE and the regulatory framework applied to ECE service providers. This economic lens is intended to assess whether regulations are the right tools and whether they are working well in practice to ensure children in ECEs are safe, well cared for, and well educated so they are prepared for school.

⁵ Ministry for Regulation, "[Strategic Intentions 2024/25 – 2028/29](#)", (September 2024), p. 8.

⁶ Minister for Regulation, Press release "[Ministry for Regulation kicks off first sector review – Early Childhood Education](#)", (5 June 2024).

⁷ Ministry for Regulation, "ECE Review Terms of reference" on the "[ECE regulatory sector review](#)" webpage.

⁸ Ministry for Regulation, "[What Submitters told the Early Childhood Education Regulatory Review](#)", (October 2024).

24. The following topics were analysed in the review. We acknowledge the issues raised, however solutions to these issues are already underway or sit outside the review. Therefore, we have not developed specific findings or recommendations for them. They include:

- a. **Kōhanga reo:** The Ministry of Education already has work underway to review and improve the regulatory framework that applies to Kōhanga reo. This is in response to Waitangi Tribunal findings (Wai 2336) which found that ECE policy undermined Te Kōhanga Reo.⁹ See below also.
- b. **ECE service provision for children with disabilities, neurodiverse children and medically fragile (DNMF) children:** Many ECE services are not equipped to deal with the specific needs of increasing numbers of DNMF children. Improving this situation may require reconsidering funding arrangements, which is outside the scope of this review.
- c. **Ratios and group size:** A number of submitters raised issues around ratios and group size; however, these may be dealt with in the Ministry of Education’s potential future ECE Funding Review.

Te Kōhanga Reo

25. Kōhanga reo are language nests that provide a total immersion Māori language and whānau development programme for children from birth to age six, and their whānau. Parents, whānau, and kaumātua, together with kaiako, are closely involved in children’s learning, and take responsibility for management, operation, and everyday decision-making. Kōhanga reo emerged as a community-based response to the deep concern amongst kaumātua and Māori generally over the declining number of te reo speakers and the very survival of the Māori language.¹⁰

26. In this review we considered the role Te Kōhanga Reo plays in the ECE market, how it has been regulated historically and how it fits in the current regulatory system. We conducted several visits to kōhanga reo to meet with staff as well as National and Regional staff from the Te Kōhanga Reo National Trust and learnt about the issues they face related to engagement with the Ministry of Education and the Education Review Office, as well as the learning environment provided at kōhanga reo and its role in the preservation of te reo Māori. These services are often found in rural settings which supports addressing ECE shortages in rural areas.

27. The ECE regulatory system works in partnership with Te Kōhanga Reo National Trust. This relationship is unique in the ECE sector and reflects the Crown’s responsibility to give effect to Te Tiriti o Waitangi. While the findings and recommendations are likely to be applicable to Te Kōhanga Reo, there are no specific findings or recommendations in this report related to the regulation of only Te Kōhanga Reo ECE services.

Recent changes to the ECE regulatory system

28. Changes to requirements for person(s) responsible and change of service provider identity: In April 2024, Cabinet agreed to put on hold the requirements for person(s) responsible to hold a Full (Category One or Two) Practising Certificate. This change aimed to address labour supply concerns. At that time Cabinet also approved the removal of the implementation of requirements for a change of service provider identity on a service provider’s licence. This change aimed to ease compliance costs on ECE providers as the process to change a service provider identify was burdensome.¹¹

⁹ Waitangi Tribunal, [“Matua rautia; the report on the kōhanga reo claim”](#), (2013).

¹⁰ Te Kōhanga Reo, [“Mō Te Kōhanga reo / About Te Kōhanga reo”](#) webpage.

¹¹ Ministry of Education, [Cabinet paper material Proactive release](#), 16 April 2024.

29. Removal of the network approvals requirement: The *Education (Early Childhood Services Network Approval) Regulations 2022* came into force on 1 February 2023¹², and were repealed from 1 October 2024.¹³ The regulations were introduced to ensure that any party seeking a license to operate an ECE had to first seek ‘network approval’. Network approval was defined as an approval “to apply for license to operate an early childhood service.”¹⁴ The aim of these regulations was to address concerns about the impact of the potential for oversupply of ECE services in specific areas on the overall quality of services; however, the regulations were considered an unnecessary regulatory burden.¹⁵
30. The Government has made two changes in September 2024 around the way relief teachers are paid.¹⁶ ECE services do not have to follow pay parity salary steps for relief teachers. This simplifies the formula for paying relief teachers to help manage costs.
31. In November 2024, the Government announced two changes to home-based ECE, which will support providers to meet requirements for teachers and educators.¹⁷ The first change relates to enabling the person responsible (or visiting teachers) to work as a person responsible in more than two services a month. The second change creates more flexible qualification requirements for educators so instead of managing percentages of educators qualified or in training within a license, they only have to ensure that all educators are either qualified or in training.
32. The government also recently introduced an opt-in pay parity scheme.¹⁸ The Early Childhood Education Pay Parity Scheme is about closing the pay gap between certificated teachers working in education and care-based services with their teacher colleagues working in kindergartens. To achieve this, higher funding rates are available to education and care and hospital-based services who pay all employed certificated teachers at least the salary amounts described in the ECE Funding Handbook. The scales are based on qualifications, recognition of service, and previous relevant experience.

Next steps following the publication of this report

33. The Minister for Regulation will consider the findings and recommendations to determine which recommendations to discuss with the Minister of Education in the first instance, and which then to recommend to Cabinet.
34. To support Cabinet decision on the recommendations and the implementation of Cabinet agreed recommendations, Ministers will receive advice from agencies on work programmes to implement the Review’s recommendations. The Ministry for Regulation will provide relevant advice to Ministers and advise and support to agencies at appropriate points during implementation.

¹² [Education \(Early Childhood Services Network Approval\) Regulations 2022](#), section 2.

¹³ [Education and Training Amendment Act 2024](#), section 78.

¹⁴ [Education \(Early Childhood Services Network Approval\) Regulations 2022](#), section 3.

¹⁵ Ministry of Education, [“Regulatory Impact Statement: Repeal of network approval legislation”](#) (19 March 2024).

¹⁶ Minister for Regulation, Press release, [“Government moves to lessen burden of reliever costs on ECE services”](#), (4 September 2024).

¹⁷ Minister for Regulation, Press release, [“Home-based ECE care made easier”](#), (6 November 2024).

¹⁸ Ministry of Education, [“Pay Parity Guide for ECE teachers and service providers”](#) Early Learning webpage.

Chapter 2: Context and challenges

35. This chapter provides an overview of the current state of the Early Childhood Education (ECE) sector (see Section A), outlines the primary drivers for regulatory changes (see Section B), and presents a vision for an improved regulatory system (see Section C).

Section A: Current state of the ECE sector

Key points about the current ECE market

National participation in ECE service is approximately **191,602 children**, with most attendees aged 3 or 4 years old. On average, **62% of preschool-aged children** attend ECE at any time.

The sector comprises **4,483 licensed services from 1,941 providers**. Nearly half (**47%**) have waiting lists, particularly affecting rural areas where competition is limited.

Māori and Pasifika children are more likely to be attending an ECE in an area of **high deprivation**. Kōhanga reo and home-based care services are declining year-on-year, while costs have risen faster than inflation since 2007.



Market competition and access

Competition mainly exists in **urban areas**, where families may have multiple ECE options within 10 km.



In contrast, **rural families** face limited choices, **impacting service quality and accessibility**.



Level of competition in the ECE market

36. We are interested in the level of competition in the ECE market because it can tell us two things. Firstly, it can tell us if there is pressure on ECE service providers to lift the quality of their services above minimum standards to attract business from their competitors. Secondly, it can tell us whether parents and whānau have choices of services. The latter is an objective in section 14 of the Education and Training Act 2020. We are interested in whether the objectives of the Act are being delivered by the regulation of the ECE market.

37. For this regulatory review, we investigated the level of competition experienced by education and care centres and kindergartens using 2023 ECE census data (these are the two most common service types within the term ‘ECE services’).¹⁹
38. There is no ‘national ECE market’ as parents and whānau look for a local service, so ‘competition’ was alternatively measured as the number of other ECEs within 1 km, 5 kms and 10 kms of an ECE centre. This is an imperfect proxy, as parents and whānau may have reasons for choosing specific ECE services, such as ones that are open for longer hours. The three different measures of competition revealed similar stories, so here we focus on the 10 km result.
39. The analysis related to services within a 10 km radius indicated:
- a. **most education and care centres and kindergartens face considerable competition within 10 kms**, even when centres with waiting lists are not considered to be genuine competitors because they cannot immediately enrol another child.
 - b. **rural ECE services face hugely lower competition than urban ECE services** on average and rural ECE services are much more likely to have no competitors, and
 - c. **ECE services in high socioeconomic areas face lower competition** than ECE services in low socioeconomic areas.²⁰ This may be due to a range of factors, such as high property prices prohibiting ECE services from entering those areas.²¹
40. To investigate whether there is an undersupply of ECE services in New Zealand we looked at the prevalence of waiting lists. We found most education and care centres and kindergartens have waiting lists. In 2023, 51 percent of education and care centres had a wait list for two-to four-year olds, and 76 percent of kindergartens had a wait list for two-to four-year olds.²²
41. We also compared the number of licensed ECE places with the number of children under the age of five years in different parts of New Zealand. Again, this is an imperfect proxy because not all parents and whānau want their children to attend ECE services.
42. We found a high ratio of children to ECE places (up to three children per place) in some parts of the country outside the cities (see Districts in Figure 2.1 below) and that there is likely to be an undersupply in smaller centres. This suggests ECE services may be insufficient to meet demand in these regions.²³ In most of Auckland and in other cities, ECE places are more plentiful relative to the number of children and are more likely to be sufficient to meet demand.

²⁰ Socio-economic status (SES) areas were defined in the analysis by using the Ministry of Education’s Equity Index. High SES was defined as an index of 5 - 10 and above, while low SES was defined as 4 or below.

²¹ This is an assumption and has not been mentioned in the submissions. Only ECE stakeholders made submissions, and parents who do not use ECE services may not have been interested in making a submission.

²² Waiting lists are an imperfect indicator of excess demand. Parents can put their names on multiple lists and may not remove themselves once they have found a service. Nonetheless, evidence shows that waiting lists are higher in areas where there are fewer ECE places per child.

²³ Supporting this conclusion, areas with a high proportion of children to ECE places also tend to have high proportions of ECE centres with waiting lists.

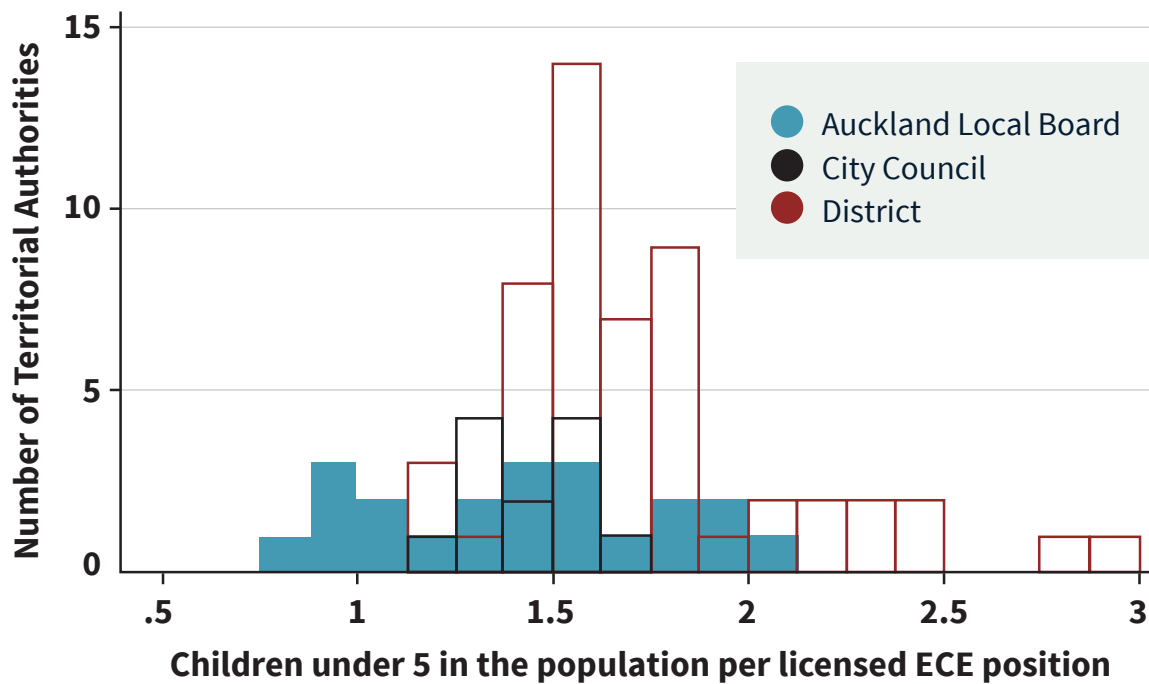


Figure 2.1: Children relative to ECE places in 2023 by territorial authority

43. This analysis is consistent with what we heard from submitters. We consistently heard there is unmet demand for ECE services in New Zealand.²⁴ Waiting lists are a likely indicator of unmet demand in some locations (though it may be an indicator of quality, if parents will wait for a specific service in an area where other options are available). Given parents and whānau need to access local ECE services, we need to focus on what is driving lack of supply in specific locations, rather than nationally.

Trends in the prices parents and whānau pay for ECE services

44. We heard from stakeholders that ECE prices are becoming unaffordable for many parents and whānau.²⁵ Our analysis has shown that, when compared against consumer prices overall, ECE prices rise higher than inflation.²⁶ ECE prices rose faster than prices in general between 2008 and 2020, and then rose more slowly between 2020 and 2024.

45. You will see these trends demonstrated in the chart below. Please note the introduction of the 20-hours free government subsidy which commenced from July 2007.

²⁴ Ministry for Regulation, “What Submitters told the Early Childhood Education Regulatory Review, (October 2024), p. 50.

²⁵ *Ibid.* pp. 90 – 93.

²⁶ This is based on the CPI Index Basket of goods. We do not have detailed information on ECE prices.

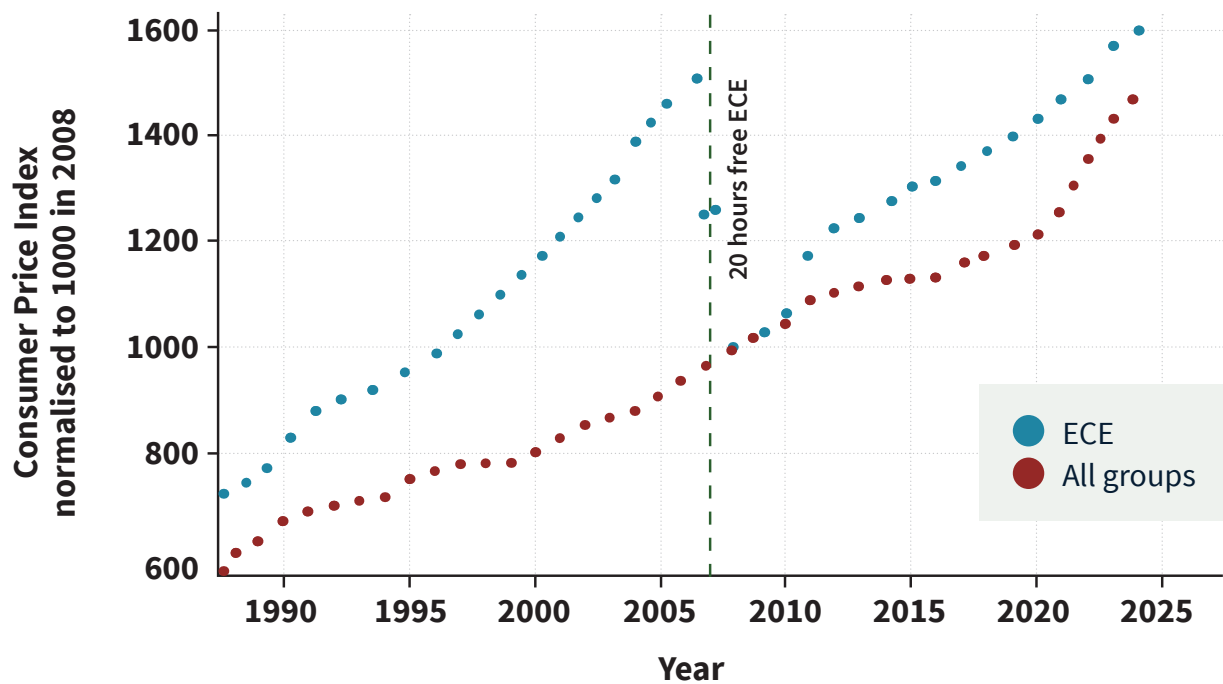


Figure 2.2: Comparison of ECE prices and the consumer price index

Government’s rationale for regulating ECE for social and economic outcomes

46. This section provides two points of discussion; firstly, it clarifies the government’s policy objectives for regulating for ECE outcomes by intervening in the ECE market; and secondly, it presents a counterfactual hypothesis of how the market would likely function without government regulation or funding influences.

Policy objectives

47. ECE is a merit good that has benefits for parents and whānau, children and society.²⁷ ECE plays a crucial role in the wider education system by preparing children for schooling. There is currently a reported lack of clear and agreed government objectives for the ECE sector, which leads to inconsistency in

decision-making and policy. The Education and Training Act 2020 (the Act) sets out some objectives for ECE regulations related to **children’s learning** and the **health and safety of children**. These objectives are narrowly focused on the regulations rather than on the sector settings as a whole.

48. Section 14 of the Act states the purpose of regulation in the ECE system is so:

“all children are able to participate and receive a strong foundation for learning, positive well-being, and life outcomes by –

- a) setting standards to support quality provision and learning; and
- b) supporting health, safety and well-being of children; and
- c) enabling parental choice by providing for licensing and funding of different types of provision.”

²⁷ A ‘merit good’ is defined as “Goods or services whose consumption is believed to confer benefits on society as a whole greater than those reflected in consumers’ own preferences for them. A good may be classed as a merit good if it causes positive externalities.” Oxford Reference, “[Merit goods](#)” webpage.

49. Supporting parents' ability to participate in **labour markets**, particularly women, is another reason why government intervenes in the provision of ECE services. This was also reflected in the feedback that we received from parents as part of the review.
50. Section 14(c) of the Act references "**parental choice**" as in choice of ECE service. We consider that the labour market participation policy objective complements s14(c) of the Act by enabling the choice of parents and carers to participate in the labour market. Without this policy objective being clear to regulatory leaders, we consider that policy and decision-making in the ECE regulatory system can be limited as the full range of costs, benefits and trade-offs are not fully considered by decision-makers.
51. Both the value to children and the value to parents and whānau are emphasised by the Early Learning Action Plan 2019-2029.²⁸ See the section Vision for an improved ECE regulatory system later in this chapter for further discussion.

Counterfactual – if there were no government interventions in the ECE market

52. Without any government intervention an ECE market would still exist. The market would respond to the demand from parents and whānau for ECE services; however, there would be failures in this market. These market failures would result in unacceptable levels of harm to children as well as an inadequate quantity and quality of ECE services in some areas. In a situation without government intervention in the ECE market, labour market participation would also be hampered by the need for parents and whānau to care for preschool aged children. It could also adversely impact future labour market productivity through poorer developmental and educational outcomes for children, as well as higher social welfare costs.

Current regulatory system for the ECE sector

53. This section describes the current regulatory system for the ECE sector. The following box summarises the key points for readers' ease of reference.

Key points about the ECE regulatory system

- The government intervenes in the ECE market through regulation, funding and evaluation.
- The Ministry of Education is responsible for the ECE regulatory system and funding system. The Ministry, as the lead regulator, is responsible for setting the operating requirements for licensed services and for enforcing these requirements
- The Education Review Office has a regulatory role through reviews and evaluations of ECE services' overall performance, including whether the services comply with regulatory standards.
- The primary regulatory tool is Licensing. It is used to allow entry to the ECE market, and to enforce compliance with the ECE regulatory requirements.
- All ECE centre-based services must be licensed and all licensed ECE services are entitled to government funding. Home-based and hospital-based services may be licensed but do not need to be. Playgroups may be certificated but do not need to be and certificated playgroups may be funded as well."

²⁸ Ministry of Education, "[Early learning action plan 2023 report](#)" accessed from the Education Counts "[Monitoring and Evaluating the Early Learning Action Plan](#)" webpage.

54. The government intervenes in the ECE market through regulation, funding and evaluation. We provide a brief summary of funding for ECE services section later in this section; however, determining whether there are issues with ECE funding is outside the scope of this regulatory review. This report will make references to aspects of ECE funding where there are regulatory implications that stem from the government’s approach to funding ECE. The Ministry of Education is currently developing the plan for undertaking a separate review of ECE funding.

55. ECE regulatory system features are summarised in Figures 2.3 and 2.4 and in the sub-sections that follow.

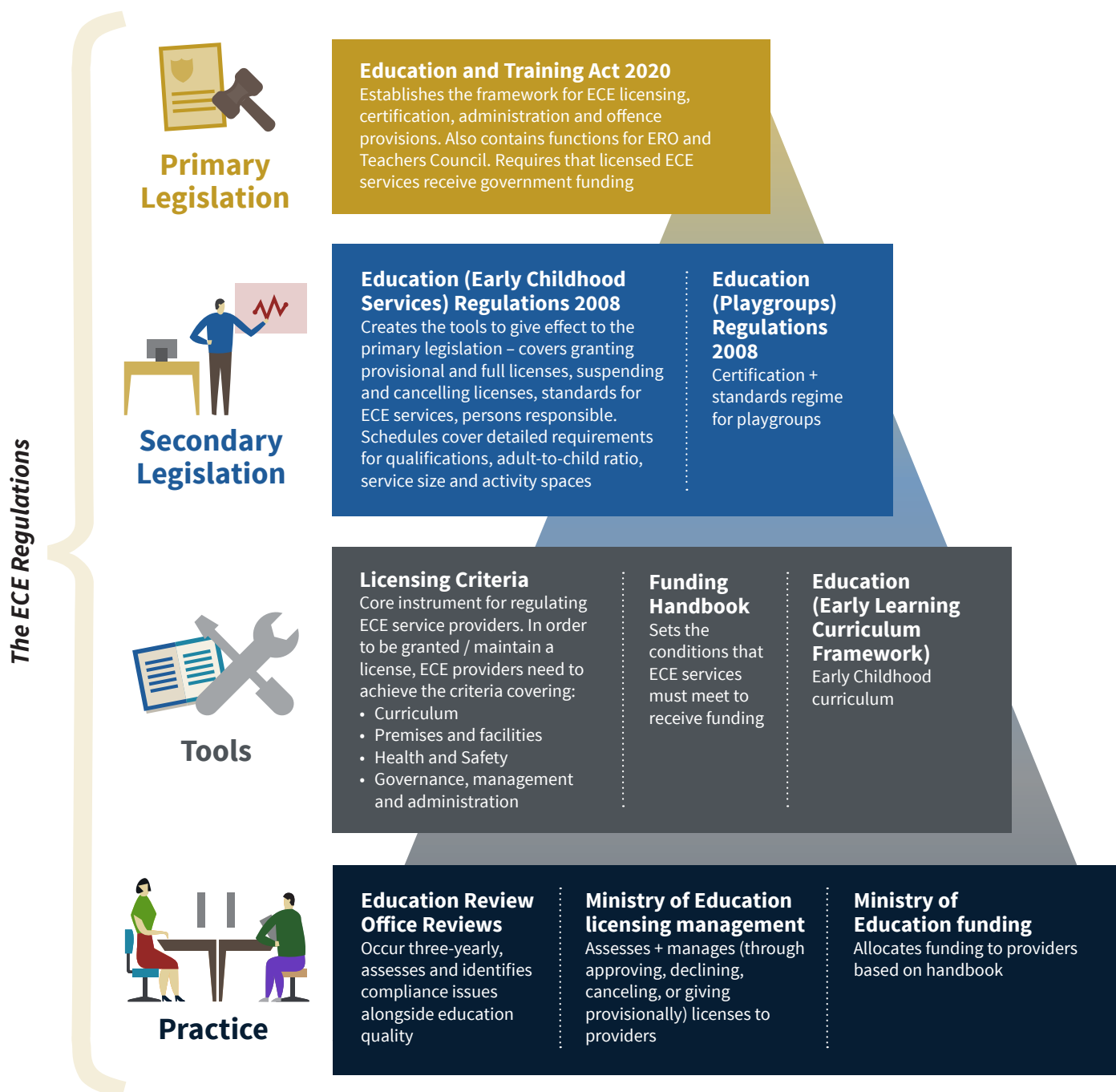


Figure 2.3 Features of the ECE regulatory system

Figure 2.4: ECE regulatory system features

Stewardship and leadership

The Ministry of Education (MoE) has primary responsibility for stewardship of the ECE regulatory system.

MoE administers the relevant legislation and regulations for ECE.

The Education Review Office (ERO)

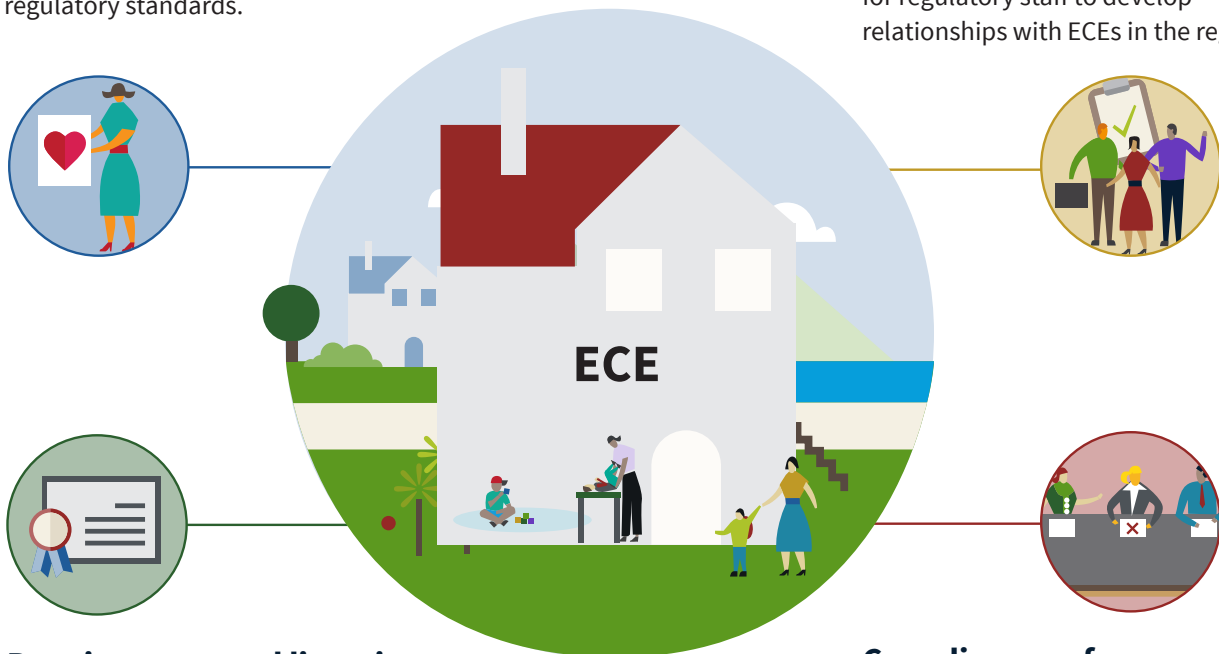
ERO is responsible for evaluating ECE service performance and assesses whether the service complies with regulatory standards.

Capability and practice

MoE has staff in regulatory agencies responsible for licensing ECEs as they enter the market and as they continue to operate.

ERO review officers visit services on a regular cycle (1 to 3 years) to assess compliance and evaluate the quality of education.

MoE and ERO have regional offices for regulatory staff to develop relationships with ECEs in the region.



Requirements and licensing

ECEs must be licensed and playgroups must be certified.

All ECEs must use the ECE curriculum except for Te Kōhanga Reo (they use one developed by Te Kōhanga Reo National Trust).

ECE services must comply with the ECE regulations.

They must also comply with any other relevant regulations from other government agencies.

Compliance enforcement

MoE responds to complaints, incidents and notifications.

ERO managers notify MoE when they have any compliance concerns when visiting an ECE.

MoE seek to support ECEs back into compliance where possible.

Compliance tools include issuing a written direction to remedy immediate health and safety risks, putting an ECE on a provisional licence, suspending a licence, and, where necessary, cancelling a licence.

Stewardship and leadership

Roles and responsibilities

56. This section demonstrates which parties in the regulatory system have responsibilities for specific regulatory settings.
57. The Minister of Education has Cabinet portfolio responsibility of education which includes early childhood education (ECE). The responsibility for ECE has been delegated to the Associate Minister of Education.²⁹
58. The Secretary for Education administers the relevant ECE aspects of the Act. In practice, the Secretary delegates ECE duties to officials.
59. Ministry of Education officials, on behalf of the Secretary for Education, administer the Education and Training Act 2020, including implementing and operating the regulation of ECE services.
60. The Chief Review Officer designates Review Officers to review the performance and assess the quality of pre-tertiary education providers in relation to the educational services they provide. The Education Review Office's legislative mandate extends into Early Childhood Education, where its reviews are focused on the quality of education in a safe and supportive environment. Officials from other relevant regulators and local authorities have a role in the regulation of ECE services. See Figure 2.5 below for a list of their key functions.

²⁹ Some aspects are not included in this delegation, including in relation to learning support, curriculum and educational outcomes.

Current State



Figure 2.5: Relevant ECE regulators for licensing

61. The Ministry of Education undertakes the initial licensing assessment process of an ECE service. Most of the parties listed above will have an ongoing role to regulate within their remit, which can include responding to complaints or issues raised by Ministry of Education or Education Review Office officials and other parties.

Case study 1: Who regulates ECEs for emergency management?

Fire and Emergency New Zealand (FENZ) officials will visit an ECE service to determine if the emergency management approach meets the required standards. Emergency management standards are owned by FENZ. The standards are also expressed in the Ministry of Education Licensing Criteria for ECEs.³⁰

The Ministry of Education will not regulate the emergency management plans on behalf of FENZ. Instead, if FENZ states the ECE has not met the required standards, the Ministry of Education will record that this aspect of licensing criteria have not been met.

The compliance breach will then be two-fold: firstly, the ECE will be in breach of FENZ emergency management standards, and secondly, the ECE will fail to meet this aspect of the ECE licensing criteria (in the case of an ECE that is seeking to enter the market) or in breach of licensing criteria (for ECEs currently in operation). This is an example of overlapping regulatory systems.

ECE legislation

62. The government's regulation of ECE is provided for by Part 2 of the *Education and Training Act 2020* (the Act).³¹ This legislation covers:

a. **Licensing and certification:** Subpart 1 requires that all ECE centre-based services must be licensed. Home-based and hospital-based services may be licensed but do not need to be. Playgroups may be certificated but do not need to be. It provides for the licensing and certification, administration, and offence provisions of services.

b. **Administration:** subpart 2 allows the Minister of Education to prescribe the curriculum; prohibits

corporal punishment and seclusion in ECE services; requires police vetting to be undertaken for non-teaching staff and others as necessary; allows kindergartens to charge fees; and provides parents with rights of entry (with exceptions).

c. **Offences:** subpart 3 includes the requirement for ECE service providers to be licensed, and explains the offence related to obstructing an authorised person's entry to an ECE, and the offence related to insulting, abusing or intimidating an ECE teacher or staff member.

³⁰ Ministry of Education, "[Emergencies health and safety criteria for centre-based ECE services – HS4 – HS8](#)" guidance published 9 July 2024.

³¹ [Education and Training Act 2020](#), Part 2 Early childhood education.

ECE regulations

63. The three key regulations governing ECE service provision are each described below.
- Education (Early Childhood Services) Regulations 2008.**³² These regulations outline the requirements related to licensing and standards for ECEs. Among other things, the regulations define: curriculum standards; qualification; teaching ratios and service size standards; premise and facilities standards and health and safety standards. The regulations also specify the additional duties of the ‘person responsible’ in an ECE setting.³³
 - Education (Registration of Early Childhood Services Teachers) Regulations 2004.**³⁴ These regulations require that the person responsible in teacher-led services be registered.
 - Education (Playgroups) Regulations 2008.**³⁵ Playgroups may be certified. Certificates for playgroups set the standard for curriculum; ratio; premises and facilities; health and safety practices and administration.

Requirements and licensing

64. The requirements that ECE services must comply with are stated in the relevant regulations (see description in previous section). All centre-based ECE services must have a license to operate.³⁶ Each licensed service provider must comply with the minimum standards in the regulations for curriculum; qualifications; ratios and service-size; premises and facilities; health and safety practices and governance; management and administration.
65. The purpose of the minimum standards is to ensure the education, care, health, comfort, and safety of children attending licensed early childhood services.³⁷ The Secretary for Education uses licensing criteria to assess compliance against the regulatory standards. The licensing criteria we propose could be either removed or adjusted are discussed in *Chapter 5: Using the right tools*.

Capability and practice

66. The Ministry of Education and the Education Review Office have staff based in regional offices throughout New Zealand. Their responsibilities related to ECE regulation are noted below.

Table 2.1 ECE responsibilities of the Ministry of Education and the Education Review Office

Ministry of Education	Education Review Office
<ul style="list-style-type: none">• License new ECE service providers• Investigate and respond to complaints about specific ECE service providers• Investigate any ECE service they have concerns about (independent of referrals and complaints)• Provide SELO³⁸ or Whakapiki i te reo Māori professional development programmes to ECE services struggling with compliance• Issue provisional licenses, suspend licenses and cancel licenses as sanctions in response to breaches of regulatory requirements. It also de-licenses ECEs when they are voluntarily exiting the market.	<ul style="list-style-type: none">• Review ECE services within a three yearly cycle (i.e. all services are visited at least three-yearly, while others may be visited more often based on risk-based compliance monitoring)• Refer any concerns to the Ministry of Education to follow up

67. ECE services are assessed against the licensing criteria to determine level of compliance with the minimum standards set in Regulations. This approach has been taken because licensing is the primary regulatory tool the Ministry of Education staff in regulatory roles have for enforcing compliance.
68. The Ministry publishes guidelines to support ECE service providers.³⁹ The Education Review Office also publishes review reports for each ECE service, as well as research about early learning.⁴⁰ Both activities require significant national office resource and capability.

Compliance and enforcement

69. The Ministry of Education is responsible for assessing compliance of ECE service providers with regulatory requirements and licensing criteria, beginning with an initial, thorough assessment when ECE services enter the market.⁴¹ While this initial licensing phase involves a detailed check of all criteria for compliance or potential for compliance once operational, ongoing compliance monitoring by the Ministry of Education largely remains reactive rather than systematic and risk-based. While the Education Review Office's proactive, risk-based monitoring contributes to identifying compliance issues, the absence of a comprehensive risk-based compliance monitoring framework overseen by the Ministry of Education (the Ministry) as regulatory steward and lead regulator, and the Education Review Office's limited enforcement powers create vulnerabilities in the integrity of the regulatory system.

70. Following initial licensing, the Ministry primarily engages with ECE providers in response to complaints, the Education Review Office findings, notifications, or specific incidents. Regional Ministry staff in regulatory roles manage the investigation and response to these complaints, but they rely on a reactive approach rather than a framework for proactive, risk-driven monitoring. Ministry officials report that complaints are becoming more complex and vary by region, and the Education Review Office share any compliance concerns related to the early childhood regulations and licensing criteria with the Ministry for follow-up.

71. The current regulatory framework and settings have not evolved alongside the sector's complexity, heightened societal expectations, or the changing nature of service provision. The lack of an integrated approach between the Ministry and the Education Review Office to compliance monitoring and enforcement limits the Ministry's ability to consistently identify and address high-risk areas before issues arise.⁴²

72. In cases of identified non-compliance, the Ministry generally works with providers to develop corrective actions and may issue provisional licenses when necessary. However, the perpetual licensing model, combined with a lack of regular compliance reviews, fails to adequately support early identification of compliance issues, creating vulnerabilities in achieving consistent regulatory standards and managing key sector risks.

³² [Education \(Early Childhood Services\) Regulations 2008](#)

³³ [Education \(Early Childhood Services\) Regulations 2008](#), Part 3.

³⁴ [Education \(Registration of Early Childhood Services Teachers\) Regulations 2004](#)

³⁵ [Education \(Playgroups\) Regulations 2008](#)

³⁶ [Education and Training Act 2020](#), section 15(1).

³⁷ [Education \(Early Childhood Services\) Regulations 2008](#) (SR 2008/204) (as at 01 October 2024) 40 Outline and purpose of Part – New Zealand Legislation

³⁸ SELO stands for “Strengthening Early Learning Opportunities” for children, whānau, families and communities). SELO and Whakapiki i te

reo Māori are professional development programmes to support the delivery of early learning services. Whakapiki i te reo Māori is for teachers who use te reo Māori. Ministry of Education, [“Professional development in early learning”](#) webpage.

³⁹ Ministry of Education, [“0-6 years Early Learning”](#) webpage.

⁴⁰ Education Review Office, [“Early learning”](#) webpage.

⁴¹ This initial check is a two-stage process where service providers are first issued a probationary licence before being issued a full licence.

⁴² While there is a MoU between the Ministry for Education and the Education Review Office, a lack of role clarity between the two organisations persists.

Summary of funding for ECE services

73. This section gives an explanation how funding from Ministry of Education is applied to the ECE sector. While the topic of ECE funding is outside the scope of the ECE regulatory review, some funding rules intersect with regulation and therefore it is important to note some key facts about the nature of ECE funding as they relate to the ECE regulatory regime. It should also be noted that the regulatory review does not examine or address issues pertaining to misuse or fraudulent use of ECE funding by ECE providers.
74. The operational costs for ECEs are funded through government funding from Ministry of Education and fees paid by parents and whānau. The nominal amount of these fees differs by ECE service provider. Private ECE providers are permitted to operate for profit and there is a mix of for profit and non-profit providers in the market.
75. All licensed ECEs and certified playgroups receive grant funding from the government.⁴³ Ministry of Education publishes and maintains the online *ECE Funding Handbook*⁴⁴ and *Playgroup Funding Handbook*.⁴⁵ These handbooks explain how ECE funding is applied.
76. Government funding to the ECE sector is approximately **\$2.8 billion per annum**.⁴⁶ Funding comes to ECEs in the following categories:
- ECE Funding subsidy**⁴⁷ This is the primary form of government funding for all licensed ECE services. Teacher-led services receive different rates of funding than whānau-led and parent-led services. Rates are split by children aged under two-years old, and children two-years old and over.
 - 20 hours ECE**⁴⁸ ECE services and kōhanga reo that opt in to this funding stream are funded to provide services to children aged 3 – 5+ years for a maximum of six hours per day for 20 hours per week in lieu of charging parents and whānau for those hours of service.⁴⁹
- Equity funding**⁵⁰ ECE services can receive equity funding. It can be sought for different reasons, such as funding for lower socio economic communities; funding for special needs or for children from non-English speaking backgrounds; funding for languages other than English (including sign language), and funding for isolation.
 - Māori and Pacific immersion teachers' allowances**⁵¹ Since 2023, ECEs can apply for funding to pay allowances to teachers in Māori and Pacific or immersion ECE services.
 - Targeted funding for disadvantage**⁵² This funding is dedicated to support the participation of children from disadvantaged backgrounds to attend ECE services.
77. The government's **20-hours free funding** that is paid to ECE services via the Ministry of Education does not subsidise services to children under the age of two years.⁵³ Parents and whānau may be eligible to access other forms of government funding to assist with meeting the costs of ECE for children at any age under six years– the Childcare Subsidy paid by Work and Income, and the FamilyBoost childcare payment recently introduced by Inland Revenue.
78. The **Childcare Subsidy** from Work and Income helps eligible parents and whānau by subsidising their childcare costs through direct payments to the ECE service provider.⁵⁴ The number of hours of ECE services subsidised per week depends on the circumstances of the child's parents or whānau; for example, whether they are working, studying, a shift worker, seriously ill or disabled, or have other relevant circumstances.⁵⁵
79. The **FamilyBoost** childcare payment from Inland Revenue helps eligible parents and whānau pay for the cost of ECE through a rebate system.⁵⁶ This payment has been available to claim from October 2024. Eligible households may be able to claim up to 25 percent of weekly childcare fees, up to a maximum of \$975 in a three-month period. FamilyBoost payments are made to parents and whānau directly.

- 43 [Education and Training Act 2020](#), subpart 1 Funding, section 548.
- 44 Ministry of Education, "[ECE Funding Handbook](#)" Early Learning webpage.
- 45 Ministry of Education, "[Playgroup Funding Handbook](#)" Early Learning webpage.
- 46 New Zealand Treasury, [2024/25 Vote Education Appropriation for Early Learning](#), 30 May 2024. See references to (M26) and (A19) on p. 3. This figure includes licensed and certificated services.
- 47 Ministry of Education, "[ECE Funding Handbook](#)" Early Learning webpage.
- 48 Ministry of Education, "[20 hours free for ECE services](#)" Early Learning webpage.
- 49 In home-based services educators can request top-up payments.
- 50 Ministry of Education, "[Equity funding](#)" Early Learning webpage.
- 51 Ministry of Education, "[Funding and data](#)" Early Learning webpage.
- 52 Ministry of Education, "[Targeted funding for disadvantage](#)" Early Learning webpage.
- 53 New Zealand Government, "[Help paying for childcare](#)" webpage.
- 54 Work and Income, "Childcare Subsidy" webpage.
- 55 MSD has further targeted subsidies - Guaranteed Childcare Assistance Payments (GCAP) for children of young parents, and Early Learning Payment (ELP) for children of families in Oranga Tamariki's Family Start or Early Start programmes.
- 56 Inland Revenue, "[FamilyBoost](#)" webpage.

Section B: Drivers for ECE regulatory change

80. This section briefly explains what the failures are in the ECE market, and what the impact of those failures are for the parties in the sector. This section concludes with a discussion of why ECE regulation has not prevented those market failures and explains the costs and benefits of the current ECE regulatory system.

Market failures and information gaps

- Two primary market failures affect the ECE sector:
 - information asymmetry regarding the health and safety practices and education quality of ECE services, and
 - undersupply of ECE services, which can lead to higher prices and longer waiting lists.
- Parents often lack access to clear, comparative information on service quality, limiting informed choice.

- Additionally, compliance complexities and regulatory requirements deter new providers from entering the market, especially in underserved areas.

Rising costs and barriers to entry

- ECE fees have consistently outpaced inflation, making affordability a barrier for families. Compliance requirements create additional costs for providers, limiting market growth and accessibility.

What are the market failures in the ECE sector?

81. In the review we have diagnosed two main failures in the current ECE market. They are:

a. **information asymmetry:** Parents and whānau know less than providers about the ECE services they are purchasing. This manifests in two primary ways:

- i. **Health and safety of children:** Parents will not have full knowledge of the risks their children are exposed to in an ECE service and malicious, negligent or incompetent providers may engage in practices that are harmful to children.

- ii. **Educational quality:** Parents may struggle to compare the educational quality of different ECE services. This may make it hard for higher quality services to out-compete lower quality services.

b. **undersupply:** The market does not provide sufficient quantity and/or quality of ECE services at affordable prices in some areas. This means that children are not able to fully benefit from the educational and developmental benefits that ECE provides. It can also hinder the ability of parents and whānau, especially women, to return to the workforce.

Information asymmetry

82. When parents and whānau do not have access to good enough information about their ECE service provider options, their decision-making will be hampered because they will not be able to accurately judge any particular ECE service by factors such as health and safety risk for their child(ren) or educational quality in comparison to other available ECE service providers. While information is available in Education Review Office reports this information is not always as accessible to parents as it could be. For example, they may not know that the reports exist, where to find them or fully understand them. These reports do not cover all the information that would allow a parent or whānau member to compare service quality; for example, they do not provide information on historic compliance action taken against the provider.
83. **Health and safety of children:** Regulation is needed to mitigate the health and safety risks to children because provision of information would not sufficiently mitigate this risk. While unsafe providers might go out of business when information about their poor safety record spreads, the number of accidents, some potentially fatal, that would likely occur for this market mechanism to operate would be unacceptable. However, it is impossible to eliminate all risk and all that can be expected is for providers to work consistently to reduce risks.
84. **Educational quality:** This can be largely mitigated through better provision of information to parents. However, even if better information is available, it is not possible to guarantee that all parents will be aware of it or know how to access it. Some degree of regulation is likely to be needed as a backstop to create a floor below which standards cannot fall.
85. In the review we sought to understand whether there was any correlation between competition between ECE services and the level of quality in those services to determine whether parents and whānau have higher demand for services of a higher quality (see Level of competition in the ECE market section above). Unfortunately, we have not been able to develop any conclusions about either the level of quality in ECEs, or the visibility of that quality to parents and whānau, for a range of reasons which are discussed next.
86. **Parents and whānau report selecting an ECE service based on teacher ratios as well as factors of convenience.**⁵⁷ Parents and whānau report finding teacher-child ratios as the second most 'very important' category in their selection of an ECE with 'information in Education Review Office reports coming tenth in a prioritised list.⁵⁸ Choosing an ECE service based on proximity to home, and service hours were other factors.
87. **Better teacher ratios do not always mean better quality of ECE services.**⁵⁹ A lower number of children per teacher is desirable from the perspective of both teachers and parents and whānau. The legislated measure for teaching ratios refers to number of children in attendance and the number of adults employed at the ECE service (regardless of whether they are teachers). This calculation is adjusted for the age of the children.
88. **Education Review Office reports on ECE services' compliance with the minimum standards.** There is no other government communication of ECE service quality. The role of government regulation in the ECE sector is to ensure minimum standards are met that ensure children are well cared for and educated. Staff in regulatory roles provide additional supports for ECEs to improve their quality, such as providing guidance materials and recommendations (above the minimum standards) for how they could improve their quality.

⁵⁷ Ministry for Regulation, "[What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024), p.22.

⁵⁸ The top-rated category was 'Positive interactions between children and staff'. Ministry for Regulation, "[What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024), p. 22. This data was collected before ERO updated its report format in July 2024.

⁵⁹ While ratios are widely used as a proxy for quality in the ECE sector good ratios do not automatically mean good quality. Quality should be measured through outputs rather than inputs.

89. **Market conditions may not be driving quality improvements due to an overall information asymmetry.** Parents and whānau have limited access to information, other than three-yearly Education Review Office reports, about any ECE service. They cannot get up to date information about whether any ECE service they have an interest in, has any open investigations into complaints, or whether there have been detected or undetected serious breaches of health and safety requirements since the last Education Review Office inspection. High levels of government subsidy as well as relatively inelastic demand (i.e. because ECE will be a necessity for many parents and whānau so that they can go to work they will be willing to tolerate higher prices and or lower quality than they would like) can reduce the incentives for services to improve and may mean that poor performing ECE services will not exit the market as quickly as they might otherwise.

90. In July 2024, the Education Review Office introduced a new report format to the ECE sector. In the development phase parents were consulted on the report's new look, accessibility, and clarity and this feedback informed the changes made. This report clearly identifies if a service is meeting compliance or improvement is required. In addition, the new report format shows if a service is above or below the quality threshold in relation to the learner and their learning, collaborative professional learning, and if development builds knowledge and capability, leadership, and stewardship. This change should improve the information accessibility for parents and whānau.

Undersupply

91. The undersupply of ECE services will be partially caused by the nature of the ECE market. Some areas (in particular, low population density areas) may not have access to ECE services or only have access to lower quality ECE services or services that do not suit their preferences, because it is not financially viable to provide services in those areas.

92. However, evidence gathered by the review including the prevalence of waitlists, and the concerns presented by submitters, suggest that entry into the ECE market is not responsive to excess demand. While excess supply is associated with more ECE providers leaving the market, the current state of excess demand does not seem to induce more new providers to enter the market to meet this demand. This suggests there are barriers to entry that are disrupting the functioning of the ECE market.

93. These barriers may be:

- a. **an inability to recruit qualified ECE teachers** could be acting as a limit on the ability of new ECE services to open (e.g. new services are not able to open because they cannot recruit enough qualified teachers to meet regulatory requirements or funding conditions). See Figure 2.6 below.
- b. **a lack of clarity over what is required to meet licensing criteria**, especially when combined with an overly stringent application of the licensing criteria, could be creating both too high a regulatory barrier to entry and uncertainty that disincentivises market entry and the expansion of operating ECE services.

94. Figure 2.6 shows that a significant proportion of regions in New Zealand have relatively few qualified ECE teachers to meet the needs of three and four year old children in that region. A lack of qualified teachers in these regions would constrain the ability of potential new ECE centres to enter those markets. Figure 2.6 also shows that it is disproportionately rural areas that have the fewest teachers relative to the number three and four year old children.

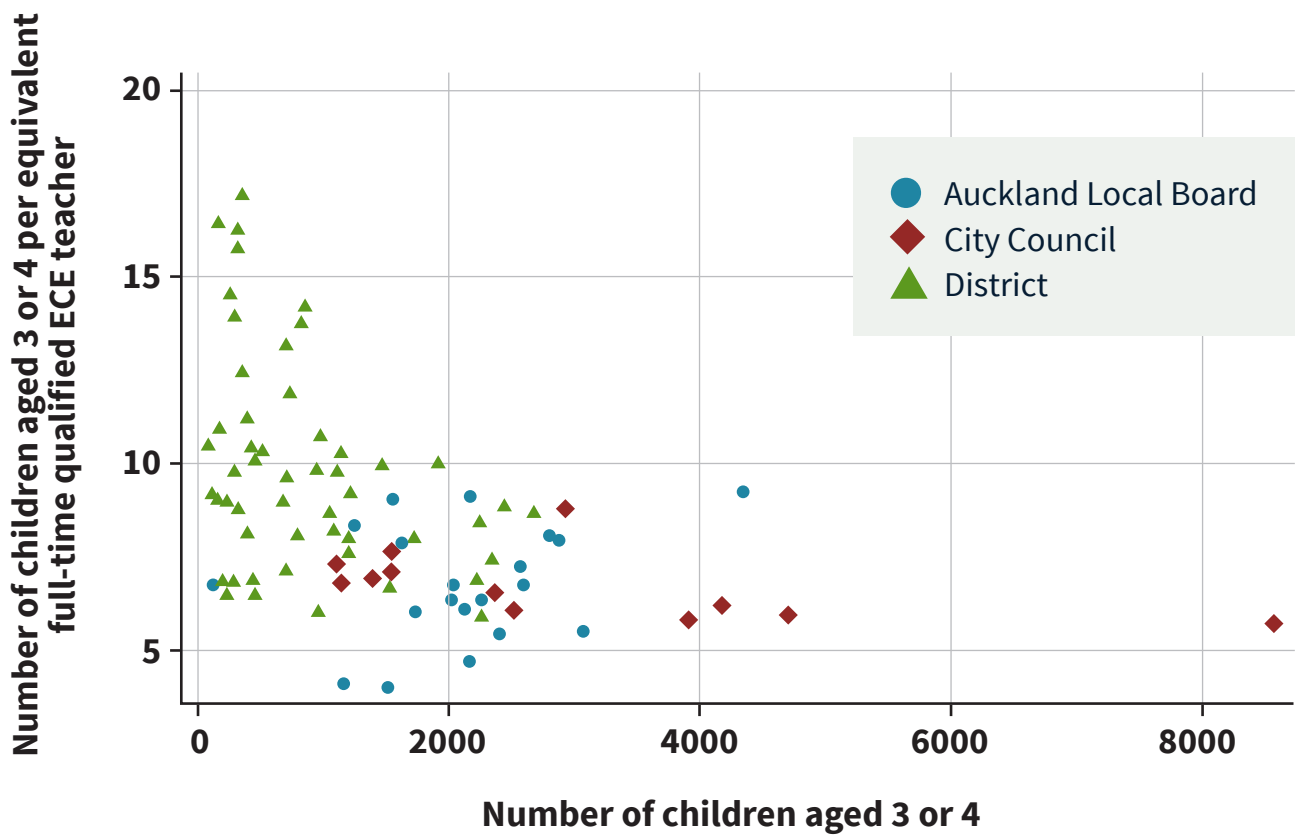


Figure 2.6 Qualified ECE teachers relative to children aged 3 or 4 by local authorities

95. There are likely to be other, non-regulatory barriers that prevent the ECE market from meeting the demand for services. For example, the high cost of property may prevent new services being established in certain neighbourhoods. Also, each local authority will have an influence on the building and resource consent requirements for new ECE buildings. These will continue to act as barriers and are worth considering alongside the ECE regulatory system reform recommendations in this report.

Is regulation the best way to address these problems?

96. This section describes the aspects of the regulatory system that have either failed to act to prevent the market failures or have exacerbated the market failures. We consider that the current regulatory settings, tools, capability and practice:

- a. only partially address information asymmetry:

- i. **Health and safety of children:** Parents and whānau have no way of knowing if an ECE is able to keep their children safe from harm, so they must place their trust in the regulatory system to ensure ECE services meet at least the minimum standards for health and safety. The regulatory system has undoubtedly prevented a lot of harm to children that would otherwise have occurred if the regulations had not been in place. However, the risks are not as well managed as they could be as compliance checks are not regular enough and are too focused on paperwork.
- ii. **Educational quality:** Information on ECE services' educational quality has not been sufficiently clear and accessible for parents and whānau to be able to quickly and easily compare ECE services. In July 2024 Education Review Office updated their report format which should improve the public accessibility of information and help address this issue to a degree.

- b. exacerbates the undersupply of ECE services by creating compliance burdens on ECE service providers that inhibit their operations, and any ambitions for expansion and innovation. The compliance burdens arise from confusion about regulatory requirements leading to document-heavy compliance actions by ECE service providers and regulators, and a lack of a proportionate approach to addressing any identified compliance breaches. Compliance administration draws teaching staff away from educative contact time with children.
97. Throughout the review, we have heard from stakeholders about a wide range of practical issues that arise where regulatory practice and ECE service provision meet, for example, in licensing, in Education Review Office reviews and in Ministry of Education compliance enforcement activity. We consider that regulatory practice is where deeper, systemic regulatory and market failures become visible to all parties.
98. The problems identified in this review stem from a broad array of inadequacies across the regulatory spectrum: from outdated system design; unclear roles and responsibilities in leadership; the absence of strategy setting; inadequate regulatory enforcement tools; unbalanced workforce capability and the lack of clarity and direction for regulatory practice.
99. The most prominent regulatory failure issue we have found is the Ministry, as the lead regulator, does not systematically incorporate proactive, risk-based compliance monitoring into its regulatory operations, as they do not currently have the structured framework or mechanisms in place to do so. Monitoring is carried out primarily through Education Review Office reviews, which also focus on the overall quality of the education and care provided by the service. However, the Education Review Office does not have enforcement powers or regulatory tools to intervene when non-compliance is identified.
100. This issue has many causes and effects. For example,
- a. **Causes:** The current ECE regulatory approach does not align with best practice, which would require the inclusion of a risk-based compliance monitoring function, with enforcement powers, to effectively mitigate risks and prevent harm to children, in a timely manner. This function would need to be provided for by the legal framework, i.e. in legislation or regulations, and would need to be resourced sufficiently to operate.
 - b. **Effects:** In the absence of this compliance monitoring function within the Ministry of Education, the licensing criteria appear to have been applied as a very high bar to market entry with several licensing criteria that are not proportionate to the risk (see chapter 5). The Ministry then provides only a reactive response to compliance concerns raised by the Education Review Office or other parties. This means ECE non-compliance can remain undetected for substantial periods of time which puts the safety of children in ECEs at risk.
101. This report makes several recommendations for how to improve the regulatory approach to better address these market failures. These recommendations are described in both the *Executive summary* and in Chapters 3 – 6. Some of the recommendations will be:
- a. **cost neutral to government:** e.g. by removing superfluous licensing criteria and/or by moving some criteria to other regulatory tools (see *Chapter 5: Using the right tools*)
 - b. **at a cost to government:** e.g. developing a compliance monitoring system to enable a risk-based approach to enforcement (see *Chapter 3: Setting it up right*).
102. We expect that the implementation of the suite of recommendations will have a broad range of benefits to all parties. We describe the indicators of successful implementation in *Section C: Vision for an improved ECE regulatory system*.

What are costs and benefits of the regulations?

103. We have found that the combination of the ECE market failures and the current regulatory settings are putting undue limits on the abilities of all parties in the system to exercise choice as well as imposing other costs. We anticipate implementation of the recommendations in this report will reduce or remove some compliance costs and expand the range of choices parties can make in the ECE sector. In Chapters 3 – 6 we discuss each of the recommendations in detail. This includes how some recommendations would contribute to the reduction and removal of certain compliance costs or administrative burdens.

104. The following table charts the main cost and benefits of the current ECE regulations.

Table 2.2 Costs and benefits of current ECE regulations

	Costs	Benefits
Children	<p>Less time spent with teachers when the teachers are completing compliance administration</p> <p>May not attend ECEs if their parents and whānau cannot access or afford it</p>	<p>Having education and care that can improve their social and economic outcomes over their lifetime, getting school-ready, and learning how to make positive social connections with other children and teachers</p>
Parents and whānau	<p>Parents and whānau are limited in their choice of ECE services to access for children by:</p> <ul style="list-style-type: none"> the high costs of fees, which can be unaffordable for many parents and whānau⁶⁰ limited service offerings near where they live, especially if they live rurally, and information asymmetry which prevents them from understanding the level of quality in the ECE services they could choose from. <p>Most parents and whānau pay fees for the ECE services they access</p>	<p>Parents and whānau benefit from ECE service being regulated. The benefits draw from both their ability to participate themselves in the labour market and the ability to entrust the care and education of their pre-school aged children to an ECE service</p>
ECE service providers	<p>Current ECE service providers report they are limited in their choices to enter, expand, and innovate in the market by high barriers to entry for new ECE services and to expansion and innovation for existing ECE services.</p> <p>ECE service providers also face the costs from the administrative burden of compliance requirements. This burden is a financial cost, a time cost, and an opportunity cost for the time teaching staff spend completing administration instead of educating children. The barriers to service expansion also represent an opportunity cost of unrealised revenue</p>	<p>There are two key benefits:</p> <ul style="list-style-type: none"> They can operate a business which is subsidised by government. It would be unlikely for any ECE service to be operationally viable without substantial government subsidisation. Risk in the ECE sector is effectively shared between service providers and the regulator. In the event of an incident, such as harm to a child, providers may refer to their compliance with these regulated standards as evidence that they were operating within approved guidelines. In these situations, the focus may shift to adequacy of the standards themselves, to ensure they reflect expectations for child safety and service quality

⁶⁰ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review.”](#) (October 2024), pp. 90 – 93.

	Costs	Benefits
ECE workforce	<p>ECE workforce members are limited in their career choices by the ‘all or nothing’ approach to teaching qualifications in ECE service centres. Only teachers with at least a three-year bachelor’s degree (or equivalent) are counted as ‘qualified’ while teachers with qualifications below this level are considered ‘unqualified.’ This inhibits career pathways as there is no recognition of sector experience.</p> <p>Internationally, many comparable countries recognise ECE qualifications below degree level. While there are processes for recognising international qualifications, there are significant barriers for experienced ECE teachers with international ECE qualifications below degree level from entering the New Zealand market.</p> <p>Other costs:</p> <ul style="list-style-type: none"> • The time they need to spend complying with complex and sometimes confusing regulatory requirements, and • The cost and time spent on gaining teaching qualifications 	<p>ECE teaching staff benefit from the regulations including minimum adult-to-child ratios. The minimum ratio aims to keep both teacher and children safe. Please note, it is outside the scope of this review to consider whether the current ratio is safe or not</p>
Ministry of Education and Education Review Office	<p>Ministry of Education officials are limited in their choice of where to best focus compliance assurance activities by:</p> <ul style="list-style-type: none"> • The limited integrated compliance monitoring system which could create the data and insights to enable regulators to target resources to areas of highest risk, and • inadequate regulatory tools, capability and inconsistent regulatory practice which places staff in regulatory roles into a reactive and an unprioritised manner of working. <p>Ministry of Education and the Education Review Office have finite funding for their regulation and evaluation activities respectively. They do not currently have the ability to implement new regulatory tools or enablers that will cost new money</p>	

⁶¹ *Ibid.* chapter 3, from p. 45.

⁶² Teachers are required to have a NZQF Level 7 qualification to count as qualified. Which is a Bachelor’s Degree or equivalent.

Section C: Vision for an improved ECE regulatory system

105. This section presents the government’s agreed vision for early childhood education and outlines the regulatory challenges that need to be tackled before the vision can be achieved.

Goals for an enhanced ECE framework

- The current agreed vision for an improved ECE regulatory framework emphasises accessible, high-quality services that support diverse needs. This system should minimise administrative burdens while ensuring safety, quality, and choice for families.

Key objectives

- **Enhanced Transparency and Accountability:** Clearer standards and simplified compliance processes to reduce confusion and costs.
- **Targeted Support for Growth:** Address barriers for new providers, particularly in rural areas, to promote equitable access to services.
- **Risk-Based Approach:** Prioritise compliance efforts on high-risk areas and streamline lower-risk processes to support providers efficiently.

106. The Early Learning Action Plan 2019-2029 states the government’s vision is for:

“New Zealand’s early learning system enables every child to enjoy a good life, learn and thrive in high quality settings that support their identity, language and culture, and are valued by parents and whānau.”⁶³

107. The ECE regulatory review supports this vision. The findings and recommendations in this report aim to equip the Ministry of Education and the Education Review Office to undertake the changes necessary to achieve this vision in the ECE sector.

108. The recommendations in this report support achieving that vision by proposing three regulatory reforms for ECE regulation; they are to:

- a. modernise the ECE regulatory system to better support the ECE market to grow and innovate and to enable regulators to better assure

compliance by Setting it up right (chapter 3) and Leading it the right way (chapter 4)

- b. simplify and clarify the range of ECE regulatory requirements to reduce compliance burdens on ECE service providers and relieve regulatory confusion for all parties by *Using the right tools* (chapter 5), and

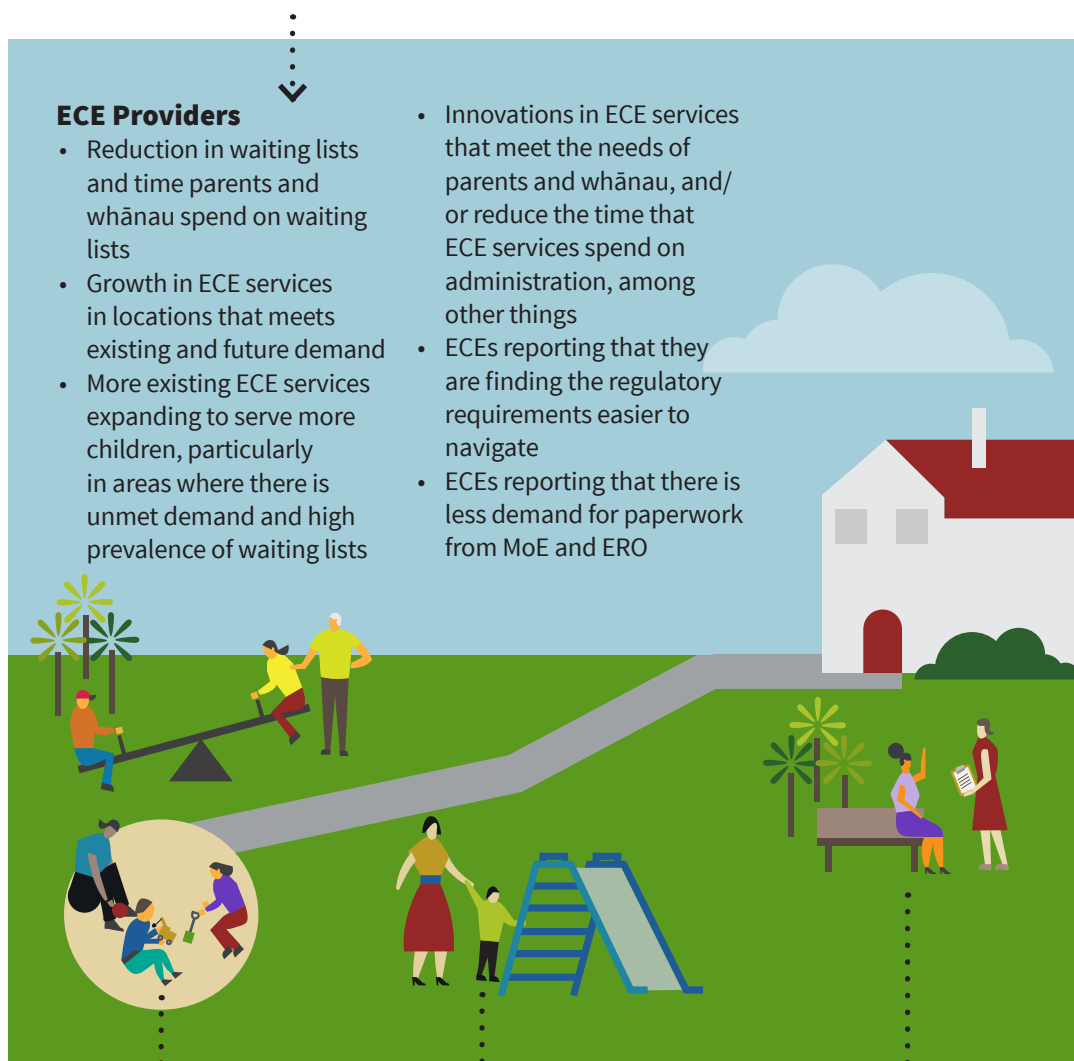
- c. improve support for the ECE sector to communicate requirements more clearly and ensure they support ECE services to implement regulatory changes so they can be sure they are *Doing it the right way* (chapter 6).

109. This will benefit parents and children by making ECE more affordable, accessible and achieving better outcomes.

⁶³ Ministry of Education, “[Early learning action plan 2023 report](#)” accessed from the Education Counts “[Monitoring and Evaluating the Early Learning Action Plan](#)” webpage.

How will we know if we are getting closer to the vision for the ECE sector?

What success would look like...



ECE Providers

- Reduction in waiting lists and time parents and whānau spend on waiting lists
- Growth in ECE services in locations that meets existing and future demand
- More existing ECE services expanding to serve more children, particularly in areas where there is unmet demand and high prevalence of waiting lists
- Innovations in ECE services that meet the needs of parents and whānau, and/or reduce the time that ECE services spend on administration, among other things
- ECEs reporting that they are finding the regulatory requirements easier to navigate
- ECEs reporting that there is less demand for paperwork from MoE and ERO

ECE workforce

- Lower staff turnover in ECE services
- No issues filling vacancies
- High rates of employment for recent graduates

Parents and whānau

- ECE service prices tracking in line with the inflation rate
- Less ECE services with waiting lists
- More service offerings near where they live
- Greater information transparency

ECE regulators

- Improved compliance monitoring system that is more proactive and risk based and less focused on paperwork
- A broader array of enforcement tools and a more proportionate, risk-based approach to enforcing compliance
- A regulatory strategy
- A more balanced mix of regulatory and sector experience in regulatory agencies and improved training for staff in regulatory agencies

What regulatory challenges do we need to overcome to address the market failures?

110. To make the reforms, we consider there are four key regulatory challenges to address.

- a. **Setting it up right (Chapter 3):** The steward of the ECE regulatory system needs to be supported to set it up right and to consistently ensure the system structure and settings are fit for purpose. The current set up contributes to the market failures by making the bar of entry too high which stifles market growth to meet demand by parents and whānau; allows non-compliance to go undetected potentially for long periods, and lacks role clarity which is leading to duplication, unnecessary burdens, regulatory creep and unresolved conflicts in the compliance requirements for ECE services across other regulatory systems.
- b. **Leading it the right way (Chapter 4):** ECE regulatory system leaders need to have clear decision-making accountability and transparency. Decision-makers need to be deliberately acting as stewards of the system by monitoring the system for risks and evolving the system where necessary. Leaders also need to be applying a responsive and risk-based compliance monitoring approach to ensure non-compliance is detected early before children are harmed. In the absence of a clear overarching regulatory strategy that guides collaboration between agencies, the system's ability to address risks effectively and ensure compliance across the sector is limited. This means that resources cannot be targeted to areas of highest risk. This report recommends that, supported by the recommended compliance monitoring system, a deliberate compliance strategy be developed that is guided by risk assessments.
- c. **Using the right tools (Chapter 5):** ECE regulation needs to be equipped with a broader set of regulatory tools to enable proportionate responses to varying degrees of non-compliance. Best practice in regulatory

systems emphasizes the importance of having flexible tools beyond licensing, which is currently over-relied upon in the ECE system. As a result, reclassification of a service's license is often applied in cases where other tools—such as warnings, improvement notices, or targeted education—would be more appropriate. This overuse of licensing creates undue pressure on providers, as even minor breaches are seen as potential threats to their ability to operate. A more comprehensive toolkit, including graduated sanctions and risk-based monitoring, would enable the application of proportionate interventions, easing the burden on ECE providers while still ensuring compliance and protecting children's safety.

- d. **Doing it the right way (Chapter 6):** All parties in the ECE system need to be supported to do their job well. There are several areas where regulatory practice does not meet the government's expectations. For example, we have heard that between staff in regulatory roles and between ECE service providers there are a range of different interpretations of what is required and what is guidance. We consider that more emphasis on induction and ongoing training would build and maintain consistency of practice across regionally-based operational staff and responsible decision-makers. There should also be a recruitment strategy to enable Ministry of Education as the ECE regulator to recruit and maintain a diverse workforce with the right balance of sector knowledge and regulatory practice skills.

111. We have used the above categories as headings for the substantive chapters in this report, Chapters 3 - 6. Within each of those chapters we refer to the findings of our economic analysis and enquiries. We also describe the drivers for regulatory change in much more depth in those chapters.

112. Each chapter also includes a series of recommendations, which require further policy development by relevant agencies and identification of resource needs. Some recommendations may include legislative change.

Chapter 3: Setting it up right

Purpose of this chapter

113. This chapter examines the structural issues within the ECE regulatory system. It presents findings on current challenges (see Section A) and offers recommendations for setting up the regulatory system more effectively (see Section B).

Chapter overview

114. While the regulatory interface with markets is where problems become visible to parties, these problems often have deeper origins. To find the causes of the problems we heard about from ECE service providers in the review, we have looked across all aspects of the regulatory system.⁶⁴ This chapter focuses on problems originating in the system settings.

115. Key ECE regulatory system setting problems include:

- a. **Outdated framework:** The system lacks defined goals, clear outcomes, and principles to guide decision-making, leading to inconsistencies.
- b. **Limited compliance monitoring:** There is no proactive monitoring system in place, which prevents early identification of non-compliance and heightens child safety risks.
- c. **Role confusion:** The perceived overlap in roles of the Ministry of Education and the Education Review Office sometimes leads to confusion and conflicts, particularly in compliance and enforcement.
- d. **Inconsistent complaint handling by the Ministry of Education:** Procedures for managing complaints need improvement to prevent uneven enforcement and uncertainty for providers.

116. Our findings can be summarised as:

- a. **Finding 1:** The ECE regulatory system is out of date and lacks defined outcomes and objectives and principles for decision-making.

- b. **Finding 2:** The Ministry of Education does not have an effective compliance monitoring system.

- c. **Finding 3:** The Education Review Office has a responsibility to evaluate and report on the performance of ECE services.

- d. **Finding 4:** The Education Review Office does not have enforcement powers or tools to intervene when they identify non-compliance in an ECE service setting.

- e. **Finding 5:** Compliance monitoring does not take a coordinated systems view.

- f. **Finding 6:** Confusion persists between the respective roles of the Ministry of Education and the Education Review Office.

- g. **Finding 7:** The Ministry of Education's approach to managing complaints is inconsistent.

117. Our recommendations are:

- a. **Recommendation 1:** Define clear outcomes, objectives and principles for ECE regulation in legislation, aligning with government priorities for early childhood education.

- b. **Recommendation 2:** Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required.

- c. **Recommendation 3:** Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector.

- d. **Recommendation 4:** Improve the pathways for providers to appeal regulatory decisions, ensuring fairness and encouraging trust in the regulatory process.

⁶⁴ See *Attachment B: Glossary of Terms* for definitions.

Section A: The findings related to ECE regulatory system settings

118. This section details the first set of findings of the regulatory review related to how the ECE regulatory system is set up. Each finding is presented in a blue box. Further descriptions of the findings follow along with details of the evidence sitting behind the finding. We conclude each finding discussion with a short overview of its implications.

Finding 1: The ECE regulatory system is out of date and lacks defined outcomes and objectives and principles for decision-making

Since the introduction of the current regulatory framework in 2008, the regulatory system and legislative settings have not kept pace with the complexity of the sector, increasing societal expectations, and the evolution of service provision, particularly in terms of regulatory capability, clarity, and compliance monitoring. The system lacks clearly defined regulatory outcomes, objectives, and guiding principles, to support consistent decision-making.

119. Since the introduction of the current regulatory framework in 2008⁶⁵, the early childhood education sector has experienced significant growth and change that includes increasing expectations for developmental and educational outcomes and for child safety and changing patterns of use including longer hours. This has increased complexity of the sector and presents different risks to be managed. However, the Ministry of Education’s ECE regulatory system has not kept pace with these changes which has exposed critical weaknesses in the regulatory framework.
120. In chapter 2, we described the current ECE purpose and objectives from section 14 of the Act.⁶⁶ There we explained that the statement was narrowly focused on the regulatory outcomes related to children’s education, their health and safety, and enabling parental choice of different kinds of ECE service types. We outlined in that chapter that there are wider government objectives that could be included in the purpose of the ECE regulatory framework to guide decision-making by parties within the system.
121. There are no guiding principles for decision-making in the Education and Training Act 2020 (the Act). We are aware that there is a decision-making framework for staff in regulatory roles in the Ministry of Education. This is no doubt a useful tool to guide staff in regulatory roles; however, we would expect there would also be either guiding principles in the Act, and/or some other form of decision-making framework for ECE regulatory system stewards and leaders.
122. With the exception of the repeal of the *Education (Early Childhood Services Network Approval) Regulations 2022* in October 2024, and other minor changes introduced by the *Education (Early Learning Services) Amendment Regulations 2023*, we have not seen evidence of the regulations being periodically reviewed and updated to ensure they are fit for purpose and meet the needs of children and parents with respect to education and health and safety. A regulator must have a clear understanding of its purpose and objectives to function effectively, otherwise, it risks becoming overly reactive and inconsistent.⁶⁷

⁶⁵ See chapter 2 for a list and description of the regulations.

⁶⁶ [Education and Training Act 2020](#), section 14.

⁶⁷ Productivity Commission, [“Regulatory Institutions and Practices”](#) (1 June 2014) .

What are the implications of this finding?

123. Effective regulation requires clear objectives. Without these, the regulatory system risks becoming reactive, focusing on immediate issues rather than anticipating and addressing long-term needs. This lack of clarity can create a fragmented approach, where decision-making is not consistently aligned with overarching policy goals or societal expectations, such as promoting parental choice, ensuring child safety, and facilitating equitable access to ECE services.
124. Without principles to guide decision-making, the system's ability to align with broader social and

economic needs is compromised. Decisions related to regulatory design and operation may not be tested against wider government commitments or societal expectations, such as supporting parents' ability to engage in the workforce or providing respite from caregiving responsibilities. This gap in strategic oversight means that regulatory actions may not effectively contribute to broader outcomes beyond the immediate scope of child education and safety, weakening the system's responsiveness to the evolving demands of the sector and limiting its overall effectiveness.

Finding 2: The Ministry of Education does not have an effective compliance monitoring system

The Ministry of Education, as the lead regulator, has responsibility for the ECE sector. The Ministry does not systematically incorporate proactive, risk-based compliance monitoring into its regulatory operations, as they do not currently have the structured framework or mechanisms in place to do so. This monitoring is carried out primarily through Education Review Office reviews, which also focus on the overall quality of the education and care provided by the service.

125. The Ministry of Education holds the primary responsibility for regulating the ECE sector under the Act, which empowers the Ministry to grant licenses, alter license statuses, and investigate complaints or concerns about ECE service providers. However, the Act does not specifically mandate a dedicated compliance monitoring function or provide explicit guidance on whether such monitoring should be proactive or reactive. Separately, section 463 of the Act does empower the Chief Review Officer of the Education Review Office to administer reviews of the Early Childhood Services.
126. This regulatory framework has led to a predominantly reactive compliance approach by the Ministry. Compliance activities are triggered mainly through Education Review Office reviews but also through complaints, notifications, or incidents rather than the Ministry systematically incorporating risk-based monitoring into its own day to day functions.
127. There are three ways the Ministry of Education identifies non-compliance with ECE regulation in ECE services:
 - a. **reports of compliance concerns from the Education Review Office**, these concerns are usually identified when the Education Review Office are conducting a review or evaluation of an ECE service
 - b. **complaints about ECE services** submitted to the Ministry of Education from parents and whānau and other sources, such as ECE workforce members, and other ECE providers, and
 - c. **responses to incidents in an ECE service setting**, when the Ministry of Education is attending an ECE service in response to an incident, such as harm to a child, they will visit the ECE service to determine the full degree of non-compliance.

128. These are all reactive methods to identifying non-compliance. The Ministry conducts investigations in response to the complaints, concerns, and incidents, and further non-compliance may be identified in the investigations. The Ministry does not have a systematic method of analysing its data holdings about ECE services and ECE service providers to predict or identify risks for non-compliance that warrant a proactive approach. In addition, relying on complaints about services to identify risks is not a good approach as many of those we rely on to identify risks may not be in a good position to report their concerns (e.g. a parent or a teacher).
129. The Education Review Office complements the Ministry's role as lead regulator by conducting regular evaluations of ECE services, assessing both educational quality and adherence to regulatory standards, including aspects related to health and safety. The Education Review Office's approach is systematic and risk-based, using formal and informal data to guide the scheduling of reviews and their evaluation methods. However, the Education Review Office's role does not involve enforcement as it is not the responsible regulator.
130. Instead, the Education Review Office's reports identify non-compliance to the Ministry, which then follows up with the service to address the issues. This arrangement can lead to delays and fragmented compliance oversight. Evidence from cross-agency interviews and internal policy documents indicates that the Ministry's follow-up actions may not align with the Education Review Office's initial findings, creating inconsistent communication to providers.
131. In July 2024, the Education Review Office introduced a new report format to the ECE sector. In the development phase parents were consulted on the reports new look, accessibility, and clarity, and this feedback informed the changes made. This report identifies if a service is meeting compliance or improvement is required. This is a welcome improvement.
132. The legislation provides a regulatory framework that enables the Ministry of Education to oversee and regulate ECE services. While compliance monitoring is not defined as a mandatory function within the Act, it is generally an expected component of regulatory oversight, as per the *Government Expectations for Good Regulatory Practice*.⁷⁰ As well, as the Ministry is empowered to grant and alter licenses, investigate complaints, and respond to concerns about ECE providers, this implies a responsibility for ensuring services comply with regulatory requirements.
133. While these legislative provisions grant the Ministry the necessary powers to monitor compliance, they do not dictate a systematic or risk-based approach. This lack of explicit guidance does not exempt the Ministry from proactively ensuring compliance, yet current regulatory settings have led to a predominantly reactive stance, with compliance activities often triggered by complaints or incidents rather than a proactive, risk-based framework.
134. The Education Review Office has a broad mandate under section 463 of the Education and Training Act 2020, which includes responsibilities related to educational delivery and health and safety oversight. The Education Review Office has been involved in compliance monitoring since it was established in 1989 and has increased its focus over time on compliance in response to sector challenges. In doing so, the Education Review Office supports the regulatory system by identifying compliance concerns as part of its regular reviews of ECE services.
135. This increased focus with regular review and reporting cycles has filled some gaps in the compliance monitoring role within the regulatory system. However, this has led to some within the sector becoming confused about the respective roles of the Ministry of Education and the Education Review Office in the regulatory system.

⁷⁰ New Zealand Treasury, [“Government Expectations for Good Regulatory Practice”](#), (21 April 2017).

What are the implications of this finding?

136. The implications of this finding are significant. By taking a reactive approach to compliance activity, the Ministry of Education is not aware of which ECE service providers are in a state of non-compliance unless there is a complaint, and incident or a concern raised by the Education Review Office. This may mean:

- a. that the non-compliance that they do not hear about is tolerated to continue for potentially long periods of time which could put children and ECE workforce members at risk of harm, and
- b. if non detected issues have not been addressed in a timely way, it can contribute to the perception that the Ministry of Education is heavy handed when they do address the matter.

137. Without a cohesive and closely joined-up monitoring and compliance system, knowledge gaps can grow which prevent the Ministry of Education, as lead regulator, from holding comprehensive insight into the prevalence and nature of non-compliance within the ECE sector. This knowledge gap prevents the Ministry from the effective allocation of resources and focusing compliance efforts on the highest-risk areas.

138. While the Education Review Office conducts proactive compliance monitoring through its risk-based evaluations, its lack of enforcement powers mean that it cannot take direct action to address non-compliance. The Education Review Office must notify the Ministry of compliance issues, which the Ministry then needs to investigate, which can slow the overall response to addressing risks.

139. These gaps in oversight and coordination place children at an unacceptable risk of harm, particularly as they are often unable to advocate for themselves or communicate issues effectively. This situation undermines public trust and fails to meet parental and societal expectations that regulatory oversight should include proactive and risk-responsive compliance monitoring.

Additionally, the lack of role clarity between the Education Review Office and the Ministry means that critical compliance issues may not be addressed swiftly, further increasing the risk of harm to children and weakening the overall integrity and effectiveness of the ECE regulatory system. Without full system awareness and coordination, opportunities for early detection and intervention are missed, resulting in a reactive environment where issues may only be managed after they escalate into more severe problems.

Finding 3: The Education Review Office has a responsibility to evaluate and report on the performance of ECE services

The Education Review Office has legislated responsibility to administer reviews of ECE services. The Education Review Office conducts reviews to evaluate ECE service performance and assesses whether the service complies with regulatory standards and associated licensing criteria, and that they are meeting the learning, safety and wellbeing needs of children in their care. The Education Review Office undertake a cyclical-review process to assess, identify, and report any non-compliance or areas of concern to the service and the Ministry of Education. It also publishes reports as a public accountability mechanism.

Finding 4: The Education Review Office does not have enforcement powers or tools to intervene when they identify non-compliance in an ECE service setting

The Education Review Office does not have enforcement powers or tools to intervene when non-compliance is identified. Where the Education Review Office identifies a service has non-compliances/ areas of concern these are reported to the Ministry of Education. The Ministry will follow up with the service regarding these issues and the Education Review Office also follows up at the next review. Compliance concerns can also be raised to be the Ministry through complaints, notifications and incidents. The Ministry is responsible for following up to ensure the issues are appropriately addressed.

140. The current framework blurs role definitions between the Education Review Office and the Ministry and creates inefficiencies in the regulatory process. Observations from accompanying the Education Review Office's on-site visits demonstrated that while the Education Review Office identifies non-compliance, it cannot enforce corrective measures.
141. The Education Review Office has legislated responsibility to administer reviews of ECE services. They regularly visit services to review and evaluate ECE service performance and identify whether the service complies with regulatory standards and associated licensing criteria. The Education Review Office undertakes a cyclical-review process to assess, identify, and report any non-compliance concerns or areas of concern to the service and the Ministry of Education. They also publish reports as a public accountability mechanism.

What are the implications of this finding?

142. Implications of this finding are significant. While the Education Review Office's proactive, risk-based reviews play a critical role in identifying non-compliance, their limited authority means that immediate enforcement actions cannot be taken directly. This results in referrals to the Ministry for further action, which can lead to potential delays and inefficiencies in addressing compliance issues. The reliance on the Ministry for enforcement creates a reactive compliance monitoring system that may not be sufficient for timely risk management, potentially compromising child safety.

Finding 5: Compliance monitoring does not take a coordinated systems view

The current regulatory system is not generating assurances that services are consistently meeting minimum standards and managing the most important risks. The perpetual licensing system does not support early identification of compliance problems.

143. The absence of a comprehensive risk-based compliance monitoring framework overseen by the Ministry of Education as regulatory steward and lead regulator, and the Education Review Office's limited enforcement capabilities, create regulatory vulnerabilities.
144. ECE services have perpetual licenses. Once they are issued a license to operate, they hold that license until such time as they leave the market. They may leave voluntarily, or they may have their license cancelled. The perpetual licensing system itself does not create a means to proactively identify performance problems and does not ensure the compliance demonstrated at the initial licensing stage is maintained over time by ECE service providers.
145. In the review, we considered whether there was a place for fixed term licensing and considered comments from submitters on this topic.⁷¹ The idea would be that fixed terms could be set in durations that match the risk of non-compliance. We have concluded that introducing fixed-term licensing would create too much uncertainty for ECE providers, workers and parent and whānau at this time and would increase compliance costs.⁷²
146. As background to this, a six yearly re-licensing cycle was initially included in the original *Education (Early Childhood Services) Regulations 2008*.⁷³ This committed the Ministry to a timetable of scheduled compliance checks against the regulatory standards. The six yearly relicensing requirement was revoked in early 2009 in the lead-up to a regulatory review which aimed to reduce compliance burden for the sector.⁷⁴
147. Following the review, a Sector Working Group recommended that a licence should be issued in perpetuity. The Sector Working Group also recommended that a single agency has responsibility for reviewing compliance with the regulatory framework after the initial licensing, and that further work be undertaken to identify an appropriate compliance assurance process to be completed by service providers.⁷⁵
148. In response, the Ministry noted there was a need to balance the compliance burden associated with regular re-licensing and the Ministry's responsibility to provide assurance to parents that ECE services are maintaining the required standards. Three options were presented to the Minister of Education:
- keep the six yearly re-licensing cycle, or
 - allow services with a satisfactory Education Review Office review to be relicensed every six years without a full relicensing check, or
 - issue licences in perpetuity.⁷⁶
149. Cabinet agreed to continue issuing full licences in perpetuity and noted that the Ministry of Education and the Education Review Office would provide the Minister of Education with advice on an efficient and effective mechanism for ensuring ongoing compliance.⁷⁷ The Sector Working Group's recommendation that a single agency has responsibility for reviewing compliance was not progressed. The current approach, whereby the Education Review Office reviews services on a three yearly cycle and the Ministry is responsible for licensing, was maintained.

What are the implications of this finding?

150. There is no 'trust dividend' built into the system for services that are reliably compliant and with proven and well-established willingness and capability, to have a 'light touch' compliance monitoring. The result is that even highly compliant ECE service providers are focused on ensuring they have a wide range of paperwork available at all times as evidence of their compliance; and any compliance identification activity takes teaching staff away from children for unnecessarily long periods.

Finding 6: Confusion persists between the respective roles of the Ministry of Education and the Education Review Office

Confusion persists between the respective roles of the Ministry of Education and the Education Review Office. This leads to differing interpretations of requirements, as well as conflicts between Ministry's roles of regulating and providing some support for the sector, and the Education Review Office's role of reviewing and evaluating the sector.

151. Confusion between the roles of the Ministry of Education and the Education Review Office has created challenges in the regulation and support of New Zealand’s ECE sector. The Ministry, as the regulator under the Education and Training Act 2020, holds powers outlined in the Act, and Education (Early Childhood Services) Regulations 2008, including the granting, conditioning, and revocation of licenses. The Education Review Office’s role is primarily evaluative, focusing on reporting on the educational performance and compliance of licensed ECE services.
152. The Education Review Office evaluation findings can prompt the Ministry to undertake compliance actions, leading to instances where roles intersect and create ambiguity. Established protocols are intended to support coordination between the Ministry and the Education Review Office, but in practice, these protocols may not be sufficient to prevent confusion in the sector about their responsibilities and an overlap in their activities.
153. The OECD report on “Governance of Regulators’ Practices: Accountability, Transparency, and Coordination” emphasises that clear role delineation is essential to avoid regulatory inefficiencies and duplication. An observation during this review has shown the Education Review Office’s evolving approach to its evaluations, particularly when it identifies regulatory non-compliance, risks overlapping with a role traditionally associated with a regulator.
154. Interview feedback from the Ministry and Education Review Office staff in regulatory roles highlighted that while the Education Review Office evaluative work sometimes can lead to the Ministry taking compliance actions where non-compliance is identified, the boundaries between evaluation and enforcement are not consistently understood by stakeholders. They agreed that role ambiguity can lead to differing interpretations of regulatory requirements and conflicts between the supportive and regulatory roles of both agencies.

What are the implications of this finding?

155. Clear regulatory roles are crucial for ensuring accountability, predictable decision-making, and the legitimacy of regulatory regimes. The lack of clear boundaries between the Ministry and the Education Review Office has led to role expansion, with Education Review Office evaluators becoming increasingly involved in assessing compliance with regulatory standards. This overlap not only risks duplicative efforts but can also cause inconsistencies in enforcement and delays in regulatory responses.
156. ECE service providers often interact more with Education Review Office staff than Ministry staff, leading to potential misperceptions about the regulatory authority of Education Review Office. Clearer delineation of roles and enhanced coordination between the Ministry and the Education Review Office are needed to avoid these inefficiencies and ensure both agencies operate within their mandates, maintaining regulatory focus and efficacy.

Finding 7: The Ministry of Education’s approach to managing complaints is inconsistent

The approach to managing complaints and incidents about ECE service providers across the Ministry of Education’s regional offices is inconsistent. Variations in how complaints are handled, including the timeliness of responses and the processes for escalating incidents, have led to differing outcomes across regions. Some providers feel that there is no dispute resolution mechanism they can trust or use for addressing disputes about regulatory intervention taken by the Ministry of Education.

⁷¹ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review, \(October 2024\),](#) pp. 103-104.

⁷² Specific concern about the potential for fixed term licenses to increase compliance costs were raised in the submission process by a collective of service providers.

⁷³ [Education \(Early Childhood Services\) Regulations 2008 \(SR 2008/204\) 14 Duration of full licence](#)

⁷⁴ See Cabinet minute – CBC Min (08) 32/15.

⁷⁵ Ministry of Education, “Early Childhood Education 2008 Regulations Review: Report of the Sector Working Group” (9 April 2009).

⁷⁶ Ministry of Education, “Education Report: ECE Regulations:2009 Review”, (17 April 2009).

⁷⁷ See Cabinet minute – SOC Min (09) 11/1

157. The Ministry is responsible for investigating and resolving complaints against ECE service providers. We have heard from Ministry officials that complaints are becoming more complex over time. We also heard from stakeholders about regional variations in how complaints from the Ministry are handled.⁷⁸
158. We consider that the Ministry’s multiple roles (i.e. steward, policy setter, licensor, guider and supporter, and compliance enforcer) may create a risk that ECE service providers could use complaints or media pressure to influence compliance decisions. This may undermine the trust and confidence of stakeholders in the Ministry’s ability to act independently and consistently as a regulator.
159. We reviewed the design and implication of operational policy related to the complaints process, the legal framework and the tools, documentation and resources that support complaints resolutions. This finding has also been substantiated by what we have heard from officials in interviews and workshops.
161. Some providers feel that there is no dispute resolution mechanism they can trust or use for addressing disputes about regulatory intervention taken by the Ministry of Education. The Ministry of Education works to resolve complaints received about ECE service providers through a formal process. There is confusion around the process used to resolve complaints by ECE service providers about the regulatory decisions, such as enforcement actions, that affect them.
162. The Ministry of Education provides opportunities for providers to ‘make representations’ before a licence is cancelled due to non-compliance. However, after a decision to cancel a licence has been made, there is no straightforward way for ECE services to appeal regulatory decisions taken against them. There is also no process for ECE services to appeal decisions to reclassify their licence as provisional or to suspend their licence. The only recourse ECE services have is to take the Ministry to court which is expensive for them and for the Ministry. This also disadvantages smaller providers that are unable to afford the legal costs.

What are the implications of this finding?

160. Along with having simple and straightforward ways to engage with regulated parties and hear and respond to their views, complaints management is an essential function of the ECE regulatory system.⁷⁹ The current approach to resolving complaints and disputes about ECE regulatory decisions is not transparent or well-functioning. This can erode the Ministry’s credibility in the eyes of both providers and the public.

⁷⁸ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024), p. 95.

⁷⁹ New Zealand Treasury, [“Government Expectations for Good Regulatory Practice”](#), (21 April 2017).

Section B: Recommendations to improve ECE regulatory system settings

163. This review aims to find practical regulatory improvements that will reduce compliance burdens on ECE service providers. Making changes to the regulatory system may seem a long step away from that aim on a first glance, but we do not think it is possible for consistently good regulatory practice to be achieved without a sound regulatory system.
164. The recommendations in this chapter indicate how the ECE regulatory system could be modernised to better meet the needs of the ECE sector. By ‘modernised’, we mean brought into line with other regulatory systems in New Zealand by aligning with the *Government’s expectations for good regulatory practice*.⁸⁰

Recommendation 1: Define clear outcomes, objectives and principals for ECE regulation in legislation, aligning with government priorities for early childhood education.

165. The Education and Training Act 2020 (the Act) already includes a clear purpose statement for early childhood education which focusses on the education and health and safety of children, and parental choice of service type.⁸¹ Our recommendation is to update the purpose statement, include labour market participation by parents and whānau alongside fulfilling the Crown’s obligations to Māori under Te Tiriti o Waitangi.
166. How the purpose statement is framed in the Act shapes the direction for the entire regulatory system. We consider that by broadening out the objectives in the purpose statement it would enable and facilitate regulatory decision-making and behaviours that are underpinned by an understanding of the role of the ECE market to provide something that:
- the government does not provide directly (i.e. there is no viable state-run substitute⁸²)
 - is essential for the personal finances of most parents and whānau of preschool aged children, and
 - contributes to the national economy through the freeing up of labour.
167. The Act should be amended to include principles to guide decision-making by relevant leaders and staff in regulatory roles. We have reviewed a Ministry of Education internal draft working paper which suggested principles for decision-making.⁸³ We encourage the need to further define the principles with a view to including them in the Act at the next opportunity.
168. Without a line of sight to wider objectives and guiding principles all regulatory decision-making and practice will continue to be driven by what is best for children in terms of the education they receive and their health and safety. These are a sound basis for most decisions; bearing in mind some decisions may have the unintended consequences of limiting access to ECE services by failing to consider the impact of decisions on the ability of parents and whānau to depend on the ECE services they procure for their children.

⁸⁰ New Zealand Treasury, [“Government Expectations for Good Regulatory Practice”](#), (21 April 2017).

⁸¹ [Education and Training Act 2020](#), Section 14.

⁸² Playcentres are administered by the government; however, they are not widely available and have limited eligibility criteria that most parents and whānau do not meet. See Chapter 2 for a description of playcentres.

⁸³ Ministry of Education, Internal draft working paper “Regulatory approach for early learning” (July 2022), pp. 29 – 30.

What are the costs, benefits and implications of the recommendation?

169. Implementing this recommendation would require legislative change, which would take Ministry of Education resources and time to complete.
170. The benefits of the change would be as follows:
 - a. The purpose of the ECE regulatory system would guide policy decisions to better reflect the value ECE has for New Zealand in terms of the freedom it provides parents, caregivers and whānau to contribute to the economy. This is also an opportunity to consider whether other government objectives should be added to the statement.
 - b. Principles to guide decision-making would enhance the consideration taken when officials make key decisions in the ECE sector and may also contribute to more consistent decision-making by regional staff. ECE service providers would benefit from being able to better predict how the regulator will make decisions on specific issues.

Recommendation 2: Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required

171. Within this recommendation, we outline the need to:
 - a. define roles in monitoring and enforcing compliance with the regulations, and reviewing and reporting on performance, and clarify responsibilities
 - b. if required, update legislation to specify the functions that agencies are expected to carry out in performing their roles, and
 - c. strengthen coordination between the agencies involved.
172. We have found many parties in the ECE sector are confused about roles and regulatory functions. We believe that the functions need to be redesigned to meet the needs of the sector and then be provided for by the *Education and Training Act 2020* (the Act) if required. It is important for the ECE regulatory approach to be led by a deliberate regulatory steward. There are several models of effective regulation where either one regulatory party holds end-to-end responsibility, or where multiple agencies take on responsibilities and work together.
173. It is beyond the scope of the regulatory review to make specific recommendations on which agencies should hold specific legislative powers to regulate ECE services. Instead, we consider that the Ministry and the Education Review Office should work together to design the best approach, and which agency should administer specific enforcement powers that suit the needs of the ECE sector.

Strengthen coordination between the Education Review Office and the Ministry of Education
174. We understand there are good working protocols and practices between the Ministry of Education and the Education Review Office for the purpose of ECE regulation. Given the significant degree of change recommended in this report, we consider both agencies will need to strengthen coordination mechanisms between each other to manage the interface between any adjusted roles and responsibilities.

175. While clarifying roles and responsibilities may take some time, we recommend the Ministry of Education, and the Education Review Office review the existing protocols for reporting, escalation, and follow-up on compliance issues identified by the Education Review Office. These protocols should update or develop detailed timelines, communication channels, and responsibilities, ensuring that non-compliance identified by the Education Review Office is effectively addressed by the Ministry, without unnecessary delays or double handling.
176. The Education Review Office may benefit from being aware of where the Ministry is focusing its future proactive compliance activity to prevent inefficiencies and negative impacts from both agencies visiting the same ECE service provider within too close a timeframe.
- What are the costs, benefits and implications of the recommendation?**
177. Defining and clarifying the roles and responsibilities would require in depth discussion between the leaders of the Ministry and the Education Review Office. Discussions would need to be considered during and following any adjustments to the ECE regulatory system design so that the roles of parties are clearly aligned to the efficient delivery of system functions. These discussions would include defining the roles and interfaces with other regulatory regimes, such as the National Public Health Service.
178. We recommend legislation be amended to provide for the clarified roles and responsibilities for regulatory parties. This would take Ministry resources and time to complete. There are other options for how to make the roles and responsibilities clear; for example, the establishment of a regulatory strategy could create a document to make statements about the roles and responsibilities of each party. This would be a flexible approach to allow for future changes to roles and responsibilities.
179. The benefits of clarifying roles in ECE regulation would be:
- a. enabling the leaders of the Ministry and the Education Review Office to identify and address overlaps and gaps in the performance of regulatory duties, and
 - b. improving ECE service providers' understanding of which party is responsible for regulating specific aspects of ECE regulatory compliance, so they can go directly to the right party to ask any questions or seek other assistance.
180. Coordination between the Ministry and the Education Review Office is already happening and has costs and benefits that are accepted by both parties. The benefits of strengthened coordination are likely to be improved efficiencies, regulatory coherence, and relationship building and reliable working practices.

Recommendation 3: Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector

181. We consider the establishment of a systematic, risk-based compliance monitoring function is one of the most significant recommendations in this report. This function would enable proactive identification and targeting of compliance risk.
182. Within this recommendation we outline the need for the Ministry of Education, in consultation with the Education Review Office, to:
- evaluate the full suite of enforcement powers and legal framework
 - improve systematic, risk-based compliance monitoring
 - develop and implement a proactive risk-based, monitoring framework that allocates resources efficiently and considers how the use of technology can help
 - develop risk-based monitoring plans consistent across regulatory agencies, and
 - consider the transitional and resource implications of improving compliance monitoring.
185. An enhanced compliance monitoring function could ensure that ECE service providers that demonstrate good compliance management, and minimal risk factors get a light touch from regulators. New ECE service providers and those with histories of non-compliance or risk factors for non-compliance would get more proactive support and engagement from regulators, as well as enforcement activity to rectify instances of non-compliance that risks harm to children.
186. When carrying out compliance monitoring, agencies should shift the balance towards observations and less focus on paperwork as proof of compliance.

Develop and implement a proactive risk-based, monitoring framework

Evaluate the full suite of enforcement powers and legal framework

183. We recommend agencies assess whether enforcement powers are working effectively. This assessment should consider regulatory best practice as well as resourcing needs, operational efficiency, and regulatory effectiveness. Analysis should address the potential impact of decisions about who holds enforcement powers on compliance outcomes, predictability, and consistency of regulatory decision making, and regulatory burden for the sector.

Improve systematic, risk-based compliance monitoring

184. The development of a structured, risk-based compliance monitoring function within the ECE regulatory system would provide the regulatory system and the regulated parties/entities with a clear, proactive framework for overseeing high-risk providers and addressing non-compliance before issues escalate. This framework should clarify the distinct roles of the Ministry and the Education Review Office in the regulatory system without duplication or overlap.

187. There is a clear need to adopt a risk-based, proactive monitoring framework to enhance regulatory oversight and protect children's safety and wellbeing in ECE settings. This framework should enable the relevant agencies to identify or target the highest-risk ECE service providers by building risk profiles of ECE service providers, and by allowing resources to be better allocated towards those with indicators of high-risk.

188. We recognise an indicator of high-risk may not mean that an ECE service provider is not compliant with the regulatory requirements. Some may be over-compliant, and some may ask the relevant agencies to support them to achieve a higher quality than minimum standards. Where this occurs, this information could serve to test and refine risk profiles.

189. It is likely, though, that the evolving risk profiles and proactive compliance activity targeting high risk ECE service providers will result in instances of non-compliance being detected by the Ministry, and actions to resolve the issues will be commenced earlier than they would otherwise have been. We consider that there are likely to be instances of non-compliance that ECE service providers themselves may remain unaware of, or may tolerate, until such time as they are detected at the Education Review Office education quality evaluations which are undertaken at each ECE service site at least every three years.

190. Operating a risk-based framework would need to be supported by a technology platform and appropriately skilled staff that can mine databases of up to date information and process inputs of field intelligence. We are not aware of any such platform being used by the Ministry to support ECE regulation. Agencies should consider their wider technology needs to implement the suite of recommendations in this report, including this one.

Develop joint risk-based monitoring plans

191. We recommend the Ministry establish a collaborative, risk-based monitoring plan between the Education Review Office and the Ministry of Education for high-risk ECE providers. This plan should outline how both agencies will coordinate compliance checks, share data, and monitor improvement over time, ensuring a cohesive regulatory approach that aligns with the sector's complex and evolving needs.

Consider the transitional and resource implications of improving compliance monitoring

192. In the short term if changes to roles and responsibilities are agreed, we recommend transitional arrangements to ensure continuity of service and regulatory oversight during implementation. As part of this transition, the Ministry and the Education Review Office would need to evaluate the costs and benefits of implementing a new compliance monitoring framework further. This evaluation should focus on resource requirements, capability-building, and timeframes needed to bring both the Ministry and the Education Review Office in line with a coordinated, proactive, risk-based compliance monitoring approach.

What are the costs, benefits and implications of the recommendation?

193. As part of a legislative change process, agencies need to identify and assess the potential impact on compliance outcomes and sector consistency from any substantial changes to the

current regulatory approach. This transparent communication would benefit the ECE sector as they would see in advance why specific changes are being progressed as well as an assessment of the potential impacts of the changes. We expect that many of the impacts would be aimed at reducing compliance costs and administrative burdens on ECE service providers.

194. An improved compliance monitoring system would create the following benefits for the regulators, it would:

- a. enable regulators to identify and address risks by shifting from reactive responses to complaints and incidents to a proactive approach that is preventative and risk-based
- b. support coordination between Ministry and Education Review Office officials who are working with ECE service providers that are in breach of the minimum standards for the operation of an ECE service, and
- c. create and apply the data and information for agencies to build its understanding of the dynamic ECE sector context. This information could identify risks that warrant compliance activities, and support decision-making for where to target resources.

195. An improved compliance monitoring system would also have the following benefits for ECE service providers:

- a. compliant ECE service providers could have a light touch from regulators which would reduce their overall compliance costs and administrative burden
- b. non-compliant ECE service providers could access more support from staff in regulatory roles to achieve and maintain compliance, and
- c. new ECE service providers could have more initial engagement with agency staff to establish compliance management approaches (as they may be considered high risk).

196. It is beyond the scope of the regulatory review to identify the resource costs associated with transition or to make specific recommendations on how exactly the Ministry and the Education Review Office should manage the change. This change risks being disruptive for the ECE sector unless it is well resourced and well managed.
197. Also, building the risk-based monitoring framework, including the risk profiles, would be an ongoing activity with an up-front establishment cost. The primary intended benefits of applying the frameworks approach are:
- a. **earlier detection, and resolution, of non-compliance** by high risk ECE service providers which would result in less risk of harm to children
 - b. **building a ‘trust dividend’ for low risk ECE service providers.** It would be unlikely for low risk ECE service providers to be targeted by proactive compliance activity by the relevant agency. This approach may also encourage ECE service providers to seek additional support from the relevant agency to build their understanding of maintaining compliance as this is likely to show evidence to the Ministry that they are reliably compliant, and so should be considered ‘low risk.’
198. This framework approach may incentivise some ECE services providers to promote their ability to comply and their compliance ‘bill of health’ publicly. This may go some way to providing new information to parents and whānau, as well as regulatory agencies.

Recommendation 4: Improve the pathways for providers to appeal regulatory decisions, ensuring fairness and encouraging trust in the regulatory process

199. Some ECE service providers feel that there is no dispute resolution mechanism they can trust or use for addressing disputes about regulatory intervention taken by the Ministry of Education.
200. We recommend the Ministry, as the lead regulator, and other responsible agencies consider how to improve the management of complaints. In particular, by considering whether to establish an independent dispute resolution mechanism that service providers can use to appeal regulatory interventions taken against them. This mechanism could also guard against regulatory creep (e.g. where guidelines and recommendations become treated as regulatory requirements) and would need to be clear and easy for all ECE services to access, with clear expectations on the process.
201. We also recommend that the Ministry and other responsible agencies consider whether to design and operate this mechanism itself, or commission a third party to do this. The mechanism may benefit from having independence from the regulatory decision-making leadership and processes. The Ministry for Regulation can provide advice to support the design and implementation by a third party. One example of how this could work would be to have a panel of independent experts with a mix of regulatory and sector expertise and no affiliation with the Ministry or the Education Review Office.
- What are the costs, benefits and implications of this recommendation?**
202. Establishing a dispute resolution mechanism could be resource intensive to develop and would require ongoing funding to operate. For the mechanism to have independence from the regulator, it would be necessary for it to be housed by a separate organisation that has secure, ongoing funding.

Chapter 4: Leading it the right way

Purpose of this chapter

203. This chapter addresses leadership challenges in the ECE regulatory system. It presents the findings related to leadership issues (see Section A) and offers recommendations for effective regulatory stewardship (see Section B).

Chapter overview

204. In Chapter 3 we described our findings that the ECE regulatory system set up is not aligned to the government's expectations for good regulatory practice.⁸⁴ In our review, we found that the current stewardship and leadership of the ECE regulatory system is aligned to the current set up. This means that the stewardship and leadership approach is also contributing to a system that does not adequately address the ECE market failures.⁸⁵

205. Key ECE regulatory system leadership problems include:

- a. **Lack of Performance Metrics:** The regulatory system's impact isn't adequately measured, making it difficult to assess improvements or risks.
- b. **Unclear Strategy and Priorities:** There's limited direction for regulatory activities, which leads to inconsistencies in enforcement and oversight.
- c. **Weak Compliance Framework:** Compliance actions lack a unified strategy, and risk-based monitoring is insufficient.
- d. **Resource Allocation Mismatch:** Regulatory resources aren't targeted to high-risk areas, causing inefficiencies.

206. Our findings can be summarised as:

- a. **Finding 8:** The performance of the regulatory system is not well measured.
- b. **Finding 9:** Limited direction and prioritisation for ECE regulatory activity.

- c. **Finding 10:** Regulatory changes are not considered in sufficient depth.
- d. **Finding 11:** There is no defined strategy to guide ECE compliance activity.
- e. **Finding 12:** Regulatory functions are not aligned with desired outcomes in ECE sector.
- f. **Finding 13:** The ECE regulatory system is a hybrid model.
- g. **Finding 14:** There is no clear regulatory approach to achieving ECE outcomes.
- h. **Finding 15:** ECE regulatory practice resources are not proactively targeted to areas of risk.
- i. **Finding 16:** The Education Review Office does not have the enforcement training, tools or levers to directly address non-compliance.
- j. **Finding 17:** There is room to improve the mix of regulatory skills and capability and sector knowledge within the agencies with a role in ECE regulation.
- k. **Finding 18:** Workloads for staff in the agencies with a role in ECE regulation are becoming increasingly high and complex.
- l. **Finding 19:** Training for Ministry of Education staff is inconsistent and inadequate.

207. Our recommendations are:

- a. **Recommendation 5:** Strengthen regulatory oversight to foster trust, transparency, and effective sector stewardship.
- b. **Recommendation 6:** Establish a strategic, long-term approach to ECE regulation that supports innovation, quality, and growth.
- c. **Recommendation 7:** Invest in workforce training across agencies to improve regulatory effectiveness and consistency.

⁸⁴ New Zealand Treasury, "[Government Expectations for Good Regulatory Practice](#)", (21 April 2017).

⁸⁵ See Attachment B: Glossary of Terms for definitions.

Section A: The findings related to ECE regulatory system leadership

208. This section describes the findings related to the ECE regulatory system leadership. Each finding is presented in a blue box. Further descriptions of the findings follow along with details of the evidence sitting behind the finding and the implications of each finding.

Finding 8: The performance of the regulatory system is not well measured

ECE outcomes are not measured sufficiently to assess the benefits of regulatory interventions.

209. There is significant reporting on the regulation of the ECE system to government from the Ministry of Education and the Education Review Office.⁸⁶ This reporting does not measure the achievement of outcomes in the ECE sector or the value for money from the government's investment. Without insights from measurement, it is not possible for the government, or the Ministry, to understand where the system is failing or succeeding.
210. In this review, we sought to find evidence of the leaders of the regulatory system assessing and reflecting on the regulatory system's performance. The Ministry shared with the review team an internal draft working paper developed in 2022 which assessed the quality and fitness of the range of ECE regulatory functions.⁸⁷ This shows the Ministry has considered how to improve its ECE regulatory stewardship. The internal report did not assess the outcomes of the regulatory interventions in the ECE sector as there is no current performance measurement method for doing so.
212. Instead, it is possible to set some key performance indicators (KPIs) for the system, as other regulatory systems do.⁸⁸ For example, WorkSafe measures "the frequency that an updated view of health and safety system performance is published" with the intended direction of travel described as "system performance overview updated at least every two years." The KPIs generally include feedback from regulated parties. Insights from such measurement and feedback can be fed into a continuous improvement cycle for the system. We did not see evidence of a functioning continuous improvement cycle in the ECE regulatory system. This has resulted in the persistence of the confusion about regulatory requirements and the compliance cost burden for ECE service providers.

What are the implications of this finding?

211. We acknowledge that it is challenging to measure ECE outcomes for children given the range of uncontrollable variables, the fact that ECE benefits may emerge over a child's lifetime, and the difficulty establishing causal links. We do not recommend that Ministry seek to measure impacts of ECE regulation in terms of the outcomes for children.

Finding 9: Limited direction and prioritisation for ECE regulatory activity

Regulatory stewardship across the ECE regulatory system is currently not well-coordinated and lacks the necessary prioritisation from senior leadership in the Ministry of Education. There is no cohesive strategy guiding collaboration between the Ministry and other regulatory agencies, which limits the system's ability to address risks effectively and ensure compliance across the sector. No single agency has taken system leadership to resolve conflicts between differing regulatory requirements and regulatory systems, such as the building system.

213. We consider there are tensions between the Ministry's regulatory role in early childhood and its other roles, such as policy development, funding, and sector support. This lack of regulatory neutrality can compromise the Ministry's ability to make impartial and evidence-based regulatory decisions. The guide *Achieving Compliance: A Guide for Compliance Agencies in New Zealand* highlights the importance of having clear governance for ensuring accountability and effective compliance. "An agency's structure should reflect its need to maintain independence, ensure accountability, and promote public confidence in its ability to enforce regulations without bias."⁸⁹
214. The regulatory environment overseeing ECE is complex, involving multiple regulatory systems. We have found conflicts between some of the requirements that different regulators need ECE service providers to comply with under their license to operate. These tensions may be eased somewhat if there were a guiding strategy for regulatory activity.
215. We heard from ECE service providers about topics where there is a conflict in regulatory requirements, such as the door handle height, in our ECE service visits and through the submissions process.⁹⁰ We consulted the range of regulators with requirements for ECE service providers to determine their views on where the regulatory systems do not align.

⁸⁶ See the Ministry of Education, "[Corporate documents](#)" webpage for Annual Reports, Statements of Intent and Briefings to Incoming Ministers. See Education Review Office "[About us](#)" webpage for Annual reports.

⁸⁷ Ministry of Education, Internal draft working paper "Regulatory approach for early learning" (July 2022), pp. 29 – 30.

⁸⁸ We have looked at examples of other regulators with KPIs for the regimes they administer; they include [WorkSafe, Financial Markets Authority](#), and the [New Zealand Transport Authority Waka Kotahi](#).

⁸⁹ Pink, G. (2011). *Achieving Compliance: A Guide for Compliance Agencies in New Zealand*. Ministry of Economic Development, New Zealand.

⁹⁰ Ministry for Regulation, "[What Submitters told the Early Childhood Education Regulatory Review](#)", (October 2024), p. 55.

Case study 2: Who cares about the external door handle height at an ECE service?

This case study briefly explores the range of regulated parties who have an interest in the external door handle height at an ECE service. This is an example of how conflicts between regulatory systems affect ECE service providers.

Early Childhood Centres are required to be compliant with three separate regulatory regimes with regards to the height of their door handles:

- **Education (Early Childhood Services) Regulations 2008** – regulates to ensure minimum health, safety and quality standards are maintained in the provision of early childhood education. As part of this, the Licensing Criteria requires that children are supervised at all times, and they cannot freely leave the premises. They are also required to be compliant with both the Building Act 2004 and have a current Fire Evacuation Scheme approved by Fire and Emergency New Zealand.
- **Building Act 2004** – regulates to ensure minimum standards for buildings in New Zealand. As part of this, the Building Code (a regulatory instrument) requires reasonable and adequate access for all people – including those with disabilities. To ensure access for all, the acceptable solution D1/AS1 Access Routes specifies that door handles on accessible doors must be between 900 mm to 1200 mm above floor level.
- **Fire Safety and Evacuation of Buildings Regulations 2006** – regulates to ensure that buildings mitigate the risk of fire and can be safely evacuated if required. The regulations

require exit doors to not be locked, barred or blocked to prevent any of the building's occupants from leaving the building.

Independently Qualified Person's (IQP) are approved by the local territorial authority to assess whether a building's specified systems inspection, maintenance and reporting procedures are compliant with their Compliance Schedule. For ECE services, if the building does not meet the Building Act, it does not receive a license to operate.

But the Licensing Criteria, Building Code requirements and FENZ' evacuation regulations conflict with each other because for an ECE to have an exit door that cannot be locked with door handles at the height of 1200mm would allow children to exit the ECE unsupervised. A door handle higher than 1200mm would be non-compliant with the acceptable solution D1/AS1.

There is no clear guidance from any regulatory agency as to what is expected by the sector, despite there being potential pragmatic solutions offered by ECE services. In practice, this leads to IQP's filling in the ambiguity with different decisions across the country, and confusion from the sector. We have heard of multiple instances of ECE service providers reaching out to different regulatory agencies seeking clarification and offering solutions.

What are the implications of this finding?

216. When ECE service providers experience situations where two regulatory systems are in conflict it causes frustration and erodes the public's trust in regulation and in the staff in regulatory roles. It can also lead to economic inefficiencies when:
- a. ECE providers need to make expensive changes to achieve compliance with one regulator only be told to make further expensive changes to meet the compliance requirements of another, and
 - b. staff involved with regulatory activity at the operational level in different regimes spend time negotiating the compliance requirements between each other without having clear avenues to influence the policy decisions behind those requirements.

Finding 10: Regulatory changes are not considered in sufficient depth

The Regulatory Impact Statements we reviewed did not sufficiently consider all the policy objectives, the trade-offs, or the likely costs on regulatory parties. The process requirements in Regulation 41 do not include obligations to justify regulatory interventions based on an analysis of the relative costs and benefits.

217. From time to time, the Ministry makes changes to the Act, regulations, schedules and the licensing criteria that ECE service providers, new and current, must comply with. These changes can result in new compliance costs and administrative burdens for ECE service providers. Changes are consulted on and, in some cases, funding is provided to support implementation of these changes.
218. Regulation 41 in the *Education (Early Childhood Education) Regulations 2008* outlines the power for the Minister to prescribe criteria, by notice, that may be used by the Secretary for Education to assess compliance with the minimum standards for ECE services.⁹¹ This regulation requires that relevant organisations be consulted on changes, and notes that any notice made under the regulation is secondary legislation.
219. We reviewed several Regulatory Impact Statements (RISs) prepared by the Ministry to explain regulatory change proposals. We noted the following issues with the RISs:⁹²
- a. inconsistent use of policy objectives to justify changes
 - b. bias towards the education outcomes of ECE at the expense of other government objectives, such as labour market participation, and
 - c. an underestimation of the likely compliance costs to ECE service providers.

⁹¹ [Education \(Early Childhood Education\) Regulations 2008](#), regulation 41.

⁹² New Zealand Treasury, "[Guide to Cabinet's Impact Analysis Requirements](#)" (30 June 2020).

What are the implications of this finding?

220. Given Regulation 41 does not include a merit test or some kind of justification process to ensure that all proposed changes to licensing criteria are thoroughly analysed, we consider compliance costs of changes are not likely to be accurately assessed or well communicated to decision-makers. An impact of this is the consultation with the sector may also be insufficiently informed.

Finding 11: There is no defined strategy to guide ECE compliance activity

The Ministry of Education does not have an overarching regulatory strategy. This has limited its capacity to effectively address the growing complexity of the ECE sector and respond to sector challenges, and move towards a more risk-based, outcomes-focused approach.

221. There is no clear or cohesive regulatory strategy guiding compliance activity in the ECE sector. This fact has been acknowledged by Ministry of Education officials in interviews and cross-agency workshops. A regulatory strategy would set out how the regulating agencies intend to change the organising of people, resources and processes to regulate ECE services effectively in its current context or anticipated future context. It must be informed by legislative mandates and should take into account the government's expectations for good regulatory practices.
- b. repositioning from reporting minor incidents away from concrete evidence used in a zero-tolerance approach to a healthy transparency approach that enables the regulator to support ECEs to improve their compliance management practices, and
 - c. leveraging technology to manage regulator workloads by gathering better information on ECE services which could reduce some of the need for on-site inspections.

What are the implications of this finding?

222. The absence of a regulatory strategy is a clear departure from accepted best practice. The Treasury's Government Expectations for Good Regulatory Practice emphasises that regulators should have clear objectives, be risk-based, and ensure transparency in their actions.⁹³ A regulatory strategy would explain the need for the new objectives and set out a path for achieving them. Implementing a shift in regulatory approach as described above would involve many changes, including:
- a. shifting from assessing prescriptive processes to monitoring against KPIs for outcomes

Finding 12: Regulatory functions are not aligned with desired outcomes in ECE sector

There are a number of ways the Ministry of Education could strengthen its regulatory practice to align with regulatory best practice guidance and support the achievement of desired outcomes. These include adopting more modern regulatory practices, such as implementing clearly defined systems that efficiently respond to proactive compliance monitoring, sharpening its focus on stewardship, leveraging regulatory cross-coordination and adopting Key Performance Indicators (KPIs), and making better use of technology and data collection.

223. This review compared the ECE regulatory system against regulatory best practice to see where there is scope to improve the ECE regulatory system in a way that benefits the ECE sector. Systemic issues with regulatory practices are not working well in the ECE sector.
224. This diagram shows the key regulatory functions.⁹⁴ It forms part of a suite of guidance from the Ministry for Regulation on good regulatory practice.⁹⁵

⁹³ New Zealand Treasury, [“Government Expectations for Good Regulatory Practice”](#), (21 April 2017).

⁹⁴ Ministry for Regulation, [“Regulation in New Zealand: Quick Guide”](#), (September 2024).

⁹⁵ Ministry for Regulation, [“Regulatory Practice Essentials – Quick Guides”](#) webpage.

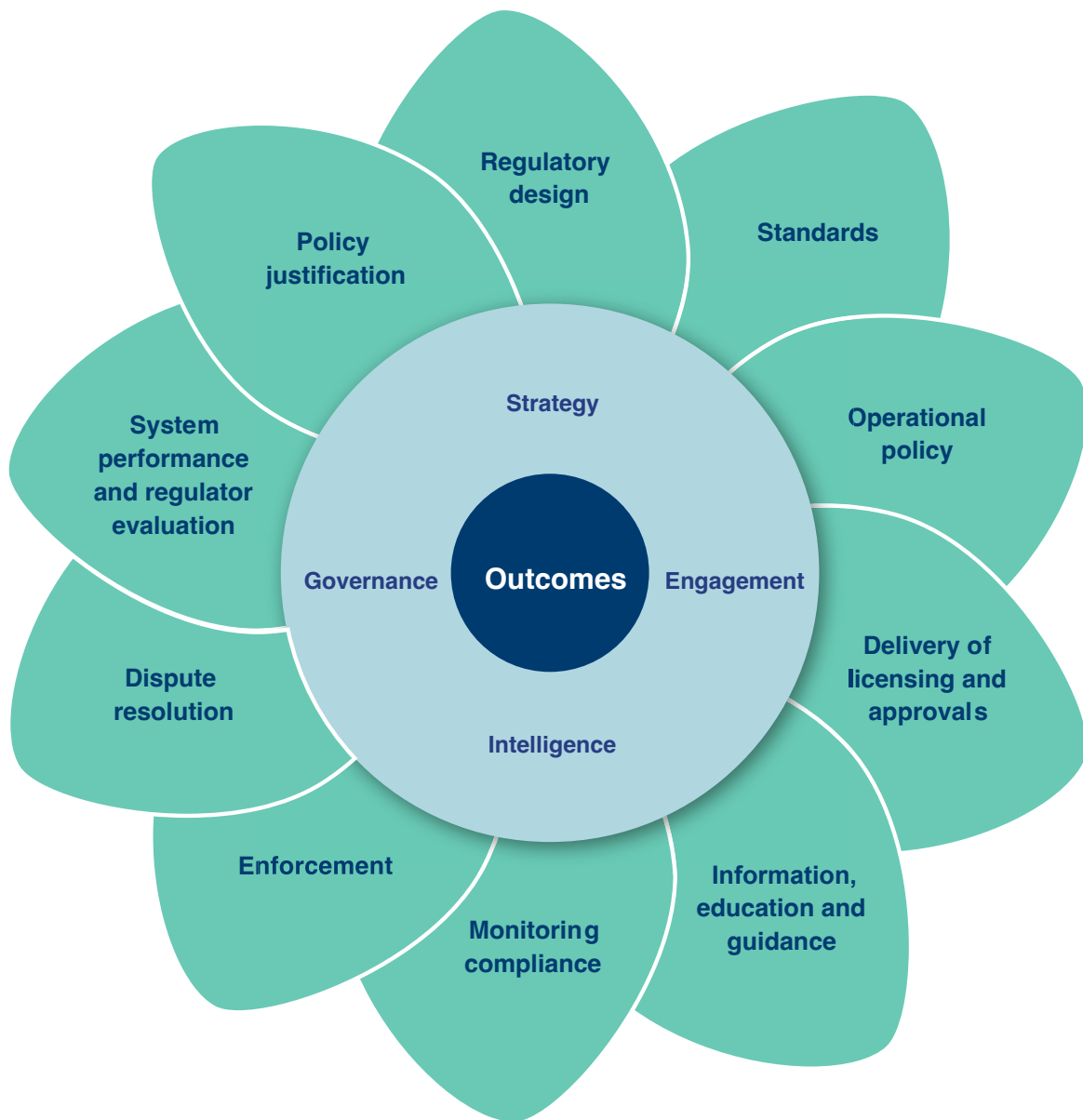


Figure 4.1 Functions of a regulator

225. We have considered which of the Ministry and the Education Review Office are currently accountable for each function, see this brief diagram. These functions, and the issues we have found within several of them, are discussed across Chapters 3 – 6.

226. We have heard from the ECE sector about a range of regulatory practice issues that cause confusion, heavy administrative burdens, and undue compliance costs. We believe aspects of the design and operation of the regulatory functions cause these issues.

What are the implications this finding?

227. This finding shows that the Ministry of Education is following good regulatory practice inconsistently. It demonstrates that the system design has significant implications for how regulatory practices impact on regulated parties.

Finding 13: The ECE regulatory system is a hybrid model

The current regulatory model is a hybrid, blending prescriptive criteria (e.g. health and safety) with principle-based approaches (e.g. wellbeing and curriculum standards).

228. The current regulatory model is a hybrid of two approaches:

- a. **a management approach** where ECE service providers, to attain and maintain a license, must prove they have the systems, policies and procedures in place to manage health and safety of children and provide a quality education to them, and
- b. **a prescriptive approach** where ECE service providers, to attain and maintain a license, must demonstrate they are meeting specific regulatory requirements in the way they are prescribed in the regulations themselves. For example, there are many health and safety requirements that must be followed in a uniform manner by all ECE services.⁹⁶

229. We have reviewed the Act, the ECE regulations and the licensing criteria to discern the overall regulatory approach. We have defined it as a hybrid approach to regulation. It is common to have a hybrid approach to regulation in other regimes.

What are the implications of this finding?

230. Having a hybrid approach to regulation is not a specific problem in itself; although we consider the hybrid approach is contributing to the overall level of confusion in the sector about how to comply with regulatory requirements. Most submitters said current regulatory interventions from government were not achieving the right balance between prescription to ensure children's safety and positive learning outcomes, and discretion to enable service providers and people who work in ECE services to be able to deliver what was needed.⁹⁷

231. We consider this would only increase compliance costs; instead, we recommend that clearer guidance be developed to clarify which requirements are strictly prescribed and which are open to ECE services determining how they can achieve compliance in a way that best suits their needs.

⁹⁶ Ministry of Education, "[Health and safety](#)" webpage.

⁹⁷ Ministry for Regulation, "[What Submitters told the Early Childhood Education Regulatory Review](#)", (October 2024), p. 97.

Finding 14: There is no clear regulatory approach to achieving ECE outcomes

The Ministry of Education currently lacks a clearly defined regulatory approach, operating largely on a reactive basis, which hampers its ability to proactively influence ECE outcomes sought through regulatory intervention.

232. It is essential for any regulator to have a clear and comprehensive regulatory approach to organise its regulatory workforce, target resources, and undertake compliance actions effectively. We have found that the Ministry of Education does not have a clear regulatory approach. We consider that this is a gap in the regulatory system resulting in inconsistent ECE regulatory stewardship and practices.
233. The regulatory approach for ECE would need to be aligned to the range of stewardship responsibilities, the decision-making powers of regulatory leaders, the application of the available regulatory tools, including compliance activities and enforcement tools, and the regulatory practices of the staff in regulatory roles.
234. This regulatory approach would need to be generally understood and accepted by all relevant regulators (government agencies), the regulated parties (ECE service providers), and those engaging the regulated services (parents and whānau of the children who attend the ECE services).
235. We have heard that parents and whānau have a reasonable expectation that the regulator of ECE services is taking a proactive approach to prevent harm. This is because they do not have access to up to date information about the level of quality and risk in ECE services they access for their children.
236. The current regulatory structure grants the Secretary for Education both operational responsibility for licensing and regulatory stewardship under the *Public Service Act 2020*.⁹⁸ This can be interpreted to include the prerogative to intervene on behalf of children in dangerous situations. But the current reliance on complaints, incidents or Education Review Office reports to initiate regulatory action is reactive, meaning that harm may already have occurred before the Ministry can take action on behalf of the Secretary for Education.
- What are the implications of this finding?***
237. Children, especially those in early learning settings, are vulnerable and unable to advocate for the quality of education and care they experience. The regulatory framework and duty of care that exists in the ECE sector is designed to protect children from harm. Without a clear regulatory approach, with a clearly defined and cohesive system of proactive compliance monitoring, the ECE regulatory system fails to identify risk of non-compliance early and act before harm occurs. This is contrary to public expectations of any regulator whose primary goal is to ensure the safety and wellbeing of the public, especially children.
238. To have a clear regulatory approach, there needs to be a clearly defined regulator, in the more modern sense of that definition.⁹⁹ We understand the Ministry is behaving as a regulator to the degree it can within the constraints of the current legislative authority and the resources it has available. The purpose of this review is to determine whether this approach is in line with the government's expectations for good regulatory practice. We consider it is not aligned and so we recommend that several adjustments to the regulatory approach be made.
- ⁹⁸ [Public Service Act 2020](#), section 52.
- ⁹⁹ New Zealand Treasury, "[Government Expectations for Good Regulatory Practice](#)", (21 April 2017).

Finding 15: ECE regulatory practice resources are not proactively targeted to areas of risk

Some of the Ministry of Education's current regulatory practices do not align with established expectations for good regulatory practice, which emphasize the need to proactively focus resources where the risks are greatest.

239. Even without the oversight of compliance monitoring, the Ministry of Education already has some relevant information available to discern the risk factors for non-compliance with the ECE regulatory requirements. The Ministry holds relevant information from several sources, including:
- information they receive about ECE service providers when they are initially licensed
 - the Ministry's own case management data about complaints and incidents in ECE services
 - concerns the Education Review Office reports to Ministry, and
 - the Ministry's own learnings from cases where an ECE service provider has had their license cancelled due to irreparable non-compliance.

240. We consider these information groups could be further analysed to inform and support a proactive approach to targeting areas of higher risk of non-compliance through compliance activities such as audits and un-announced visits. We have not seen evidence of this happening in the Ministry. Instead, we have only heard about the Ministry's reactive compliance activity.

What are the implications of this finding?

241. The current resourcing for Ministry back-office functions enables the Ministry to bank substantial information holdings that could be used to proactively target resources to areas of high risk in the ECE sector; but the current resourcing for frontline activity is reactive only. It appears that ECE regulatory leaders have not connected these two functions in the system.

Finding 16: The Education Review Office does not have the enforcement training, tools or levers to directly address non-compliance

The Education Review Office has legislated responsibility to administer reviews of early childhood services. The Education Review Office conducts reviews and assesses whether it is complying with regulatory standards and associated licensing criteria, and that they are meeting the learning, safety and wellbeing needs of children in their care.

The Education Review Office undertakes a cyclical review process to assess, identify and report any non-compliance or areas of concern to the service. However, as the Education Review Office does not have the tools and levers needed to decide on or issue enforcement interventions, when a non-compliance is identified, their primary focus is on improving the quality of education and care for children.

Where the Education Review Office identifies compliance concerns still to be addressed or that pose an unacceptable risk to children, they report this to the Ministry of Education and will follow up with the service at the next visit. The Ministry is responsible for following up to ensure the issues are appropriately addressed.

242. In Chapter 3, we discussed that Education Review Office staff in regulatory roles do not have enforcement powers or tools to address aspects of non-compliance directly. This finding is related to the fact that, as a consequence of not having these powers, they also do not have the regulatory training to address identified non-compliance.
243. The Education Review Office has a broad mandate under section 463 of the Education and Training Act 2020, which includes responsibilities related to educational delivery and health and safety oversight.¹⁰⁰ The Education Review Office has been involved in compliance monitoring since it was established in 1989 and its functions and powers in relation to ECE have remained the same.
244. The Education Review Office has increased its focus on compliance in response to sector challenges. The Education Review Office identifies compliance concerns as part of its regular, proactive reviews, and while new review officers are trained by experienced staff who have gained knowledge over the years, specific training in regulatory enforcement has not been necessary given it has been beyond the scope of the Education Review Office's role.
245. While the Education Review Office can identify non-compliance, including health and safety risks, and escalate these issues to the Ministry for action, the Education Review Office does not have enforcement powers. Reliance on the Ministry of Education for enforcement can introduce delays and double handling, if appropriate protocols and agreed processes are not followed, slowing down the regulatory response to the ECE sector.
246. Interviews with both the Ministry of Education and the Education Review Office, along with internal audit reports and memos, indicate that when non-compliance is referred from the Education Review Office to Ministry, the Ministry often takes a different view of the issues as the regulator, leading to inconsistencies and slower resolution of compliance concerns. While it is not uncommon for a third party to undertake compliance monitoring on behalf of a lead regulator, typically, the monitoring body is both trained and empowered to enforce or intervene, which is not the case here.

Finding 17: There is room to improve the mix of regulatory skills and capability and sector knowledge within the agencies with a role in ECE regulation

The Ministry of Education values the sector knowledge that former ECE teachers bring to regulatory roles, including licensing and decision-making roles. This experience is seen as beneficial for ensuring credible and robust assessments, including assessing compliance with curriculum standards and understanding the context within the regulations are applied. However, there are risks associated with placing too much emphasis on sector experience without also ensuring the right mix of regulatory knowledge and more diverse experience to ensure assessments reflect balanced views and robust decision making.

¹⁰⁰ [Education and Training Act 2020](#), section 463.

247. We have found that the staff completing regulatory duties in both the Ministry of Education and the Education Review Office do not all have adequate regulatory skills for the job. See *Attachment B: Glossary of terms* for a description of what we mean by a ‘regulatory skillset’.
248. In all our interviews with Ministry of Education regional staff we discussed their views on the level of skills they need for their regulatory roles. We reviewed the skillset described in the job descriptions for specific regulatory roles. We held a cross-agency workshop to discuss our findings related to the level of regulatory capabilities for staff in regulatory roles in both the Ministry of Education and the Education Review Office.

249. We heard that the Ministry of Education tend to hire staff for regulatory roles who have a background working in either ECE or the compulsory schooling sector. The rationale given for this by Ministry of Education officials was that the regulators would need to have a deep understanding of the regulatory settings and the drivers for compliance behaviours.

What are the implications of this finding?

250. The practice of prioritising the hiring of staff with a teaching background to regulatory roles creates the risk of bias where regulators are perceived to be ‘captured’ by the sector they are regulating.

Finding 18: Workloads for staff in the agencies with a role in ECE regulation are becoming increasingly high and complex

Ministry of Education staff (licensing officers and Managers) report they are managing increasingly complex workloads, influenced by the growing demands of the wider sector.

251. While there are more licensing officers now than in the past, their responsibilities are spread across multiple ECE areas, not solely licensing.¹⁰¹ As a result, each staff member is responsible for overseeing a substantial number of ECE services, contributing to challenges in maintaining consistent oversight. Managers also have responsibility for areas other than ECE (e.g. schooling and learning support) The complexity of the ECE sector has also increased, which further compounds the pressures faced by staff.
252. We have heard from the Ministry of Education ECE staff in regulatory roles that they face excessive workloads, with each staff member responsible for an average of 100 ECE services. An overwhelming caseload would limit staff’s ability to proactively monitor services and carry out quality improvement activities.

What are the implications of this finding?

253. Excessive workloads undermine the Ministry’s ability to maintain regulatory standards. When staff are overburdened, they are unable to engage in proactive compliance work, and their focus is diverted to addressing immediate issues, resulting in burnout and high staff turnover.

Finding 19: Training for Ministry of Education staff is inconsistent and inadequate

Training across the Ministry of Education’s regional offices is inconsistent, with variations observed in induction programs. Staff in regulatory roles in different regions report receiving different levels of training, particularly when it comes to understanding regulatory practice. Significant work remains in developing and delivering consistent, high-quality training for all staff, ensuring uniform standards and practices across all regions.

254. The Ministry has a regulatory workforce that is committed to child safety and development. The Ministry really cares about what they see as their role and understand what it means to be an effective regulator. Despite this, the Ministry’s staff in regulatory roles told us that the training they received is inadequate and is inconsistently delivered across regions.
255. Ministry staff told us that new staff in regulatory roles are often left to learn on the job, with inadequate induction processes in place. This creates disparities in regulatory practices across regions and undermines the Ministry’s ability to deliver consistent outcomes. These staff also told us they need more comprehensive training in conflict management and communication with ECE service providers, especially in cases where they need to take regulatory enforcement.
256. Similarly, we heard a significant amount from ECE service providers about the variations in requirement interpretations and differences in decision-making by staff in regulatory roles.¹⁰² These variations may stem from the inconsistent approach to training staff.

What are the implications of this finding?

257. The lack of standardised induction and training programmes results in uneven knowledge and skills among staff in regulatory roles, which weakens the Ministry’s ability to enforce regulations consistently and effectively across the country.

¹⁰¹ Examples of other tasks they undertake are; developing guidance, responding to complaints about regulatory decisions, and offering support and professional development to ECE service providers and staff.

¹⁰² Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review.”](#) (October 2024). pp. 51 – 53.

Section B: Recommendations to improve ECE regulatory leadership

258. In Chapter 3, we said making changes to the regulatory system is an essential first step to find practical regulatory improvements that will reduce compliance burdens on ECE service providers. The next step is to improve the leadership of the ECE regulatory system in terms of its approach, strategy, decision-making, and targeting of resource.

Recommendation 5: Strengthen regulatory oversight to foster trust, transparency, and effective sector stewardship

259. Within this recommendation we outline the need for the Ministry of Education and the Education Review Office to consider:

- a. establishing performance indicators for the regulatory system with regular reporting for transparency and feedback between ECE service providers, parents and whānau, staff in regulatory roles, and policy makers
- b. reviewing practice arrangements to ensure the mechanisms are in place to support a proactive regulatory approach and enhance stewardship, and
- c. ensuring all changes to regulatory requirements and licensing criteria are thoroughly assessed against policy objectives, costs, and trade-offs.

Establish performance indicators for the regulatory system with regular reporting

260. We recommend the performance of the regulatory system be measured against specified targets. It is important the measures include assessments of feedback from ECE service providers and parents and whānau as this visibility could increase the ability for staff in regulatory roles and policy makers to respond to emerging risks and issues.

261. It may take time to design measurable targets to regularly assess the performance of the ECE regulatory system. Also, as we have recommended the ECE regulatory system goes through a process of redesign, it may be some time before these targets can be measured.

Review practice arrangements to ensure mechanisms are in place to support a proactive regulatory approach and enhance stewardship

262. We recommend the Ministry and the Education Review Office review the current practice arrangement to ensure that the right mechanisms are either there, or can be implemented, to support the transition to the proactive, risk-based approach. Consider ensuring all changes to regulatory requirements and licensing criteria are thoroughly assessed against policy objectives, costs, and trade-offs.

263. We consider that the Ministry is not doing sufficiently thorough analysis of the regulatory impacts of proposed changes to the licensing criteria. This is likely because they are not required to do this kind of analysis under the current regulations.

264. We recommend regulation 41 be amended at the next opportunity to include a merit test or some kind of justification process to ensure that all proposed changes to licensing criteria are well considered; in particular, that the compliance costs of changes for ECE service providers are accurately assessed and communicated. The benefits of this approach are that more of the costs, benefits and any unintended consequences would be identified in the analysis process, and this information could be shared when the Ministry consults with the ECE sector.
265. In this report we also recommend changes to the licensing criteria (see Recommendation 9 in Chapter 5), and all the changes would be thoroughly assessed by the Ministry using the Regulatory Impact Statement process. We recommend this process be used for all changes regardless of whether the proposed amendment to Regulation 41 has been approved.

Recommendation 6: Establish a strategic, long-term approach to ECE regulation that supports innovation, quality, and growth

266. There is no regulatory strategy guiding compliance activity in the ECE sector. We recommend that agencies develop a formal strategy, publish that strategy, and report on it regularly.
267. In Finding 9 we noted conflicts between some of the requirements that different regulators need ECE service providers to comply with under their license to operate. We noted these tensions may be eased somewhat if there were a guiding strategy for regulatory activity. Developing an ECE regulatory strategy would require the steward of the ECE regulatory system, the Ministry of Education, to take a cross-system view to ensure that the strategy can work well alongside other regulatory regimes. This would necessarily involve working with other regulatory stewards to resolve any conflicting or overlapping requirements in the regimes that interface with the ECE sector.
268. The benefits of having a published and reported on regulatory strategy would be that all parties would have transparent information about:
- a. the approach for how ECE services will be regulated
 - b. areas of high-risk that will be proactively regulated, and
 - c. how regulators will conduct compliance activities and use enforcement tools.
269. Regular reporting on the implementation of the regulatory strategy would provide up to date information about the performance of the regulatory system and would enhance accountability and contribute to continuous improvement efforts by agencies
270. We also recommend agencies follow good regulatory practice by focusing compliance activity on high-risk areas.
271. We recommend a comprehensive, risk-based regulatory approach be developed that prioritises resources for high-risk areas while also tailoring compliance approaches depending on the capability and willingness of ECE service providers to comply. We understand that some non-compliance is driven by a lack of capability, while other non-compliance is driven by a lack of willingness to comply.

Recommendation 7: Invest in workforce training across agencies to improve regulatory effectiveness and consistency

272. Within this recommendation we outline the need for the Minister of Education, in consultation with relevant agencies, to:

- a. implement a recruitment and workforce management strategy that attracts candidates with a regulatory skillset and develop a regulatory capability training programme, and
- b. improve case management systems.

Implement a recruitment and workforce strategy and a regulatory capability training programme

273. We also recommend agencies consider how best to ensure ongoing labour supply for the regulatory workforce and focus on how to ensure that the workforce has a good balance of regulatory skills and a diversity of experience.

274. We see the need to invest in the regulatory capacity and capability through better induction, training programmes and professional development. Running the regulatory system well requires a nationally standardised approach to ensure staff in regulatory roles are well supported and equipped to conduct their roles with a high degree of professionalism.

Improve case management systems

275. We consider regulatory agencies need to be resourced adequately to support investment in case management systems comparable to those used by similarly sized regulators in New Zealand. This recommendation will require substantial up front and ongoing resources to implement.

Chapter 5: Using the right tools

Purpose of this chapter

276. This chapter discusses the tools in the ECE regulatory framework. It presents the current issues related to regulatory tools (see Section A) and offers recommendations for new compliance activities and enforcement tools (see Section B).

Chapter overview

277. We refer to ‘regulatory tools’ regularly in this report. This term covers all the non-financial means at the government’s disposal to influence parties within the regulatory system. It includes the ‘tools of the system’, such as legislation and regulation setting, as well as the ‘tools of the job’ of regulation, such as compliance and enforcement tools, and guidance.

278. Key problems with ECE regulatory tools and requirements include:

- a. **Limited Tool Variety:** The current regulatory framework creates an over-reliance on using changes to the status of licences as a regulatory tool with limited options for addressing varying degrees of non-compliance.
- b. **Inflexibility in Compliance:** Current standards do not sufficiently account for differences in service types, leading to unnecessary burdens on providers.
- c. **Qualification Confusion:** Differences in the definition of a ‘qualified teacher’ contribute to regulatory misunderstandings and labour supply shortages.
- d. **Home-Based Service Challenges:** Requirements for home-based services often don’t reflect their unique operational needs, limiting growth in this sector.

279. Our findings can be summarised as:

- a. **Finding 20:** The ECE regulatory toolkit is limited and there is an over-reliance on changing licensing status to enforce compliance
- b. **Finding 21:** Compliance activities and enforcement tools are not proportionate
- c. **Finding 22:** Differences in ECE definitions of ‘qualified teacher’ are causing confusion

- d. **Finding 23:** ECE service providers can choose to offer better adult-to-child ratios
- e. **Finding 24:** There are some problems with licensing criteria
- f. **Finding 25:** The qualification requirements contribute to ECE labour supply shortages in some areas and for some service types
- g. **Finding 26:** Home-based educators who are qualified teachers are currently unable to maintain their practicing certificate when working as a home-based educator
- h. **Finding 27:** The ‘person responsible’ requirements are causing problems in the ECE sector, including for home-based ECE services
- i. **Finding 28:** The ECE regulatory system is not fit for purpose for home-based ECE.

280. Our recommendations are:

- a. **Recommendation 8:** Update regulation to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk.
- b. **Recommendation 9:** Revise licensing criteria to ensure they are proportionate, effective, and support quality without overburdening providers.
- c. **Recommendation 10:** Allow greater flexibility in workforce qualifications to support access and quality across all areas and service types.
- d. **Recommendation 11:** Ensure the person responsible requirements are practical, appropriate to meet the needs of children and purpose of the requirements, and responsive to service needs, including home-based services.
- e. **Recommendation 12:** Work with stakeholders to develop a strategic plan for home-based services, including provisions for rural areas and whānau with diverse needs.

281. These recommendations cannot be implemented successfully without firstly addressing the failings in the ECE regulatory system and its leadership described in Chapters 3 and 4.

¹⁰³ See Attachment B: Glossary of Terms for definitions.

Section A: The findings related to the current ECE regulatory tools

282. This section details the findings of the regulatory review related to the ECE regulatory tools. Each finding is presented in a blue box. Further descriptions of the findings follow along with details of the evidence sitting behind the finding and the implications of each finding.

Finding 20: The ECE regulatory toolkit is limited and there is an over-reliance on changing licensing status to enforce compliance

The current regulatory and compliance tools in the Ministry of Education's ECE regulatory system are limited and rely on changes to the status of the service licence as the primary compliance tool. This results in a heavy focus on licensing, which is not always suited to managing ongoing operational compliance. This means that:

- Some service providers are concerned that they may lose their licence for a minor issue
- There is a lack of transparency about why regulatory decisions have been made, and
- Some simple compliance actions take longer than they should.

283. This is a significant finding from this review. At present, the regulatory tools available focus primarily on altering the licensing status of ECE services (provisional, suspension, cancellation). These are significant interventions, appropriate in instances of serious non-compliance or immediate risks to children's health and safety. However, using licence status as a multi-purpose regulatory tool may not be appropriate for less serious breaches, where service providers might not warrant full suspension or cancellation but still require regulatory attention.

284. As described in section 41 of the *Education (Early Childhood Services) Regulations 2008*, the licensing criteria are used by the Secretary for Education as a tool to assess whether service providers have complied with the minimum standards set out in regulations 43 to 47. In practice this means that the criteria are used as:

- a. **A market entry tool** to ensure prospective ECE service providers have, or will be expected to meet, all requirements to be eligible for a perpetual licence to operate an ECE service.¹⁰⁴
- b. **A tool used as part of compliance activity** when the Ministry of Education is investigating a complaint or an incident which has put

into question whether the ECE service has maintained compliance.

- c. **A tool used as part of enforcement processes** either when putting an ECE service provider on a provisional licence until non-compliance is resolved, or to require severely non-compliant ECE service providers to exit the market.

285. Using licensing criteria as a tool for identifying and responding to most regulatory actions means that when minor compliance breaches are identified, the ECE service provider could be put on a provisional licence until non-compliance is resolved. We recognise that the Ministry of Education generally does not typically take regulatory action unless there are multiple and/or significant issues of non-compliance, and only after the service provider has had the opportunity to resolve the issue. In addition, the Ministry supports some providers to resolve issues with support in the form of professional learning and development and/or SELO contracts.¹⁰⁵ However, the issue remains that structurally the framework does not enable more nuanced approaches, and therefore can result in disproportionate responses.¹⁰⁶

286. This overreliance on the licensing mechanisms has a range of impacts. Three key impacts are noted in the Finding box above. Each are expanded on here, along with a brief note on the implications:
287. Some service providers are concerned that they may lose their licence for a minor issue: We have heard from ECE service providers that having their licence reclassified as provisional is perceived as a major sanction. While providers can continue to operate, they report that it can be stressful and disruptive. We also heard from the Ministry of Education the ECE service can continue to operate with a provisional licence and that most ECE service providers have their full licence reinstated. This difference in perception is important; it may explain some of the friction and lack of trust that has developed between agencies in the regulatory system and regulated parties.
288. There is a lack of transparency about why regulatory decisions have been made: Some providers have said that when the Ministry takes regulatory action against them it is not always clear why or how they have come to the decision to take enforcement action. The Ministry of Education provides a letter to service providers explaining the regulatory action they have taken. However, feedback suggests transparency could be improved regarding the decision-making which led to the action being taken.
289. Some simple compliance actions take longer than they should: Changing an ECE service provider's licence status is an administratively burdensome task for the Ministry of Education. We consider that other compliance activities and enforcement tools would be quicker to apply to instances of minor non-compliance. We also consider that there is an overly long process for changes that an ECE service provider may wish to make to their licence. For example, providers have reported that when

they make small changes, such as increasing the number of children attending a service or replacing a board member, they have been required to be re-assessed against all the licensing criteria again. Although the procedure to make these changes does not explicitly state that the service needs to be re-assessed, regional Ministry offices may take this change as an opportunity to review the service against all the licensing criteria particularly if the service has not been reviewed by the Ministry for a long time. We consider the lengthy administrative processes may act as a barrier to individual service expansion as well as growth in the ECE service market.

What are the implications of this finding?

290. The use of licensing as an enforcement tool, especially provisional licences, may not always provide clear signals to parents and whānau regarding the severity of compliance concerns, as they cover a broad spectrum of issues that vary significantly in risk level. Additionally, the Ministry's reliance on licensing can result in slower responsiveness by ECE service providers.
291. The lack of graduated enforcement mechanisms may have also created reluctance by Ministry staff in regulatory roles to take compliance action for more minor breaches, resulting in inconsistent compliance management and missed opportunities for encouraging sector improvement.

¹⁰⁴ Some compliance cannot be demonstrated until an ECE service is operational, so compliance cannot be assured before the service opens.

¹⁰⁵ Ministry of Education, "[Strengthening Early Learning Opportunities programme](#)" webpage.

¹⁰⁶ Ministry for Regulation, "[What Submitters told the Early Childhood Education Regulatory Review](#)", (October 2024), pp. 124-125.

Finding 21: Compliance activities and enforcement tools are not proportionate

The compliance tools available are not sufficiently graduated or proportionate to the range of non-compliance issues in the sector.

292. The current ECE regulatory framework relies heavily on changes to the status of the service licence as an enforcement tool. Good regulatory practice requires that a wider, more graduated set of enforcement tools is available to allow the regulator to take proportionate action that addresses different levels of risk and encourages sector-wide improvements in compliance behaviour.¹⁰⁷

What are the implications of this finding?

293. Having only licensing to use as a regulatory tool limits the Ministry's ability to implement a responsive, risk-based regulatory strategy. We have seen that the current, licence-reliant, approach has eroded trust with the ECE sector and is a cause of some of the undue compliance costs and administrative burdens for some providers who are worried they may have their licence status changed in response to minor breaches of compliance.

Finding 22: Differences in ECE definitions of 'qualified teacher' are causing confusion

Some of the definitions in the ECE Funding Handbook do not match the definitions in the regulations which can add complexity, and create confusion for service providers.

294. In our review we discovered some discrepancies between some definitions in the *ECE Funding Handbook* and ECE regulations. Here are two examples of where there are discrepancies, but there may be more.

- The *ECE Funding Handbook* allows teachers with primary school qualifications to be considered as 'qualified teachers' for ECE services.¹⁰⁸ The ECE regulations do not.¹⁰⁹
- The regulations allow one trainee teacher, in their final year, to count as 'qualified'.¹¹⁰ The *ECE Funding Handbook* does not.¹¹¹

295. In addition, teachers must be both registered and certificated with the Teaching Council (i.e. they need a current practicing certificate) to count as qualified for funding purposes but they only need to have an ECE teaching qualification recognised by the Teaching Council for registration purpose to meet the fifty percent regulatory requirement.

296. We have also heard that the rules themselves are complicated when considered together. It is beyond the scope of this report to explain all the requirements related to qualifications. They are outlined in the regulations¹¹² and in the *ECE Funding Handbook*.¹¹³ It creates administrative complexity to have two 'rulebooks' with differing meanings for the same words.

¹⁰⁷ New Zealand Treasury, "[Government Expectations for Good Regulatory Practice](#)", (21 April 2017), p. 7.

¹⁰⁸ Ministry of Education, "[ECE Funding Handbook](#)", see "qualification groups" in 3-B-2 Education and care services.

¹⁰⁹ [Education \(Early Childhood Services\) Regulations 2008](#), section 3, definition of "recognised qualification."

¹¹⁰ *Ibid.*

What are the implications of this finding?

297. The funding mechanisms for the ECE sector are strong drivers of provider behaviours related to staffing. This may be because the operating margins in the ECE sector, especially for smaller and non-profit providers, are tight.¹¹⁴ While we understand that there is a rationale for why the regulatory and funding systems have landed on differing definitions of qualified teacher, there has not been enough consideration of the costs and conflicting incentives created by these differing rules.
298. The impact of the examples given place a restriction on ECE labour supply because:
- a. The regulations allow a trainee teacher to count as qualified (which has a positive effect on labour supply) but since they won't receive funding for it in practice there's no incentive for an ECE service provider to hire a trainee teacher (which has a negative effect on labour supply).
 - b. The funding allows primary school qualified teachers to count as qualified (which expands the potential pool of teachers and has a positive effect on labour supply) but since they don't count towards the regulatory 50 percent threshold that's a disincentive to hiring primary school qualified teachers unless the person is the 'person responsible' (which has a negative effect on labour supply).
 - c. Requiring teachers to hold a current practicing certificate to count for funding purposes disincentivizes ECE services from hiring qualified teachers who have left the ECE sector. This reduces the pool of teachers they can recruit from and still be eligible for higher funding bands and can make it harder for individuals with ECE qualifications to return to the sector. This problem is made worse by the fact that the ECE sector appears to have a high degree of burnout. So, there is potentially a significant pool of potential workers that rules are discouraging from returning to the sector.

Finding 23: ECE service providers can choose to offer better adult-to-child ratios

There are no regulations preventing services from achieving better adult-to-child ratios, although some services may face funding constraints to employing more staff.

299. ECE regulations include minimum adult-to-child ratios.¹¹⁵ We have heard from ECE service providers and industry organisations a request for the government to improve minimum adult-to-child ratios.¹¹⁶ Doing so is beyond the scope of this review given there is a significant funding implication of such a change. However, we would like to note that the adult-to-child ratio is a minimum standard. ECE service providers can choose to offer better adult-to-child ratios.
300. There are no recommendations in this report for those ratios to be adjusted.

¹¹¹ Ministry of Education, "[ECE Funding Handbook](#)", see "qualification groups" in 3-B-2 Education and care services.

¹¹² [Education \(Early Childhood Services\) Regulations 2008](#)

¹¹³ Ministry of Education, "[ECE Funding Handbook](#)", last published on 23 September 2024.

¹¹⁴ Businessdesk.co.nz, Meier, C., "[Daycare dollars: who's winning and losing?](#)" (1 July 2024).

¹¹⁵ [Education \(Early Childhood Services\) regulations 2008](#), Schedule 2 adult-to-child ratios.

¹¹⁶ Ministry for Regulation, "[What Submitters told the Early Childhood Education Regulatory Review](#)", (October 2024), pp. 69-70 and 76.

Finding 24: There are some problems with licensing criteria

The way the ECE regulatory framework is currently structured results in an over-reliance in the use of the licensing criteria and changes in licence status as the primary tool to manage non-compliance and risk. In addition, there are some problems with the way some criteria are worded, and complications arising from multiple agencies being involved in assessing the same criterion. This results in issues relating to the proportionality, efficiency, effectiveness, and clarity of requirements. We have also identified a regulation related to immunisation record-keeping that ECE service providers currently need comply with that no longer serves a purpose.

301. *The Education (Early Childhood Services) Regulations 2008* outline a series of standards and other requirements that ECE services must meet to obtain a licence, and to continue to be licensed to provide ECE services.¹¹⁷ Under the Education and Training Act 2020 ('the Act'), a service provider who operates an early childhood education and care centre must be licensed. Under section 548 of the Act, licensed providers of ECE services must be paid 'general grants' and may receive one or more 'discretionary grants.' In effect, this means that the Ministry of Education must fund any ECE services that are licensed and currently have eligible students enrolled in the service.

302. The Licensing Criteria are intended to provide greater certainty and clarity for service providers by setting out the criteria that will be used by the Secretary for Education to assess compliance with the minimum standards in regulations 43 to 47.

Use of licensing as a regulatory tool

303. Compared to ECE regulatory systems in other jurisdictions, New Zealand relies primarily on licensing to regulate the sector, as opposed to using a range of instruments for different purposes, and with a more nuanced and proportionate set of potential regulatory actions in the event of non-compliance.

304. In New Zealand, breaches of licensing criteria are met with the response of potentially changing the licence status to 'provisional' while compliance is being restored. We have heard this can happen for some breaches of compliance that are relatively minor, which has made ECE service providers complain that this is an over-the-top response.

Problems with specific licensing criteria

305. We have reviewed the licensing criteria, this involved:

- a. discussions with agencies involved in ECE regulation
- b. review of feedback from stakeholders
- c. comparison to similar requirements in other jurisdictions, and
- d. hosting workshops with regulatory agencies to test findings.

306. We have found several licensing criteria that could be considered duplicative, and others that would be better applied if they were regulated using a different tool. Some criteria have been found to be unnecessary in the current ECE sector context, while others have been found to blur the lines between what is a regulatory requirement and what is a recommendation for improving quality above the minimum standards. See Recommendation 9 for more information, as well as remedies.

¹¹⁷ [Education \(Early Childhood Services\) Regulations 2008](#), Part 2 Standards.

Problems with multiple agencies involved with assessing the same criteria

307. We heard feedback from across the sector that having multiple agencies involved in assessing the same criterion at different points in time was problematic. This issue was further complicated by the fact that many criteria can be subjectively interpreted. The result is that criteria are assessed inconsistently, and ECE service providers expend time and effort responding to changing views on what is required to be compliant.

Insufficient testing of whether the requirements ECE service providers are required to comply with are fit for purpose

308. In this regulatory review, we did not conduct a review on all regulations which interface with the ECE sector. We reviewed the licensing criteria (as described above) and considered a range of regulations from other regulatory systems to see whether there were potential overlaps or conflicts with licensing criteria.

309. One health regulation, the *Health (Immunisation) Regulations 1995*, we used as a test case of whether regulations outside the Ministry of Education's remit remain valid. This regulation requires ECE service providers to hold vaccination records for the children aged 15 months or older that attend the ECE service. There are other health regulations that warrant a review by the Ministry of Health, with input from Health NZ, to ensure they remain fit for purpose for the ECE sector.

310. The regulation's primary purposes are:

- a. to promote the immunisation of children against disease
- b. to encourage caregivers to make an informed choice regarding the immunisation of their children, and
- c. to facilitate disease control.¹¹⁸

As alternative non-regulatory mechanisms now exist, including for consumer immunisation education and promotion, and outbreak management, we have found this regulation is no longer necessary. Health New Zealand agrees with this assessment.

311. We recommend the government revoke the *Health (Immunisation) Regulations 1995* at the earliest opportunity. We also recommend that the Ministry of Education, as the steward of ECE regulatory system, have an ongoing programme of work to ensure all relevant ECE regulations are fit for purpose, including those governed by other agencies.

Finding 25: The qualification requirements contribute to ECE labour supply shortages in some areas and for some service types

The qualification requirements in regulations and funding rules appear to be making it harder for new services to open in underserved communities and for existing services in those areas to expand as it is difficult for them to recruit enough qualified teachers. The quantitative analysis that the review has undertaken has shown that there are not enough qualified ECE teachers in some areas, particularly in rural areas. The inability to recruit qualified ECE teachers appears to be contributing to an undersupply of ECE services in some areas, meaning that parents cannot always access the right ECE service type in the right place to suit their preferences and that prices may be higher than if there was more supply of ECE.

¹¹⁸ [Health \(Immunisation\) Regulations 1995](#), section 3.

312. The review team’s quantitative analysis together with the feedback from direct and in-direct engagement with stakeholders indicates that one of the drivers is a lack of supply of qualified ECE teachers, particularly in rural areas and for Māori and Pasifika services. ECE providers have told us that it is difficult to recruit qualified teachers.¹¹⁹ Difficulty recruiting teachers is likely to be a barrier to existing services expanding and new services entering the market.¹²⁰
313. The shortage of qualified ECE teachers is in part due to the nature of the sector. Completing a three-year degree is costly in terms of both time and money, and being an ECE teacher is comparatively poorly remunerated occupation for the qualification level required. Feedback from our engagement with stakeholders suggests that there is a high degree of burnout in the sector.¹²¹
314. The combination of regulatory requirements and funding conditions could be exacerbating this problem. Funding conditions are a strong driver of behaviour in the ECE sector. The funding rules give ECE providers who have higher proportions of ECE or primary certificated teachers more funding.¹²² Many ECE services are either low profit margin community-based businesses, or non-profit organisations that are dependent on government subsidies to operate. Many providers, especially non-profits, need to achieve the higher funding levels (through hiring higher proportions of ECE or primary qualified teachers) to be financially viable.
315. New services may not be able to enter the market either because:
- a. they cannot recruit enough qualified teachers to meet the 50 percent qualified teacher requirement, or
 - b. they cannot recruit enough certificated teachers to meet the higher funding bands, and the business is not financially viable unless it meets those thresholds.
316. Existing services may not be able to expand because they cannot recruit enough certificated teachers to take on more children and stay within the higher funding bands. This is because the businesses would not be financially viable unless it meets those thresholds. This appears to be one of the factors contributing to an undersupply of ECE services in some areas.
317. It means that parents cannot always access the right ECE service type in the right place to suit their preferences. It could also be contributing to high ECE prices. In theory if there was a greater supply of ECE available prices for parents would be expected to be lower than in a scenario where there is less supply.
318. Qualification requirements is an area where the trade-off between quality and supply of ECE is one of the most direct. The current combination of regulatory and funding rules may not be striking the right balance for all services. By incentivising some services to have higher proportions of certificated teachers (e.g. 80-99 percent or 100 percent) the funding rules may be concentrating the limited number of certificated teachers in existing services and inadvertently reducing the number of registered ECE teachers available for new services to enter the market.
319. The ECE teacher recruitment problem is particularly acute for services in rural and lower socio-economic areas, as there are fewer qualified teachers available in those areas, and Māori and Pasifika services, which struggle to find qualified teachers with the necessary language skills.

Other issues related to qualifications

320. The lack of flexibility in qualification requirements can cause other issues for ECE services. For example, in one non-profit rural service we engaged with teachers ate lunch at 3.00pm (after the service had finished operating), which may be in contravention of employment rules.¹²³ They were not able to take lunch breaks earlier in the day as the service was not able to recruit a qualified reliever (despite trying for a long time). The service could not afford to lose the funding or to hire a non-qualified reliever, for whom they would not receive funding. We could see that this put the service in the difficult position of choosing between complying with employment rules or complying with ECE regulation.

321. The number of qualified teachers that an ECE service (with a full license) is required to employ is linked to its maximum licensed capacity rather than actual number of children attending. This is intended to give the Ministry of Education assurance that the service will be able to meet staffing requirements, as the Ministry of Education does carry out regular compliance checks. While services can apply to reduce their maximum licensed capacity to mitigate this, needing to apply to do this when demand is low and then subsequently apply again to increase their maximum capacity when demand increases is an administrative burden. The Ministry of Education notes that the costs of doing this will be significantly outweighed by the benefits to the service of doing this.
322. This process should be relatively straightforward, ECE service providers fill in a form online that is subject to a desktop assessment by the Ministry of Education. However, we understand that in practice regional Ministry offices sometimes use the opportunity to re-check all the licensing criteria. This is because the Ministry do not do regular compliance checks so may not have checked the services for a long time. This can significantly increase the administrative burden for an ECE service that may be reliably compliant.
- b. recognise vocational qualifications, and/or
- c. require all teachers to have some level of vocational qualification (or be working towards one).
324. The Ministry of Education notes that care should be taken in considering qualification requirements separately from other requirements that influence outcomes for children, such as ratios, group sizes and supervisory roles (e.g. person responsible). Other countries may balance lower qualification requirements with higher ratios or different supervisory roles.
325. In some other jurisdictions, (e.g. Western Australia, Tasmania), teachers actively working towards vocational qualifications count as qualified teachers in ratio calculations.¹²⁴
326. From our review of international comparisons, it appears as though the approaches taken internationally strike a better balance of ensuring quality and accessibility of ECE. However, a full cost-benefit analysis comparing New Zealand's approach with international examples would be needed to determine this conclusively.
327. By only recognising degree level qualifications when many other comparable countries also recognise vocational qualifications, it may also be hard for ECE services in New Zealand to recruit ECE teachers from abroad despite ECE teachers being on the Immigration New Zealand green list.¹²⁵

International comparisons

323. New Zealand's approach to qualification requirements is very different to that taken in other countries. Most countries appear to:
- a. require a smaller proportion of teachers to have degree qualifications (e.g. the head teacher responsible for the curriculum)

¹¹⁹ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024), pp. 10, and 79 – 80.

¹²⁰ This is an assumption because, in the submission process, we did not hear from people who wished to enter the ECE market but were prevented in doing so by market barriers. We note this in our report [“What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024), on p. 46.

¹²¹ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024), pp. 65 – 66.

¹²² The funding bands are: 100%; 80-99%; 50-79%; 24-49% and 0-24%.

¹²³ Ministry of Business, Innovation and Employment [“Rest and breaks”](#) webpage.

¹²⁴ <https://www.acecqa.gov.au/qualifications/requirements/actively-working-towards-a-qualification>

¹²⁵ Immigration New Zealand, [“Green list roles”](#) webpage.

Finding 26: Home-based educators who are qualified teachers have a pathway to maintain their practicing certificate when working as a home-educator

Home-based educators who are qualified teachers are currently unable to have their service recognised to maintain their practicing certificate when working as a home-based educator. However, a pathway is available to them to renew their practicing certificate, if they wish, using a teacher education refresh process as a proxy for the recent satisfactory teaching requirement.*

328. The requirement for 100 percent of home-based educators to either have a minimum of a level 4 qualification is a higher threshold than that which exists for centre-based services as not all staff in centre-based services are required to be qualified or in training. For rural and isolated and Pasifika children, these are areas where home-based services could fill an important demand gap in the market and easing qualification burden would be advantageous for these areas. The burden associated with the requirement to be either qualified or in training is greatest on those who are older educators (grandparents), rural and isolated, and those providing educator services in languages other than English, which presents as a barrier to workforce participation. It also fails to recognise the qualities these educators would bring to their roles.
329. Other qualification requirement changes for educators suggested by providers to improve flexibility and ease compliance were addressed during this review. These changes simplified the percentage-based requirements for qualified versus unqualified educators as home-based providers were only able to have up to 20 percent of unqualified educators or in training at any one time. This impacts on the funding for providers who are recruiting new educators who were not yet qualified, which impacts how they could grow their businesses.
330. Providers of home-based ECE services and home-based educators that are fully qualified ECE teachers have told the ECE sector review that one way to enhance the supply of home-based educators would be to enable fully qualified and certified teachers to maintain their practising certificate through the Teaching Council while working as home-based educators. This would attract qualified ECE teachers to home-based as educators who charge for four children have comparable and, in some cases, more favourable reimbursement in comparison to centre-based teachers. Potentially this change could encourage more ECE teachers to work in home-based settings and create some supply impacts for centre-based services, but equally, it could help retain more teachers for the sector if more pathways for employment are available.
331. While the educator role currently does not meet the definition of a teaching position, it may be possible for the Teaching Council to explore a process that may allow them to recognise the teaching experience of registered teachers who have held or currently hold a full practising certificate (e.g. Tūturu | Full (Category One) Practising Certificate or Pūmau | Full (Category Two) Practising Certificate) and who are working within licensed early childhood services who are not working in a recognised teaching position role. The Teaching Council has been responsive to requests by the review team to address this and has begun work to scope if this is possible.

* The Teaching Council expects to put information about this change on its website soon.

Finding 27: The ‘person responsible’ requirements are causing problems in the ECE sector, including for home-based ECE services

The ‘person responsible’ requirements potentially conflict with managerial responsibilities in larger centres; and unnecessarily restrict the provision of home-based services and for home-based services place obligations on people who may not be in location.

332. Person responsible requirements don’t reflect the roles and responsibilities that staff have in practice in ECE services. Many service providers and ECE staff have told us that these requirements are unclear, difficult to implement and duplicative with other requirements and do not clearly benefit children or teachers.¹²⁶ The person who is best placed to manage risks should be responsible for managing them. Managing a centre is a very different role to managing the education curriculum. It involves different risks and requires different skills. Currently these are all bundled together in person responsible requirements.
333. This may lead to worse outcomes, for example, if the person responsible has less time to focus on the educational side of the services as they need to manage the administrative tasks of managing the centre. It can also increase burdens, as the person responsible for managing the service is required to have a primary or early childhood teaching qualification, even though the skills that the degree provide are only relevant to the educational side of the service not the administrative side.
335. The 2018 review proposed a number of changes for visiting teachers that included: more requirements to provide training to educators (came into effect as part of regulation 62 that came in to force in February 2024), requiring the same visiting teacher to provide supervision and support to the same educator, and the requirement for coordinators to have some experience working with adults and whānau. A proposal that the coordinators must be fully certificated teachers (Category 1 or 2 practicing certificate) was due to come into force in August 2024, but this requirement was removed before coming into effect.
336. The Ministry has made changes over time as they sought to improve the effectiveness of the ‘person responsible’ role in a home-based setting. One of these recent changes was undertaken during this regulatory review and changes were made to enable the person responsible to act in that role for more than two licensed ECE services in any month.

Impacts on home-based ECE services

334. The ‘person responsible’ requirement is different in home-based services. Prior to the 2018 Review of Home-based Early Childhood Education, the role of visiting teacher was narrower and there was more flexibility for visiting teachers to act across licenses or work with educators for a short period of time.

¹²⁶ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024), pp. 106 - 107.

Finding 28: The ECE regulatory system is not fit for purpose for home-based ECE

The ECE regulatory settings are not appropriate or proportional to the home-based ECE sector. They are not striking the right balance between managing the risks and ensuring the sustainability of the home-based sector.

337. Licensed home-based ECE services are a valuable service offering. Parents who used home-based services were the most satisfied of all (compared with other types of service) but had the least choice of providers.¹²⁷ The number of home-based ECE services has declined each year since 2018. While this may be driven by a range of factors; providers have told us that the business model for home-based ECE is no longer viable.
338. The regulatory settings for home-based have profoundly influenced home-based offerings (number and range of home-based services provided), we have noted a declining trend in overall service provision from 2018 onwards.¹²⁸ The regulatory changes that were implemented have reduced the number of services, the number of child places and the distribution of services, which are now concentrated in urban areas.
339. Home-based services are different to centre-based services as they take place in homes which are not purpose-built ECE settings, they operate with lower ratios, and educators who are alone with children bring a variety of skills, although some are qualified ECE teachers. Despite these differences, the regulatory model for home-based is similar to centre-based services and providers have said the licensing criteria have been applied with a centre-based lens.¹²⁹
340. While developed with home-based needs in mind, the regulatory approach has not worked well, specifically the qualifications requirements, person responsible requirements and some of the licensing criteria. Home-based ECE providers told the review team that the approach to regulation and funding has not always encouraged growth and ease of business. The Ministry of Education notes that the focus has been on health and safety as these were identified as key risks in this part of the sector.
341. The 2018 review that led to changes to home-based policy settings found that despite funding incentives, the home-based workforce was, at that time, largely unqualified. In addition, there is limited oversight by the Ministry of Education after a service is granted a license, and there are perceived to be wide variations in the quality of service provided in home-based.
342. Since 2018, home-based ECE service provision has reduced significantly; and many providers have said the business model is no longer viable. There are likely to be a range of factors that have contributed to the decline, including regulatory changes. The next figure shows the decline in the number of home-based services as a proportion of all ECE services between 2018–2023.

¹²⁷ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review](#), (October 2024) pp. 25 – 26 and 31 – 32.

¹²⁸ Ministry of Education, [“ECE Census 2023 Services Factsheet”](#) June 2023.

¹²⁹ ECE Regulatory Sector Review National Home-based ECE Provider Group Submission, p. 6.

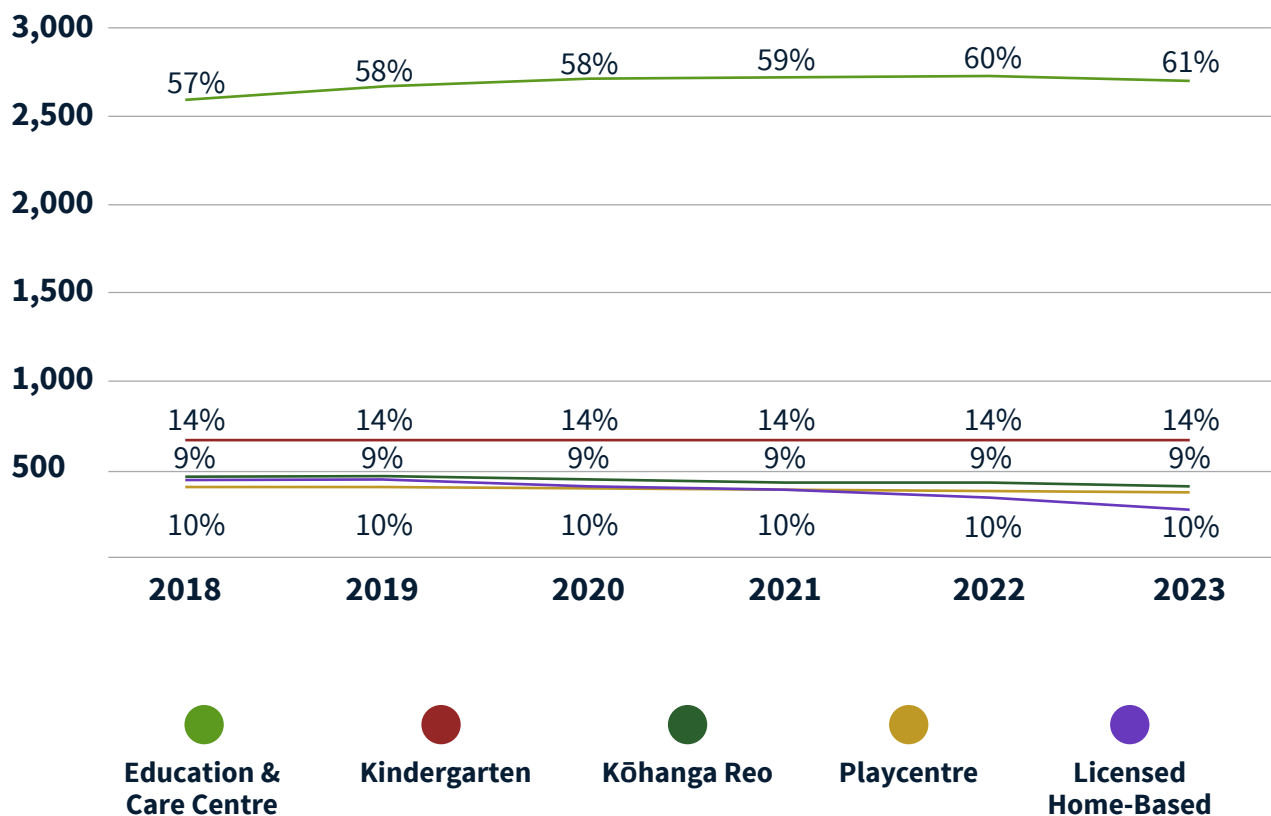


Figure 5.1 Proportion of early learning services by service type 2018–2023

343. Home-based services are also important to communities where centre-based services can either not be established or don't meet the needs of some children. These include where there are low populations and can be stood up reasonably quickly and cater to language and cultural needs of some communities. The lower ratios in home-based services provide an alternative option to centre-based services. Some families and whānau may prefer that their child is in a home-based service if their child is an infant, has disabilities, medical needs, or is neurodiverse.

344. The review found that while parents who use home-based are satisfied with the service and that home-based services can meet needs of communities where centre-based services are not viable, the settings for home-based still need work to promote ease of business and resilience.

Section B: Recommendations to improve ECE regulatory tools

345. The recommendations in this chapter respond to the main concerns we have heard from ECE service providers and have the potential to reduce compliance costs and administrative burdens. We have recommended the development of a more graduated and proportionate enforcement toolkit, to review the licensing criteria, and reconsider the qualification and ‘person responsible’ requirements which all contribute to problems in the sector.

Recommendation 8: Update regulation to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk

346. Within this recommendation we outline the need for the Ministry of Education to undertake further policy work, in consultation with the Education Review Office, to:
- create a broader set of graduated compliance tools, including creating sanctions that do not involve changing the status of a license
 - consider making all enforcement actions and compliance status publicly available to provide clearer information for parents and whānau, and
 - implement a National Enforcement Policy to ensure transparency, consistency, and proportionality in enforcement decisions.

Create a broader set of graduated compliance tools

347. Agencies involved in regulation require a broader set of graduated compliance tools, including sanctions that are not related to license status to be an effective and responsive regulator. While licensing is an effective tool for allowing ECE services to enter the market, and for exiting ECE services that can no longer comply with requirements, for every other instance, it is a blunt tool.
348. We recommend the Ministry of Education develop a set of graduated enforcement tools that can respond in a way that is proportionate to the risk. These tools could then be used to either escalate regulatory action or de-escalate regulatory action as necessary. We recommend that scope should remain in place to immediately stop service provision (suspensions) as well as downgrade the status of the licence where there are more systemic concerns with the ability of the service to fully comply.
349. A graduated enforcement toolkit would also allow the Ministry of Education to tailor compliance activity to the willingness and capability of the ECE service provider to comply. By starting with voluntary measures and escalating to enforcement, when necessary, the Ministry of Education would be able to foster a more cooperative and supportive relationship with the ECE service providers.
350. A graduated enforcement toolkit may have a combination of the following components:
- retain the licensing process for prospective ECE service providers obtaining a license to operate (entering the market)
 - create a practice of unannounced visits for ECE service providers that fit specific risk profiles (developed as part of the risk-based regulatory strategy). These visits would focus on current practices and conditions, with documentation checking tailored to the specific circumstances of the compliance objective. While the goal is to minimise administrative impost on-site, certain situations may require targeted documentary evidence to confirm past practices or ensure compliance with regulatory requirements

- c. introduce a form of improvement notices for instances of non-compliance where the ECE service provider is willing and capable, and agrees to achieve compliance in a set time
 - d. introduce a form of enforceable undertaking for instances of non-compliance where the ECE service provider is not willing or may not have sufficient capability to achieve compliance within a timeframe set by the Ministry. Non-compliance with the enforceable undertaking would result in escalation as it is likely the non-compliance in question would be creating risks of harm to children
 - e. consider whether there is a need for infringement fines for specific instances of non-compliance that, while serious, are not putting children at risk
 - f. develop a threshold above which failure to meet compliance requirements would be published and communicated to parents and whānau and/or the public, and
 - g. retain existing pathways for cancellation (provisional, suspension and cancellation) that apply the licensing criteria and add on to that process the connection with other enforcement tools. This means that non-compliance with an enforceable undertaking may also count as part of the rationale for cancelling a licence.
351. The diagram below provides further examples of the different types of tools that could be considered as part of a graduated framework.

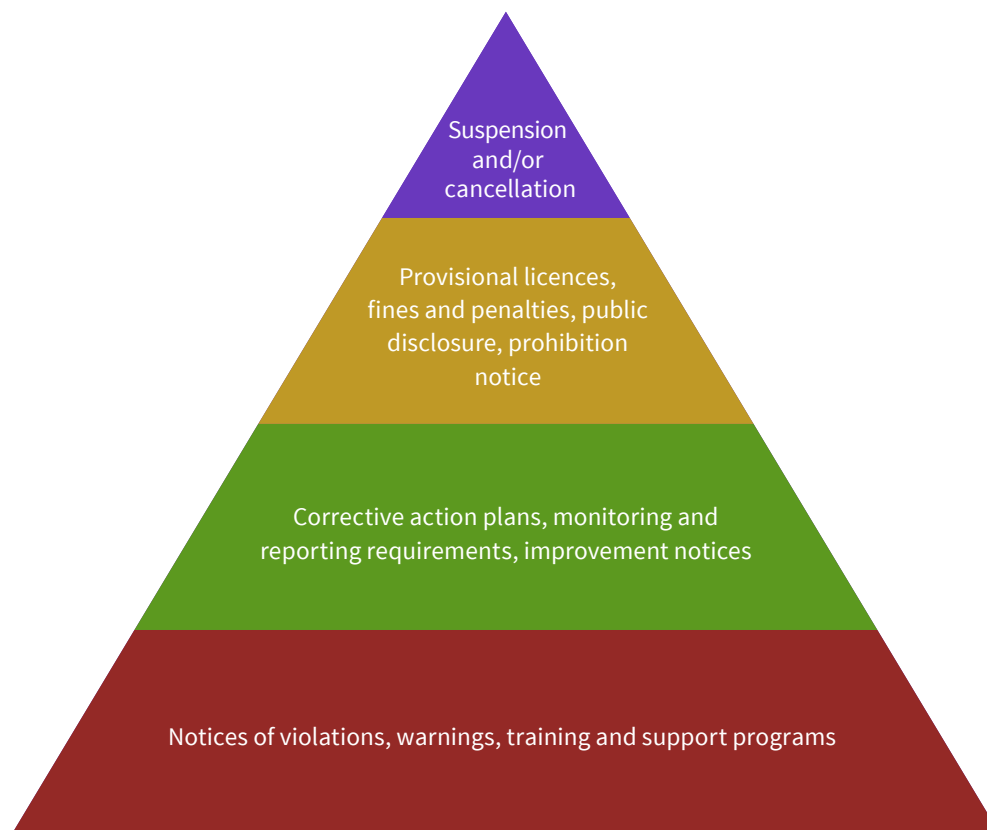


Figure 4.3: Examples of different levels of enforcement tools that could be considered

352. Table 5.1 provides further information on an option for improving the regulatory framework. The standards would still apply; the framework below would support the Secretary to assess whether the standards had been met.

b. each requirement is either clearly objective (for binary requirements) or clearly subjective (for judgement-based elements, where performance will inherently sit on a continuum) – as separating objective from subjective elements will simplify the process of assessing compliance.

Example of a risk-based framework for ECE requirements

353. In addition to considering developing a more graduated set of tools as described above, there would be merit in regulatory agencies considering parallel changes to the requirements themselves (both the regulatory standards and licensing criteria), to ensure that:

- a. the level of risk associated with non-compliance is proportionate to the regulatory tool(s) available, and

354. Below we have presented one example for an alternative framework that would fulfil these two goals.

355. Further policy analysis will be needed by the Ministry of Education in conjunction with the Education Review Office to test and refine the proposal, or an alternative that achieves the goals described above. This work will also need to include assessing whether legislative change is required.

Table 5.1 Example of a risk-based framework

Level of risk	Tier	
High Risk	<p>This category is focused on the highest risk criteria that, if not met, would pose a serious risk to the health and safety of children.</p> <p>Breaches of these requirements would trigger sanctions higher up the enforcement pyramid.</p> <p>Examples:</p> <ul style="list-style-type: none"> • HS33: No person on the premises uses, or is under the influence of, alcohol or any other substance that has a detrimental effect on their functioning or behaviour during the service’s hours of operation. • GM7A: Safety Checking of employees in ECE services 	
Medium – Low Risk	<p>Binary requirements</p> <p>These are requirements that are binary, ‘i.e. either a service has them or it hasn’t’. They do not involve elements of subjectivity or judgement in assessing compliance with the requirement.</p> <p>Graduated enforcement tools would be used for breaches of these requirements and/or an accumulation of breaches on a regular or semi-regular basis.</p>	<p>Outcomes based standards</p> <p>These are standards that inherently exist on a spectrum of unacceptable to good practice. The regulatory requirements should set minimums.</p> <p>As much as possible the requirements should be outcomes focused rather than prescriptive.</p> <p>Sanctions for falling below the minimum would start towards the bottom of the enforcement pyramid. However, the regulator could move up the enforcement pyramid if there was deliberate and persistent non-compliance.</p>

Level of risk	Tier
Medium – Low Risk	<p>Sanctions for breaches would start towards the bottom of the enforcement pyramid. However, the regulator could move up the enforcement pyramid if there was deliberate and/or persistent non-compliance.</p> <p>Examples:</p> <ul style="list-style-type: none"> • PF28: First aid kit • PF11: Telephone
Low – No Risk	<p>Best practice – no sanctions</p> <p>Best practice that goes beyond regulatory minimums. Best practice would form part of quality evaluations, which are currently carried out by the Education Review Office, but there would be no regulatory sanctions for not following these.</p> <p>This component could either be referred to in the regulatory framework (with no associated sanctions) or sit outside it.</p> <p>Recommendation 9 sets out the licensing criteria that we recommend should be moved into this category.</p>

Consider making enforcement actions and compliance status publicly available

356. One way to encourage compliance by ECE service providers could be to take their compliance history into the public domain. We recommend the responsible regulatory agency consider publishing the enforcement activity taken against ECE service providers for the most serious breaches of non-compliance. We appreciate there are a wide range of considerations the responsible regulatory agency would need to assess before this recommendation could be made to decision-makers for the ECE regulatory system.¹³⁰
357. The responsible regulatory agency would also need to consider how this practice would complement the existing practice of the Education Review Office to publish reports on ECE services.¹³¹ These reports focus on the quality of education and care. This includes the conditions that support children’s learning and the leadership and governance of the service. Compliance activities are also included and reported on.

358. We are aware of other regulators in New Zealand using this publication as a compliance tool. For example, the determinations (i.e. decisions) of all employment relations disputes mediated by the Employment Relations Authority are published on their website.¹³² This informs the public of the result of all cases, which is of interest to many parties; particularly, current and prospective employees of employers who have had cases taken against them.
359. In Chapter 2, we consider the contribution of the current ECE regulatory system on the ‘information asymmetry’ market failure which impacts parents and whānau of children attending ECE services. This recommendation aims to partially rebalance this by providing the public, particularly parents and whānau, a way to find out whether any ECE service has a history of serious non-compliance with ECE requirements.

¹³⁰ Given the significance of such a decision, we expect it would be presented to Ministers for final approval.

¹³¹ Education Review Office, “[Tirohia ngā pūrongo me ngā rangahau mā ngā Whare Kōhungahunga Review reports and research for Early Learning](#)” webpage.

¹³² Employment Relations Authority, “[Determinations](#)” webpage.

360. It should be noted that compliance history information is not reliably predictive. An ECE service provider that has had serious non-compliance in the past may be reliably compliant now; and ECE service providers with no history of non-compliance may currently be in a state of non-compliance. A further possible issue is that when a service is sold the profile number is sold with it – this means that the new owner inherits the history of the service. This issue could potentially be resolved if the information available made it easy for caregivers to see when changes in ownership had occurred. We recommend the Ministry consider this recommendation carefully.

Consider implementing a National Enforcement Policy

361. A regulatory strategy would include communicating to interested parties how regulators will conduct compliance activities and use enforcement tools in a proportionate manner. This strategy would be supported by the implementation of a National Enforcement Policy.
362. The aim of a National Enforcement Policy is to show how the regulator responds to risks and instances of non-compliance with the ECE minimum standards. It would include:
- a. roles and responsibilities of regulators that have enforcement duties and powers
 - b. all compliance activities and enforcement powers provided for by legislation, and
 - c. a description of how the compliance activities and enforcement powers will be applied to differing levels of non-compliance risk, compliance capability, and willingness to comply by ECE service providers.

363. We recommend that a National Enforcement Policy be designed to reflect the proportionate enforcement models that can be escalated or de-escalated as circumstances require. The Braithwaite Compliance Pyramid and the VADE Model are examples that have been assessed as best practice by the Productivity Commission in the 2014 report on Regulatory institutions and practices.¹³³ Reviewing these would be a good place to start, and there are likely to be other models that would be readily applicable to the ECE sector. We also recommend the Ministry consider models used by ECE regulators in other countries, particularly those of Australia.

What are the costs, benefits and implications of the recommendation?

364. Any adjustment to the regulatory toolkit would likely require legislative amendment.¹³⁴ This process would necessarily include consultation with the ECE sector, and so the policy development for the new enforcement tools would incorporate an assessment of how they would work in practice and how they would be received in the ECE sector.
365. This change would also involve time and resource costs (for example, staff time, IT system change costs) associated with the design of new regulatory tools. The costs, benefits and unintended consequences of each new tool would need to be thoroughly assessed as well as how the range of tools would operate together. This may require substantial design work. A key outcome that could drive the design would be enabling proportionate responses to compliance activities and enforcement actions that reduce the administrative burdens and compliance costs for ECE service providers.

¹³³ Productivity Commission, “[Regulatory Institutions and Practices](#)” (1 June 2014).

¹³⁴ [Education and Training Act 2020](#), section 636 provides for regulations relating to early childhood services.

366. There would also be costs associated with the publication of enforcement actions and compliance activity, if this approach was adopted. Firstly, doing so would require an enabling legislative provision. This would take time. There would be ongoing legal considerations so that would need to be built into the processes and procedures of an operational policy for this regulatory function.
367. Communicating the policy to both the staff in regulatory roles and the sector will build more common understanding of enforcement and will

provide an additional layer of accountability for enforcement decisions. We also expect that the policy will drive more consistency in enforcement decision-making.

368. We recommend that the development follows best practice approaches which have been popularised by several academics in the field of regulatory practice theory. Taking this approach to regulatory design and delivery will bring the ECE regulatory system closer in line with the practices of other regulators in New Zealand and other jurisdictions.

Recommendation 9: Revise licensing criteria to ensure they are proportionate, effective, and support quality without overburdening providers

369. This recommendation has four aspects, we recommend the Ministry of Education consider:
- a. reviewing and revising each specific licensing criterion, in this section we provide the results of our own line-by-line review of the licensing criteria
 - b. making additional changes to how the licensing criteria are operationalised
 - c. requesting the Ministry of Health to revoke the *Health (Immunisation) Regulations 1995*, and
 - d. implementing an ongoing programme of work to ensure all relevant regulations are fit for purpose, including those by governed by other agencies.

We recommend the Ministry revise specific licensing criteria

370. We recommend the Ministry of Education revise the licensing criteria used to assist the Secretary for Education to assess whether services have met the standards outlined in part 2 of the *Education (Early Childhood Services) Regulations 2008*.

371. We have conducted a line-by-line review of the 98 licensing criteria. To complete this work the Ministry for Regulation did a desktop analysis of the criteria, considered the feedback from submitters on specific licensing criteria, and hosted discussions and workshops with officials from the Ministry of Education and the Education Review Office. The objectives and results of this line-by-line review are noted here. We will provide the full analysis materials to the Ministry of Education.
372. We had two objectives for this review. Firstly, we considered whether there were any unnecessary criteria that could be changed or removed to reduce compliance costs and administrative burdens on ECE service providers. Secondly, as we developed the option for improving the regulatory framework (see Recommendation 8) we considered how any of the regulatory requirements that are currently in the licensing criteria could be moved to different regulatory tools.

373. We consider by both removing and changing some of the licensing criteria and by moving some licensing criteria to other regulatory tools, there would be less compliance costs for ECE service providers and, importantly, ECE service providers would not face changes to license status due to minor compliance breaches that do not risk harm to children.

374. Table 5.2 below shows the specific licensing criteria that we recommend the Ministry should treat in each category shown in Table 5.1. However, as described above these changes are contingent on the responsible regulatory agency undertaking further work to test and refine the framework or develop an alternative to achieve the stated goals. This may or may not involve legislative change.

375. Each of the licensing criteria are hyperlinked so that interested readers can find the full details of the criteria on the Ministry of Education’s website. To see the full list of licensing criteria, please refer to *Attachment D: Licensing criteria*.

Table 5.2: Recommended changes to the current licensing criteria for centre-based education and care services (based on the example framework described above)

Recommendation	Why recommended	Applicable criteria
Remove	We do consider compliance with three of the specific criteria is either unnecessary for ECE regulation outcomes, or is covered by other regulatory requirements	3 - PF23 , PF24 , HS5
Remove and put in guidance materials	We consider 18 specific criteria are related to quality above the minimum standards	18 - C3 , C4 , C5 , C6 , C7 , C8 , C9 , C10 , C11 , C12 , C13 , PF10 , GMA4 , GMA5 , GMA6 , GMA7 , GMA8 , GMA9
Merge with other related licensing criteria	We consider there are 11 licensing criteria on topics where it would be more appropriate to merge into a single criterion to reduce unnecessary duplication	11 - PF2 , PF15 , PF20 , PF21 , PF22 , HS6 , HS11 , HS15 , HS20 , GMA3 , GMA11
Amend licensing criteria	We consider that there are 40 criteria that could be amended to make them easier to understand and comply with and reduce unnecessary burdens	40 - PF1 , PF4 , PF9 , PF12 , PF13 , PF14 , PF16 , PF18 , PF19 , PF28 , PF29 , PF30 , PF31 , PF32 , PF33 , PF34 , PF35 , PF36 , PF37 , PF38 , HS1 , HS2 , HS8 , HS9 , HS10 , HS14 , HS16 , HS17 , HS21 , H22 , HS24 , HS26 , HS27 , HS28 , HS29 , HS31 , HS34 , GMA1 , GMA2 , GMA10
Retain	There are 26 specific criteria that we consider should be retained without changes	26 - C1 , C2 , PF3 , PF5 , PF6 , PF7 , PF8 , PF11 , PF17 , PF25 , PF26 , PF27 , HS3 , HS4 , HS7 , HS12 , HS13 , HS18 , HS19 , HS23 , HS25 , HS30 , HS32 , HS33 , GMA7A , GMA12

376. The line-by-line review and the results of our analysis are both constrained by the Ministry for Regulation’s regulatory review scope and timeframe. We expect the Ministry of Education will wish to review further and they may also need to consult the ECE sector on any proposed changes.

377. As described in regulation 41, licensing criteria may be prescribed by the Minister to assist the Secretary in assessing compliance with the minimum standards set out in Regulations 43 - 47.¹³⁵ The regulatory standard describes the requirement: while it is possible for elements included in the standards to have no associated licensing criterion, it is not possible to have a licensing criterion that is not within the broader scope described by the standards.

Process for changing the licensing criteria

378. We recommend that the Ministry of Education undertake the necessary policy and legal work to (a) develop a graduated set of regulatory tools and (b) test and refine the proposed framework (or develop an alternative framework that meets the stated goals). This is likely to involve changes to the regulations and legislation. The two steps lay the foundations for resultant changes to specific requirements.

379. The Ministry of Education will need to assess each licensing criterion that has been retained and amended to determine the level of risk and what the appropriate sanctions, using the new graduated toolkit, would be under different circumstances if the criterion was breached. Our recommendations have been described with reference to the framework we developed as an example of how the goals could be achieved. A similar assessment should be carried out for ECE regulatory requirements that are not part of the licensing criteria.

380. The following principles should guide this assessment:

- a. The sanctions should be proportionate to the risk. Some criteria pose inherently lower risks than others.
- b. The sanctions should be proportionate to the severity of the breach. A small infraction may pose a lower risk than a major one, and so sanctions should be proportionate.

c. Sanctions should reflect the behaviour of the ECE service. Services with a good track record, wanting to comply but have made an honest mistake should be treated more leniently than an ECE service that has been deliberately and persistently non-compliant.

381. The assessment of the risk and the approach to compliance should be published as part of the National Enforcement Policy.

382. Under regulation 41(1) of the Education (Early Childhood Services) Regulations 2008, sector consultation is required before changes (amendments, additions, or revocations) are made to the licensing criteria. While the timeframes and details of the process involved in consultation have not been defined in the regulations, the timing is dependent on the size, scale, and level of sector interest in the proposed change(s).

Tools for ensuring quality of curriculum teaching

383. We have recommended retaining two criteria related to the teaching of the curriculum and moving eleven criteria into good practice guidance. The criteria we are recommending retaining are:

- a. [C1](#): The service curriculum is consistent with any prescribed curriculum framework that applies to the service.
- b. [C2](#): The service curriculum is informed by assessment, planning and evaluation (documented and undocumented) that demonstrates an understanding of children's learning, their interests, whānau and life contexts.

¹³⁵ [Education \(Early Childhood Services\) Regulations 2008](#), regulation 44 - 47.

384. We think this approach will be more appropriate as it:

- a. enables the regulator to use appropriate tools from the new graduated toolkit in scenarios where ECE services are teaching the curriculum unacceptably poorly or not at all
- b. is not overly prescriptive in how ECE services should teach the curriculum. Providing services with more flexibility to innovate and meet the needs of parents and children, and
- c. recognises that there will often be a trade-off between price and quality, and that parents will often be better placed to make that judgement depending on their individual circumstances. Providing parents with more accessible information, e.g. from Education Review Office evaluations, to inform those judgements will often be a more appropriate tool than regulation.

We recommend the Ministry make changes to how licensing criteria are operationalised

385. In addition, we recommend the Ministry of Education consider four key changes in relation to the way the licensing criteria are operationalised:

- a. provide greater public transparency
- b. consider developing a single document that includes both the licensing criteria, along with guidance material, and
- c. review licensing criteria for other service types (e.g. home-based services) to align with potential changes for centre-based services, to ensure that they are focused and proportionate to the nature of the risks present in each setting.

Revise the regulatory framework so requirements and potential regulatory actions in the event of non-compliance are more proportionate to the risk involved

386. This would involve more clearly demarcating objective requirements, subjective requirements (for issues where there is inherently a continuum)

and good practice guidance. The current model of using the licensing criteria mixes these three components in ways that are at times unclear. This would potentially require amendments to the Education (Early Childhood Services) Regulations 2008.

387. At a high level this would involve:

- a. where possible, if the objective requirements can be made as objective as possible, this should reduce the level of 'churn' and likelihood of inconsistent approaches by the various agencies currently involved in assessing the criteria. Objective requirements would be binary: a service would either clearly meet or not meet them.
- b. taking a more outcomes-based approach to assessing criteria where assessment is subjective, and
- c. clearly differentiating good practice guidance from either of the two categories above.

388. We have shared a possible model that would achieve the above structure with the Ministry of Education and the Education Review Office but note that this is just one way that it could be operationalised. Further work is needed on this to develop a revised framework, including assessment of feasibility, costs, impacts, and roles.

Identify one agency to be responsible for assessing each criterion

389. A strong theme in feedback from both people who work in ECE services and service providers was that it was problematic to have multiple agencies involved in assessing the same criterion, as this frequently resulted in inconsistent views of what was compliant or non-compliant being given to the sector.

390. This lack of clarity and consistency is not only frustrating for those in the sector, but also leads to unnecessary costs – both in the form of ECE staff member time in going back and forth with the different agencies, and also at times results in providers being faced with additional costs, which may not have been necessary.
391. The extent and impact of these challenges does not seem to be widely recognised and understood, but we have found it to be a significant theme.
392. The relevant agency would produce a report for the Secretary for Education, in a similar way that Health New Zealand currently does for a subset of criteria. In addition, each agency involved in assessment should develop strong internal processes to ensure that criteria are assessed consistently across the country, and over time.

Provide greater public transparency

393. This could include a web-based record of license status, all assessments against licensing criteria or other requirements, and regulatory actions (both what and why). It is common practice for regulators in similar sectors to make at least some of this information available publicly (e.g. HealthCERT in relation to hospitals and rest homes¹³⁶, MPI in relation to businesses operating under food control plans and national programmes¹³⁷).
394. Greater public transparency is vital to help counteract information asymmetries within the sector. The two key areas in which there are information asymmetries are in relation to information relating to the quality of education, and to health and safety. For each of these areas parents and caregivers are not able to easily and/or accurately assess ECEs based on what tends to be relatively brief visits before deciding whether or not to enrol their child at the centre.

Consider developing a single document that includes both the licensing criteria, along with guidance material and links to useful resources where appropriate

395. There are currently two ways of accessing the criteria on the Ministry of Education website. The PDF version only contains the criteria, but excludes the guidance, things to consider, or relevant links. The web-based format uses a series of drop-down boxes, which is not intuitive and not suitable for printing.
396. We recommend having a single document that includes both the criteria and any guidance material including links. We recommend the Ministry of Education work with the sector to identify what format(s) would be more user friendly.

Review licensing criteria for other service types (eg home-based services) to align with potential changes for centre-based services, to ensure that they are focused and proportionate to the nature of the risks present in each setting

397. We recommend the home-based licensing criteria be reviewed to better reflect the nature of the setting where the service occurs, which is a home and the smaller ratios in home-based settings.
398. A number of examples where licensing requirements were considered by providers and educators as not fit for purpose for home-based were identified in the review. We also recommend the licensing criteria be amended to only include the requirements for ECE market entry, and to reduce the paperwork burden for educators.

¹³⁶ Ministry of Health, [“Certified providers”](#) webpage.

¹³⁷ Ministry for Primary Industries, [“Public register of businesses operating under food control plans and national programmes”](#) webpage.

Support the Ministry of Health to revoke the Health (Immunisation) Regulations 1995

399. The Health (Immunisation) Regulations 1995 are no longer necessary. We recommended that the government revoke these regulations at the earliest opportunity. The regulation's primary purpose was for outbreak management; however, an alternative non-regulatory mechanism now exists for that purpose that does not rely on ECE service providers holding immunisation records. Despite the emergence of the alternative mechanism, the regulations have not been revoked and ECE providers are still required to collect immunisation information from parents and whānau. This information collection is burdensome for parents and whānau and ECE service providers.

Implement an ongoing programme of work to ensure all relevant regulations are fit for purpose, including those by governed by other agencies

400. To prevent ECE service providers from needing to comply with regulatory requirements that are no longer serving a purpose, the Ministry of Education should implement an ongoing programme of work to ensure all relevant regulations are fit for purpose, including those by governed by other agencies. This would require the Ministry's leaders responsible ECE regulatory system stewardship to coordinate with the other leaders responsible for regulations that interface with the ECE to ensure that all requirements remain valid and function collectively to achieve the government's objectives for ECE regulation.

Recommendation 10: Allow greater flexibility in workforce qualifications to support access and quality across all areas and service types

401. We recommend the Ministry of Education make qualification requirements more flexible to ensure they strike the right balance between quality and availability of ECE provision, particularly for services in rural and lower socio-economic areas, Māori and Pasifika services, and home-based services.

402. The list below sets out some options that could be considered to improve the balance between quality and supply of ECE. We encourage the Ministry to explore these options and carry out a full cost-benefit analysis of these options to determine which option, or combination of options, would strike a better balance between quality and supply of ECE.

- a. Allowing vocational ECE qualifications to count towards qualified teacher requirements.
- b. Allowing more than one person working towards ECE qualifications to count towards qualified teacher requirements (as some states in Australia do).

- c. Allowing teachers to 'qualify by experience', e.g. they count towards qualified teacher requirements if they meet a threshold of years of experience working in the sector/with children.
- d. Removing the link between level of funding and the number of certificated teachers from the funding rules.
- e. Allowing the regulator to relax requirements for certain groups or places, either for fixed periods or permanently, to enable different service models that meet more specialised needs (perhaps by adding conditions or exemptions to their license).

403. As part of the cost-benefit analysis of the above options Ministry would need to consider the costs and benefits of requiring vocational ECE qualifications for all ECE teachers, with appropriate transitional arrangements to prevent an adverse impact on the labour supply (e.g. exemptions for experienced existing staff). The Ministry may also wish to consider international examples, such as Australia, as part of this cost benefit analysis.

404. Additionally, the Ministry should consider:
- a. Using the same definition of qualified teacher in both regulatory and funding rules. This should include incorporating any of the changes listed above. This simplification may reduce burdens and complexity for ECE providers and remove the risk of unintended consequences from having multiple overlapping definitions of qualified teacher.
 - b. Basing the maximum licensed capacity solely on the suitability of the building (and resource consent conditions) and the number of qualified teachers that a service is required to employ could be better linked to the number of children attending, rather than the licensed maximum capacity. This may reduce costs and burdens on ECE services as:
 - i. ECE services that are under capacity would not need to retain additional staff unnecessarily (and it could help free up teachers for other services), and
 - ii. ECE services wishing to take on more children would not face the administration burden of applying to have their licensed capacity increased (as long as they have the physical space to accommodate them).
 - c. Consider exemptions from qualification requirements for particular types of educators (such as those with life experience, in remote areas, or with specific language skills).
 - d. Requesting the Teaching Council review how ECE teachers can maintain their practising certificates when working in a home-based ECE.

Recommendation 11: Ensure the person responsible requirements are practical, appropriate to meet the needs of children and purpose of the requirements, and responsive to service needs, including home-based services

405. We recommend the Ministry of Education consider, for centre-based services, unbundling the ‘person responsible’ requirements into two different regulated roles (that can be held by one person or different people):
- a. **Leading and supervising education:** a person who must have an ECE or primary teaching degree-level qualification, responsible for developing and implementing curriculum, and supporting / coaching teaching staff, and
 - b. **Service manager:** a person who is obliged to know the ECE regulations, must always be one on-site (make it easy to handover to other staff), responsible for day-to-day operations including supervising health and safety and ratios, and compliance with regulations.
406. Splitting the roles has the potential to give services more flexibility and help to reduce burdens and improve outcomes. This change would require amending the regulations.

Recommendation 12: Work with stakeholders to develop a strategic plan for home-based services, including provisions for rural areas and whānau with diverse needs

407. We recommend that the future of home-based services requires some dedicated strategic planning and bespoke regulations that fit the setting and risk profile of home-based services.
408. The Ministry should consider planning jointly with providers, educators and parents to ensure all regulation of home-based is fit for purpose and proportionate to risk for low ratio service provision. This could include how home-based service growth can meet the needs of the families that prefer and/or have logistical reasons to want their child to be in a home-based setting (for example, caregivers who work non-traditional hours, who live rural and isolated, who have infants, or children with higher needs).
409. The Ministry could consider the reestablishment of a home-based advisory group, to work with the Ministry to better understand the needs of service providers, and to provide support for the development of a strategic plan for home-based services. This could include exploring a change in the definition of home-based that has been suggested in the engagement, which is to do policy work around changing the ratios from 1:4 to 2:8 in a home-based setting.

Chapter 6: Doing it the right way

Purpose of this chapter

410. This chapter discusses ECE regulation practices, highlighting current issues (see Section A), and offering recommendations for more effective regulation responses (see Section B).

Chapter overview

411. In the preceding three chapters we have outlined our findings of the systemic problems that contribute to the practical issues that become visible to parties when regulatory practices are conducted. This chapter outlines the findings related to regulatory practice that are caused by how the regulatory practices are themselves conducted, rather than by systemic problems (i.e. those related to the system set up, leadership or the availability of regulatory tools). We have defined ‘regulatory practices’ as the operational activity of a regulator.¹³⁸

412. Our findings can be summarised as:

- a. **Finding 29:** Some requirements lack clarity, leading to high compliance costs.
- b. **Finding 30:** There is a disproportionate focus on documentation as evidence of compliance.

413. Our recommendations are:

- a. **Recommendation 13:** Strengthen government communication and support for prospective and current ECE providers to streamline compliance processes.
- b. **Recommendation 14:** Strengthen the support to help providers implement new regulatory requirements effectively.
- c. **Recommendation 15:** Invest in resources and training to support sound, consistent regulatory decision-making.

¹³⁸ See Attachment B: Glossary of Terms for a more fulsome definition.

Section A: The findings related to regulatory practice

414. We heard significant feedback from submitters to the review about regulatory practice, some of which relate to systemic issues and so are discussed in Chapters 3 - 5.¹³⁹ This section details the findings of the regulatory review that are specific to ECE regulatory practice only. Each finding is presented in a blue box. Further descriptions of the findings follow along with details of the evidence sitting behind the finding and the implications of each finding.

Finding 29: Some requirements lack clarity, leading to high compliance costs

Lack of clarity over what are regulatory requirements and what are recommendations and/or guidance has resulted in confusion. Providers and workers are confused by multiple, overlapping regulatory requirements and different interpretations.

- Regional variations in the application of licensing criteria and guidance have led to frustration and challenges to licensing decisions
- There are differing interpretations of regulatory requirements between the Ministry and the Education Review Office
- Guidance is sometimes given the same status as regulatory requirements by officials
- Minor infractions may, or are perceived to, lead to disproportionate responses.
- There have been times providers have made substantial financial commitments before engaging with the Ministry of Education, leading to disputes over site suitability and costly licensing battles.

415. We considered whether ECE service providers and the public had good enough communication from the Ministry (i.e. via the website) and Ministry staff (in person) to understand the requirements. Secondly, we considered whether the Ministry communicated well enough to ensure staff in regulatory roles had a consistent understanding of the requirements. We found communication was inadequate.

416. **Communication to ECE service providers and the public:** The Ministry, as lead regulator, has a role to support ECE service providers to comply with the regulatory requirements by making the expectations clear. We consider the Ministry has done well in laying out a structured and accessible website to communicate regulatory standards and expectations. However, challenges remain, particularly across different regions. The sector has raised concerns about inconsistencies in guidance, subjective interpretations of the regulations, and a lack of clear distinctions between requirements and guidance.

417. Comments have been made to the review team by ECE providers which highlight the disconnect between issuing new guidance and ensuring the sector understands how to implement it effectively:

“The MoE needs to stop creating working documents in silos... these [guides] are issued with no professional development, creating wider sector confusion.”

“The Ministry doesn’t produce and send out guidance in set times of the year, or with sufficient time to understand the impact of changes and update my staff. Instead, the guidance updates are sent randomly. I suggest the Ministry have agreed times each month or quarter, and then urgent exceptions can be sent at other times”.

¹³⁹ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review.”](#) (October 2024).

418. **Communication to staff in regulatory roles:** The Ministry's national office provides operational policy support and guidance to regional offices, helping to interpret and apply regulations and licensing criteria uniformly across the country. Despite this, we have found regional inconsistencies in regulatory guidance and insufficient clarity which have led to operational inefficiencies and frustration among providers.

419. In our review, we found that certain expected documents did not exist, particularly those

related to the Ministry's regulatory systems and processes. This experience has raised our concerns about the accessibility of procedural information and guidance available to Ministry of Education staff, particularly in relation to aspects of its regulatory functions. For example, we requested copies of their regulatory strategy and approach, and any compliance strategies. We found that these documents did not exist. Fragmentation in internal documentation and guidance makes it difficult to understand the Ministry's role and processes.

Case study 3: Should water temperatures be a requirement or a recommendation?

An ECE provider raised concerns to the Minister for Regulation's office about the Ministry of Education's licensing assessment, which implied that laundry water must be heated to 60 degrees Celsius. The ECE provider argued that the Ministry's enforcement of a 60-degree Celsius laundering temperature as a mandatory requirement was overly burdensome and impractical.

There are three licensing criteria which relate to water temperature in ECEs:

- HS2 - Linen used by children or adults is hygienically laundered¹⁴⁰
- HS14 - Water stored in any hot water cylinder is kept at a temperature of at least 60 degrees Celsius¹⁴¹

- HS13 - The temperature of warm water delivered from any taps that children can access independently is no higher than 40°C, and comfortable for children at the centre to use.¹⁴²

The policy regarding hygienic laundering (HS2) does not explicitly state a mandatory water temperature of 60 degrees Celsius. The licensing criteria does not set a required temperature that linen must be washed at but there must be a documented procedure that details how linen will be hygienically laundered. HS14 however requires that hot water cylinders be at least 60 degrees Celsius to prevent Legionella bacteria growth.

The National Public Health Service – Health New Zealand recommends that all washing is done in hot water with the recommended amount of detergent as per the product instructions. Ideally reusable nappies are not laundered at the centre but taken home with the child. In the event that re-usable nappies need to be washed at the centre, then reusable nappies and soiled materials should be rinsed and pre-soaked in an approved sanitiser as per manufacturer’s instructions and then ideally washed in a separate washing machine that reaches a temperature of at least 60C at minimum. This may have led to the misinterpretation that 60 degrees Celsius is a mandatory requirement for all laundering.

There is a misalignment between policy (HS2) and the enforcement practice, indicating a potential gap between written criteria and operational enforcement.

Ministry of Education staff may have misapplied the temperature requirement intended for hot water cylinders (HS14) to the laundering process, creating unnecessary regulatory burdens. The compliance framework needs review to ensure that interpretations of regulatory criteria are practical and aligned with intended hygiene outcomes.

There appears to be a lack of clear communication regarding the specific requirements for hygienic laundering under HS2, leading to confusion and overregulation.

The case of laundering temperature requirements highlights a gap in the interpretation and application of regulatory criteria by the Ministry of Education. While the intention behind HS14 is to ensure safety by preventing Legionella bacteria growth, its misapplication to laundering processes under HS2 has led to unnecessary burdens on ECE providers.

¹⁴⁰ Ministry of Education, [“Hygiene”](#) webpage referring to HS2 Laundering.

¹⁴¹ Ministry of Education, [“Hazards and outings”](#) webpage referring to H14 Hot water cylinder temperature.

¹⁴² Ministry of Education, [“Hazards and outings”](#) webpage referring to H13 Hot water taps.

¹⁴³ Electronic attendance records are acceptable if they meet the criteria in the ECE Funding Handbook. This may not be well known.

¹⁴⁴ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review](#). (October 2024), p. 119.

¹⁴⁵ Ibid. p.118.

¹⁴⁶ Ibid. p. 112.

What are the implications of this finding?

420. The confusion over the rules and the regulatory practices has had a significant impact on ECE service providers. We consider it has contributed to a culture of low trust with regulatory officials and instances of over-compliance with requirements. This, when considered with the compliance burden described in chapter 5, may contribute to the lack of ECE sector growth to meet demand.

421. This issue may be exacerbated by the Ministry's decentralized approach, where regional staff interpret and apply the regulations based on their individual judgments, leading to inconsistencies across the country. The lack of consistent interpretation is particularly problematic for providers operating across multiple regions, who experience variations in decision-making and guidance.

Finding 30: There is a disproportionate focus on documentation as evidence of compliance

Submitters have told us that a focus on documents as proof of compliance is taking up time that teachers and workers would rather spend with children. Some of the focus on documents is generated by the sector itself, and some by lack of clarity about exactly what is needed.

422. The following documentation was considered problematic by submitters:

- a. Requirements for physical signatures from parents on forms (including attendance records, frequent absence forms, enrolment forms, excursion forms and medicine forms). Submitters said electronic signatures should be permitted for these forms.¹⁴³
- b. Excursion documentation requirements, including having to do risk assessments frequently for the same type of excursion (this was particularly raised in relation to home-based services but also centre-based).
- c. Records about children's education and care, including nappy changes, bottle charts, minor accidents and injuries, food records and learning/curriculum records.
- d. Hazard checklists.
- e. Paperwork developed for the purpose of Education Review Office reviews.
- f. Paperwork for internal review processes.¹⁴⁴

423. In the submission process, most submitters agreed that the documentation requirements in ECE were overly burdensome for staff, service providers and

parents, with many submitters saying that there were various documentation requirements that did not benefit children, or the benefit to children was unclear.¹⁴⁵ A few submitters said that each individual documentary requirement made sense, or seemed to have good reason, but the cumulative impact created significant burdens in time and financial cost.

424. We also heard from home-based service providers who said there needed to be more recognition that home-based services were delivered in a family home and educators were the sole people in charge. They submitted that some of the requirements, particularly documentation requirements, did not take this into account and a new balance needed to be achieved. Most said that they felt like they were treated as "mini-ECE centres" whereas the reality was quite different.¹⁴⁶

What are the implications of this finding?

425. We agree with submitters that documentation requirements have not taken into account the differing needs and capacities of ECE service types; nor have they kept up with digital means of record keeping. Both are areas that should be considered for improvements.

Section B: Recommendations to improve ECE regulatory practice

426. The recommendations in this chapter are primarily about simplifying the ways of doing things. They seek to improve regulatory practices by taking a customer-centric view of what the ECE sector needs and then refining practices to meet those needs. Recommendations in the previous three chapters should form the basis where this approach is supported by sound system settings, deliberate leadership and the right tools for regulatory practices.

Recommendation 13: Strengthen government communication and support for prospective and current ECE providers to streamline compliance processes

427. Within this recommendation we outline the need for the agencies to consider:

- a. enhancing the process for prospective ECE service providers to clarify the requirements with the responsible agency(ies) before setting up new ECE centres to avoid costly changes, and
- b. making clearer explanations available to ECE service providers.

Enhance the process for prospective ECE service providers to clarify the requirements

428. We have heard about instances where prospective ECE service providers have made significant investments in properties, including bespoke architectural designs that have been found on inspection to not be in compliance with the licensing requirements.

429. To avoid these situations, we recommend the Ministry:
- a. provide clearer explanations of the requirements on its website, and
 - b. improve the process where a prospective ECE service provider can talk directly with a Ministry staff member who can case manage their application process, from the earliest possible stage with the prospective ECE service provider.

430. This process could include:

- a. a dedicated email address that is managed by Ministry staff that can talk to prospective ECE

service providers as they work through business planning and investment decisions

- b. a published process map showing the full range of government requirements that prospective ECE service providers should consider when developing their business, eg fire exits, noise controls and ventilation, and
- c. a case management process so that a prospective ECE service provider can speak to a Ministry staff member who has ready access to the file notes of previous conversations, and where the eventual license application is then managed by Ministry staff who are aware of the prior engagement with the prospective ECE service provider.

Make clearer explanations available to ECE service providers

431. We recommend the Ministry make clear explanations available to ECE service providers about:

- a. the requirements and the risks the regulations are trying to manage
- b. distinctions between regulatory requirements and best practice recommendations
- c. how regulators will assess compliance with the requirements and any alternative methods of demonstrating compliance
- d. the range of compliance sanctions there are, and when they would be applied, and

- e. how and why regulatory enforcement decisions are made. This should always be explained clearly to specific affected ECE providers. The Ministry of Education should also consider when it would be appropriate to make general information public as well.

432. There is already an information, education and guidance function within the Ministry of Education. This recommendation is for the staff within that function to revise and reissue guidance materials and to set up an ongoing process of guidance reviews and reissuance.

433. In particular, we recommend reissued guidance include information about the risks that the requirements aim to mitigate, and about how staff will make regulatory decisions related to degrees of non-compliance. For instance, ECE service providers would likely benefit from knowing which requirements aim to keep children safe, and which requirements, if breached, may result in changes to licensing status (see the recommendation for a new regulatory framework in Chapter 5).

What are the costs, benefits and implications of the recommendation?

434. Our recommendation is to create a process to support those prospective ECE service providers that inform the Ministry of their intentions early. Those that do access the process described above may benefit in several ways, they could:

- a. avoid costly mistakes in their business planning and investment decisions as these would be well informed by the ECE regulatory requirements as well as being informed of which other regulatory systems are relevant to also comply with, and
- b. develop a trusting relationship with the regulating agencies meaning they are more willing to seek support and advice as they operate the ECE service in the future.

Recommendation 14: Strengthen the support to help providers implement new regulatory requirements effectively

435. More specific support is needed to help ECE service providers apply regulatory changes. This support needs to be tailored to different service types, particularly:

- a. home-based ECE services, where compliance may look different, and
- b. services provided in non-English language mediums, where staff may have English as a second language.

436. We recommend regulating agencies develop processes to better support all ECE service providers to implement regulatory changes. This could include:

- a. engaging with ECE service providers to ensure regulatory changes are understood and unintended consequences are addressed

b. improving the resources and education available for ECE teachers to enhance their understanding and compliance with regulatory changes

c. staggering and sequencing regulatory updates to avoid overwhelming ECE service providers

d. establishing where required or otherwise strengthen home-based specific support to enable home-based services to manage ongoing compliance with requirements, and

e. providing non-English language services with additional support to understand requirements and with more user-friendly formats for compliance.

What are the costs, benefits and implications of the recommendation?

437. Implementing this recommendation will require the regulating agencies to review and modernise their approach to providing information, education and guidance to their staff and ECE service providers. This will require time and resource and consultation with the staff and the ECE sector about how best to meet their needs. It will also require agencies to invest in improving how they manage documentation, processes and procedures that govern regulatory practices.

438. The benefits of revised guidance cannot be underestimated. Clear guidance be used by ECE service providers to lift compliance across the ECE sector which would reduce the risks of harm to children. It would also help build trust between staff in regulatory roles and the ECE sector.

Recommendation 15: Invest in resources and training to support sound, consistent regulatory decision-making

439. Within this recommendation, regulating agencies should consider:

- a. improving how they manage the internal knowledge-base of ECE regulatory practices, information, education and guidance
- b. providing more information for staff in regulatory roles on how and when to support an ECE and when to enforce sanctions against an ECE, and when to escalate so that those staff are aware of when it is appropriate to apply their discretion
- c. ongoing training and professional development for staff in regulatory roles, and
- d. reviewing and improving cross-regional moderation of important regulatory decisions.

Improve internal knowledge-bases

440. To address regional inconsistencies in regulatory practice, the regulating agencies should:

- a. prioritise the use of digital platforms for regulatory documentation and record-keeping

- b. updated document management policies to ensure streamlined workflows
- c. create unified documentation and guidance that is used consistently across all regions, and
- d. ensure staff in regulatory roles across all regions have access to the same resources and tools.

441. Improving agencies' internal knowledge-bases will require them to invest in procedure and technological improvements to how it manages its own database of the policy documentation and processes which govern its ECE regulatory practices.

442. Doing so would benefit the Ministry's staff in regulatory roles as the requirements they are regulating and the processes for regulation would be less ambiguous. This approach may also allow the Ministry to more readily identify requirements and processes that are not functioning well and require review and adjustment to meet the emerging needs of the ECE sector.

Provide more information for staff on how and when to support an ECE and when to enforce sanctions against an ECE, and when to escalate

443. The aim of this recommendation is to reduce regional variation in practice and support more efficient regulatory processes. We have heard that there are regional variations in practice, despite national policies being in place. We consider this may be due to the internal knowledge base of documents in the Ministry being difficult to navigate, and induction and training practices being inadequate. This recommendation is for the Ministry to revise and update internal procedure information and to proactively share it in more user-friendly formats, including through nationally standardised induction and training opportunities for staff.
444. The revised information about the internal procedures would provide clarity about the standard approach to supporting ECE services providers, the indicators of when to enforce sanctions and when to escalate enforcement actions using a graduated toolkit of enforcement tools. As a priority, the review should consider how to lower compliance costs on ECEs caused by the internal procedures for staff in regulatory roles. For example, it could consider where observations could be used as evidence of compliance rather than documentation.
445. ECE service providers would also benefit from these actions by experiencing consistent and predictable regulatory practices from staff. And, with less confusion about what is required and how it is regulated, we expect ECE providers would develop greater confidence in their own compliance efforts.
446. Providing more information to staff would require adequate resources to review, revise and maintain all national internal procedures. Changes to the internal procedures should be consulted on widely to ensure that the impacts of the changes are well understood and factored into decision-making.

Deliver ongoing training and professional development for staff

447. All agencies involved in regulating the ECE sector should review their induction and training programmes to ensure they align with the clarified roles and responsibilities and the new regulatory functions for proactive compliance monitoring and a risk-based monitoring framework.

Improve cross-regional moderation of important regulatory decisions

448. We are aware that there is already a moderation practice for decisions within the Education Review Office. The Ministry could consider improving this practice between its regional offices to strengthen regulatory decision-making consistency.

What are the costs, benefits and implications of this recommendation?

449. Improving the internal knowledge bases of regulatory agencies will require agencies to invest in procedure and technological improvements to how it manages its own database of the policy documentation and processes which govern its ECE regulatory practices.
450. Doing so would benefit the staff in regulatory roles as the requirements they are regulating and the processes for regulation would be less ambiguous. This approach may also allow agencies to more readily identify requirements and processes that are not functioning well and require review and adjustment to meet the emerging needs of the ECE sector.
451. ECE service providers would also benefit from these actions by experiencing consistent and predictable regulatory practices from staff. And, with less confusion about what is required and how it is regulated, we expect ECE providers would develop greater confidence in their own compliance efforts.
452. Providing more information to staff would require adequate resources to review and revise all national internal procedures. Changes to the internal procedures should be consulted on widely to ensure that the impacts of the changes are well understood and factored into decision-making.

Attachment A: Method and approach

Purpose of this attachment

1. The purpose of this attachment is to provide more detail about the method and approach used in the regulatory review of the early childhood education (ECE) sector for:
 - a. governance structure and decision-making, and
 - b. review phases and activities.

Governance structure and decision-making

2. The governance structure reflects the independent nature of the regulatory review. The Ministry for Regulation is the government expert in regulation systems, while the Ministry of Education and the Education Review Office are the experts in the specific regulation for the ECE sector.
3. While the Ministry of Education and the Education Review Office have contributed substantially to the regulatory review, the final report will be from the Ministry for Regulation to the Minister for Regulation, Hon David Seymour. The final recommendations will be submitted to Cabinet by the Minister for Regulation. The Minister of Education, and any other relevant ministers, will be responsible for delivering proposed regulatory changes that may be endorsed by Cabinet in early 2025.

Review phases activities

4. The following diagram shows the five key phases of the ECE review.

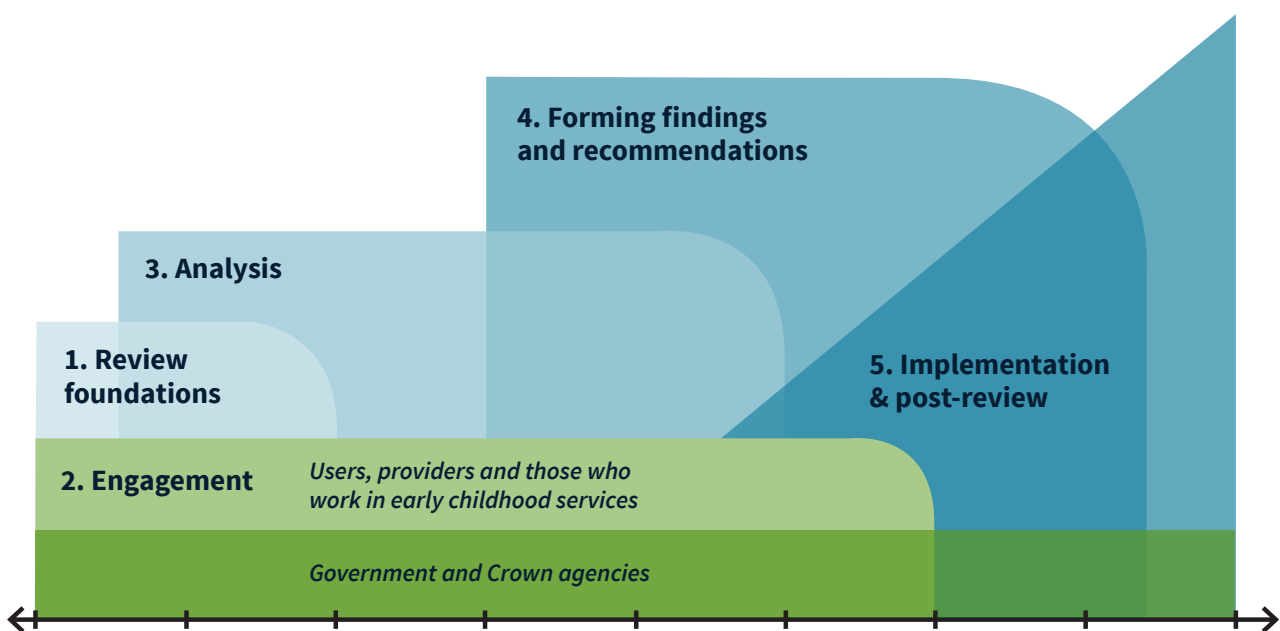


Figure A.1: Review phases

5. Key points to make about the five phases:
 - a. **Review foundations:** This preliminary stage of the review involved meeting key agencies and stakeholders to understand the sector and the issues, recruiting staff, and establishing mechanisms for working with the regulatory agencies. This helped the Ministry for Regulation decide the scope, size, and approach for the review. Draft Terms of reference were shared with the Early Learning Regulatory Advisory Group on 17 April 2024, and the final Terms of reference were agreed by Cabinet on 5 June 2024.¹⁴⁷
 - b. **Engagement:** The review team conducted both direct and indirect engagement.
 - i. **Direct engagement:** Direct engagement included face-to-face meetings with sector representatives, ECE service providers, and regulatory officials. Several organisations and individuals supplied information directly to the review team. The review team also attended some ECE conferences. A series of structured interviews and workshops were conducted with key stakeholders. These sessions were guided by a set of lead questions and prompts and were designed to elicit in-depth insights into the practical challenges and opportunities within the current regulatory system. Participants were encouraged to provide case studies and examples to help illustrate their experiences with the system.
 - ii. **Indirect engagement:** Indirect engagement involved gathering data from surveys, such as those conducted via the engagement hub, and formal submissions received from various stakeholders. Please refer to “What Submitters told the Early Childhood Education Review” for more information about the indirect engagement.¹⁴⁸
 - c. **Analysis:** The activities in this phase are described in the table below. The policy and proposal development work has been conducted primarily by Ministry for Regulation officials. Ministry of Education and Education Review Office representatives on the working group and steering group as well as with other regulatory officials across government were consulted on analysis, findings and recommendations as needed.
 - d. **Forming findings and recommendations:** The findings and recommendations in this report were tested with Ministry of Education and Education Review Office representatives on the working group and steering group as well as full drafts of this report. Most feedback from those officials has been incorporated into the report. Agencies reserve the right to disagree with any aspect of this independent review of ECE.
 - e. **Implementation and post-review:** The Ministry of Education and the Education Review Office will need to spend some time considering how to implement the recommendations. They would develop and provide advice to the Minister of Education and the Associate Minister of Education about the feasibility of, and plan of action for, implementing the suite of recommendations. This advice would need to cover the sequence and timeframes for implementing specific regulatory changes as well as what can be achieved within existing baselines (for example, through reprioritisation) and what additional resources would be required to fully deliver on the recommendations. The Minister for Regulation plans to consult Cabinet ministers with a view to formally seek a mandate from Cabinet to implement the recommendations in early 2025.

¹⁴⁷ Ministry for Regulation, “ECE Review Terms of reference” on the [“ECE regulatory sector review”](#) webpage.

¹⁴⁸ Ministry for Regulation, [“What Submitters told the Early Childhood Education Regulatory Review”](#), (October 2024).

Activities conducted in the analysis phase

6. Table A.1 describes the approach to analytical activities in the ECE review.

Table A.1: Approach for each of the analytical activities

Review activity	ECE regulatory review approach
Desktop analysis	A review of relevant documents, including policies, regulations, and sector submissions, was undertaken to identify recurring themes, patterns, and key issues. This phase helped establish the initial lines of enquiry and provided context for the sector's regulatory landscape.
Economic analysis	The Ministry for Regulation used existing data sources to review some aspects of the economics and market dynamics of the ECE sector; including: whether there were teacher shortages, the effect of competition, whether there were geographic or demographic differences, and whether prices have risen faster than inflation.
International comparisons	The review benchmarked New Zealand's regulatory practices against international best practices, drawing on regulatory frameworks from overseas jurisdictions, particularly those of the United Kingdom (England and Ireland specifically), Singapore and Australia, as well as OECD reports. Australia's National Quality Framework for early learning and the approach taken in New South Wales were carefully considered. These comparisons provided valuable insights into the strengths and potential areas for improvement in New Zealand's regulatory approach.
Descriptive analysis	We analysed the current regulatory practices. This analysis sought to provide a clear description of how the ECE regulatory system operates in practice, highlighting the outcomes and effects on key stakeholders within the sector.
Case studies	Creating case studies helped to draw broader conclusions about regulatory performance and to identify gaps in regulatory practice, as well as areas where improvements could be made.
Expert judgement	The review drew upon the expert judgement of individuals with extensive knowledge and experience in regulatory practice, both within the ECE sector and in other regulatory environments. These experts provided valuable insights into the effectiveness of the current system and the feasibility of proposed reforms.
Benchmarking	The review included comparing New Zealand's current regulatory practices with those of peer regulatory organisations and other sectors. For example, the regulatory frameworks governing aged care, liquor licensing, health and safety at work, and land transport in New Zealand were examined for relevant lessons and best practices that could be applied to the ECE sector.

Attachment B: Glossary of terms

Term	Definition
Compliance activities	Regulatory compliance activities are the activities and tools that regulators use to deliver regulatory services or to achieve their outcomes. ¹⁴⁹ In ECE regulation, licensing is the main tool to control ECE service providers’ entry and exit to the ECE market. Assessments against licensing criteria are a compliance activity, and licensing can also currently be used as an enforcement tool.
Enforcement tools	Enforcement is a legal tool that regulators use to require someone to comply or issue a penalty or punishment when they don’t. The legislation will set out the enforcement tools the regulators can use. Some regulators have a range of enforcement tools they can use, and others have very few. These tools range in severity from warnings, suspensions or abatement notices through to very severe penalties, such as revocations, large fines and imprisonment. ¹⁵⁰
Regulatory settings	These are also known as the ‘formal rules and sanctions’ of a regulatory system. Formal rules are the legislation that shapes people’s behaviour and interactions. Formal rules can be laws, regulations, standards or by-laws. Sanctions are the penalties for breaching the laws. Sanctions can include statutory notices, infringement fines, prosecution or revoking a license. ¹⁵¹
Regulatory skillset	See the next page for a detailed definition of ‘regulatory skillset.’
Regulatory stewardship	The Ministry for Regulation has defined ‘regulatory stewardship’ as “the governance, monitoring and care of our regulatory systems” which “aims to ensure that all the different parts of a regulatory system work well together to achieve its goals and to keep the system fit for purpose over the long term. By adopting a big picture view, regulators can anticipate, and respond to, changes.” ¹⁵²
Regulatory system	We have applied the New Zealand Treasury definition of a ‘regulatory system’ which is: “a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people’s behaviour or interactions in pursuit of a broad goal or outcome.” ¹⁵³
Regulatory tools	We refer to ‘regulatory tools’ regularly in this report. This term covers all the non-financial means at the government’s disposal to influence parties within the regulatory system. It includes the ‘tools of the system’, such as legislation and regulation setting, as well as the ‘tools of the job’ of regulation, such as compliance and enforcement tools, and guidance.

¹⁴⁹ Ministry for Regulation, [“Regulatory compliance activities – quick guide”](#) (September 2024).

¹⁵⁰ Ibid.

¹⁵¹ Ministry for Regulation, [“Regulatory System and Stewardship - quick guide”](#) (September 2024), p. 1.

¹⁵² Ibid.

¹⁵³ New Zealand Treasury, [“Government Expectations for Good Regulatory Practice”](#), (21 April 2017), p. 2.

Regulatory skillset

Based on the Productivity Commission's 2014 report on regulatory institutions and practices, as well as general good regulatory practice, a regulatory skillset includes several key competencies that go beyond education or sector-specific knowledge. These competencies are essential for ensuring that a regulator can operate effectively, proportionately, and in a risk-based manner.

Below are some core elements that constitute a regulatory skillset:

Risk-Based Regulation: The ability to assess and prioritize risks, focusing regulatory interventions where they will have the greatest impact. This includes the skills to evaluate risk frameworks and make informed decisions about where resources should be allocated.

Compliance and Enforcement: Understanding the range of compliance tools available, from education and guidance to graduated enforcement actions. Regulatory staff should know how to implement these tools in proportion to the level of non-compliance and according to a structured framework.

Data Analysis and Monitoring: Proficiency in gathering, analysing, and using data to monitor compliance and system performance. This includes developing performance indicators that help regulators track progress and identify emerging risks.

Stakeholder Engagement and Communication: Effective communication and engagement with regulated parties, including providing clear guidance and education, building trust, and fostering a collaborative approach to compliance.

Legal and Legislative Understanding: A deep understanding of the regulatory framework, including the legal basis for regulations, how to interpret legislation, and how to align enforcement actions with legal obligations.

Decision-Making and Accountability: The capacity for evidence-based decision-making, ensuring transparency and accountability in regulatory actions. Regulators need to demonstrate how their decisions align with public policy objectives and are made in a fair and transparent manner.

Strategic and Adaptive Leadership: The ability to adapt regulatory approaches in response to changing sector conditions and emerging risks. This involves strategic thinking, innovation in regulatory practices, and the ability to lead a regulatory body in times of reform or change.

The Productivity Commission report stresses that regulators need to have staff with a balanced mix of sector expertise and these regulatory-specific skills, ensuring that they can both understand the industry they regulate and enforce compliance in a structured, effective manner.

Attachment C: References

Office for Early Childhood Education's "Research on children who benefit from ECE" webpage which references Apps, P., Mendolia, S., and Walker, I. (2013, April). The Impact of Pre-school on Adolescents' Outcomes: Evidence from a Recent English Cohort. Working paper supplied by Professor Ian Walker, Lancaster University Management School, Lancaster, UK.

Ministry of Education, "Early Learning Action Plan" (2019).

Ministry of Education, "[Annual ECE Census 2023: Factsheets](#)" Education Counts webpage.

Ministry of Education, "[Early learning participation indicator report](#)", (May 2024).

Ministry of Education, "[ECE Funding Handbook](#)" Early Learning webpage.

Ministry of Education, "[Playgroup Funding Handbook](#)" Early Learning webpage.

Minister for Regulation, Press release, "[Government moves to lessen burden of reliever costs on ECE services](#)" (4 September 2024)

Minister for Regulation, Press release, "[Home-based ECE care made easier](#)", (6 November 2024).

Minister for Regulation, Press release "[Ministry for Regulation kicks off first sector review – Early Childhood Education](#)", (5 June 2024).

Ministry for Regulation, "[Regulatory compliance activities – quick guide](#)" (September 2024).

Ministry for Regulation, "[Regulatory System and Stewardship - quick guide](#)" (September 2024).

Ministry for Regulation, "[Strategic Intentions 2024/25 – 2028/29](#)", (September 2024).

Ministry for Regulation, "[Terms of Reference for the regulatory sector review of early childhood education](#)" (April, 2024).

Ministry for Regulation, "[What submitters told the Early Childhood Education Regulatory Review](#)" (October 2024).

New Zealand Treasury, "[Government Expectations for Good Regulatory Practice](#)", (21 April 2017).

Pink, G. (2011). *Achieving Compliance: A Guide for Compliance Agencies in New Zealand*. Ministry of Economic Development, New Zealand.

Productivity Commission, "[Regulatory Institutions and Practices](#)" (1 June 2014).

Te Kōhanga reo, "[Mō Te Kōhanga reo / About Te Kōhanga reo](#)" webpage.

Attachment D: Licensing criteria

Reference	Licensing criteria
Criteria related to the curriculum standard¹	
C1	The service curriculum is consistent with any prescribed curriculum framework that applies to the service.
C2	The service curriculum is informed by assessment, planning, and evaluation (documented and undocumented) that demonstrates an understanding of children’s learning, their interests, whānau, and life contexts.
C3	Adults providing education and care engage in meaningful, positive interactions to enhance children’s learning and nurture reciprocal relationships.
C4	The practices of adults providing education and care demonstrate an understanding of children’s learning and development, and knowledge of relevant theories and practice in early childhood education.
C5	The service curriculum acknowledges and reflects the unique place of Māori as tangata whenua. Children are given the opportunity to develop knowledge and an understanding of the cultural heritages of both parties to Te Tiriti o Waitangi.
C6	The service curriculum respects and supports the right of each child to be confident in their own culture and encourages children to understand and respect other cultures.
C7	The service curriculum is inclusive, and responsive to children as confident and competent learners. Children’s preferences are respected, and they are involved in decisions about their learning experiences.
C8	The service curriculum provides a language-rich environment that supports children’s learning.
C9	The service curriculum provides children with a range of experiences and opportunities to enhance and extend their learning and development – both indoors and outdoors, individually and in groups.
C10	The service curriculum supports children’s developing social competence and understanding of appropriate behaviour
C11	Positive steps are taken to respect and acknowledge the aspirations held by parents and whānau for their children.
C12	Regular opportunities (formal and informal) are provided for parents to: <ul style="list-style-type: none"> • communicate with adults providing education and care about their child, and share specific evidence of the child’s learning; and • be involved in decision-making concerning their child’s learning.
C13	Information and guidance is sought when necessary from agencies/services to enable adults providing education and care to work effectively with children and their parents.
Criteria related to the premises and facilities standard²	
PF1	The design and layout of the premises: <ul style="list-style-type: none"> • support the provision of different types of indoor and outdoor experiences; and • include quiet spaces, areas for physically active play, and space for a range of individual and group learning experiences appropriate to the number, ages, and abilities of children attending.

¹ Education (Early Childhood Services) Regulations 2008, reg 43.

² Education (Early Childhood Services) Regulations 2008, reg 45.

Reference	Licensing criteria
PF2	The design and layout of the premises support effective adult supervision so that children's access to the licensed space (indoor and outdoor) is not unnecessarily limited.
PF3	The premises conform to any relevant bylaws of the local authority and the Building Act 2004. Documentation required.
PF4	A sufficient quantity and variety of (indoor and outdoor) furniture, equipment, and materials is provided that is appropriate for the learning and abilities of the children attending.
PF5	All indoor and outdoor items and surfaces, furniture, equipment and materials are safe and suitable for their intended use.
PF6	Floor surfaces are durable, safe, and suitable for the range of activities to be carried out at the service (including wet and messy play), and can easily be kept clean.
PF7	Any windows or other areas of glass accessible to children are either: <ul style="list-style-type: none"> • made of safety glass; or • covered by an adhesive film designed to hold the glass in place in the event of it being broken; or • effectively guarded by barriers which prevent a child striking or falling against the glass.
PF8	There are sufficient spaces for equipment and material to be stored safely. Stored equipment and materials can be easily and safely accessed by adults, and where practicable, by children.
PF9	There is space for adults working at the service to: <ul style="list-style-type: none"> • use for planned breaks; • meet privately with parents and colleagues; • store curriculum support materials; and • assess, plan, and evaluate.
PF10	There are hygienic facilities (other than those required for PF26) or alternative arrangements available for the preparation and cleaning up of paint and other art materials.
PF11	There is a telephone on which calls can be made to and from the service.
PF12	Parts of the building or buildings used by children have: <p>lighting (natural or artificial) that is appropriate to the activities offered or purpose of each room</p> <p>ventilation (natural or mechanical) that allows fresh air to circulate (particularly in sanitary and sleep areas)</p> <p>a safe and effective means of maintaining a room temperature of no lower than 18°C; and</p> <p>acoustic absorption materials, if necessary, to reduce noise levels that may negatively affect children's learning or wellbeing.</p>
PF13	Outdoor activity space is: <ul style="list-style-type: none"> • connected to the indoor activity space and can be easily and safely accessed by children • safe, well-drained, and suitably surfaced for a variety of activities • enclosed by structures and/or fences and gates designed to ensure that children are not able to leave the premises without the knowledge of adults providing education and care • not unduly restricted by Resource Consent conditions with regards to its use by the service to provide for outdoor experiences; and • available for the exclusive use of the service during hours of operation.

Reference	Licensing criteria
PF14	APPLIES ONLY TO SERVICES LICENSED FOR UNDER 2 YEAR OLDS: There are safe and comfortable (indoor and outdoor) spaces for infants, toddlers or children not walking to lie, roll, creep, crawl, pull themselves up, learn to walk, and to be protected from more mobile children.
PF15	There is a safe and hygienic place for children attending to sit when eating.
PF16	There are facilities for the hygienic preparation, storage and/or serving of food and drink that contain: a means of keeping perishable food at a temperature at or below 4°C and protected from vermin and insects a means of cooking and/or heating food a means of hygienically washing dishes a sink connected to a hot water supply storage; and food preparation surfaces that are impervious to moisture and can be easily maintained in a hygienic condition.
PF17	Kitchen and cooking facilities or appliances are designed, located, or fitted with safety devices to ensure that children cannot access them without adult assistance or supervision.
PF18	The service has at least 1 toilet for every 1-15 persons. Persons are defined as children aged two and older and teaching staff that count towards the required adult:child ratio.
PF19	There is at least 1 tap delivering warm water (over an individual or shared handbasin) for every 15 persons (or part thereof) at the service (that is to say, children attending and adults counting towards the required adult:child ratio).
PF20	Toilet and associated handwashing/drying facilities intended for use by children are: <ul style="list-style-type: none"> • designed and located to allow children capable of independent toileting to access them safely without adult help and • adequately separated from areas of the service used for play or food preparation to prevent the spread of infection.
PF21	There is means of drying hands for children and adults that prevents the spread of infection.
PF22	At least one of the toilets for use by children is designed to provide them with some sense of privacy.
PF23	There is a toilet suitable for adults to use.
PF24	A tempering valve or other accurate means of limiting hot water temperature is installed for the requirements of criterion HS13 to be met.
PF25	There are safe and stable nappy changing facilities that can be kept hygienically clean. These facilities are located in a designated area near to handwashing facilities, and are adequately separated from areas of the service used for play or food preparation to prevent the spread of infection. The design, construction, and location of the facilities ensure that: <ul style="list-style-type: none"> • they are safe and appropriate for the age/weight and number of children needing to use them • children's independence can be fostered as appropriate • children's dignity and right to privacy is respected; and • some visibility from another area of the service is possible.

Reference	Licensing criteria
PF26	There are suitable facilities provided for washing sick or soiled children and a procedure outlining how hygiene and infection control outcomes will be met when washing sick and soiled children. Documentation required.
PF27	There is space (away from where food is stored, prepared, or eaten) where a sick child can: <ul style="list-style-type: none"> • be temporarily kept at a safe distance from other children (to prevent cross-infection) • lie down comfortably; and • be supervised.
PF28	There is a first aid kit that: <ul style="list-style-type: none"> • complies with the requirements of Appendix 1 • is easily recognisable and readily accessible to adults, and • is inaccessible to children.
PF29	Furniture and items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are of a size that allows children using them to lie flat and are of a design to ensure their safety.
PF30	Furniture and items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) that will be used by more than one child over time are securely covered with or made of a non-porous material (that is, a material that does not allow liquid to pass through it) that: <ul style="list-style-type: none"> • protects them from becoming soiled • allows for easy cleaning (or is disposable); and • does not present a suffocation hazard to children.
PF31	Clean individual bedding (such as blankets, sheets, sleeping bags, and pillowslips) is provided for sleeping or resting children that is sufficient to keep them warm.
PF32	SESSIONAL SERVICES ONLY: A safe and comfortable place to sleep (such as a bed, stretcher, mattress, or couch) is available for children aged two and older that require sleep or rest during a session.
PF33	ALL-DAY SERVICES ONLY: Space is available for children aged two and older to sleep or rest for a reasonable period of time each day. If the space used for sleeping or resting is part of the activity space, there are alternative activity spaces for children not sleeping or resting as necessary.
PF34	ALL-DAY SERVICES ONLY: Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are available for the sleep or rest of children aged two and older.
PF35	SESSIONAL SERVICES ONLY: A designated space is available to support the provision of restful sleep for children under the age of two at any time they are attending. This space is located and designed to: <ul style="list-style-type: none"> • minimise fluctuations in temperature, noise and lighting levels • allow adequate supervision; and • accommodate at least the requirements of criterion PF36, when arranged in accordance with criterion HS10.
PF36	SESSIONAL SERVICES ONLY: Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are provided at a ratio of at least one to every 5 children under the age of two.

Reference	Licensing criteria
PF37	ALL-DAY SERVICES ONLY: A designated space is available to support the provision of restful sleep for children under the age of two at any time they are attending. This space is located and designed to: <ul style="list-style-type: none"> minimise fluctuations in temperature, noise and lighting levels; allow adequate supervision; and accommodate at least the requirements of criterion PF38, when arranged in accordance with criterion HS10.
PF38	ALL-DAY SERVICES ONLY: Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are provided at a ratio of at least one to every 2 children under the age of two.
Criteria related to the health and safety practices standard ³	
HS1	Premises, furniture, furnishings, fittings, equipment, and materials are kept safe, hygienic and maintained in good condition.
HS2	Linen used by children or adults is hygienically laundered. Documentation required.
HS3	A procedure for the changing (and disposal, if appropriate) of nappies is displayed near the nappy changing facilities and consistently implemented. Documentation required.
HS4	The premises are located in a building that has a current Fire Evacuation Scheme approved by Fire and Emergency New Zealand. Documentation required.
HS5	Designated assembly areas for evacuation purposes outside the building keep children safe from further risk.
HS6	Heavy furniture, fixtures, and equipment that could fall or topple and cause serious injury or damage are secured.
HS7	There are a written emergency plan and supplies to ensure the care and safety of children and adults at the service. The plan must include evacuation procedures for the service's premises, which apply in a variety of emergency situations, and which are consistent with the Fire Evacuation Scheme for the building. Documentation required.
HS8	Adults providing education and care are familiar with relevant emergency drills and carry out each type of drill with children (as appropriate) on an, at least, three-monthly basis. Documentation required
HS9	A procedure for monitoring children's sleep is displayed and implemented and a record of children's sleep times is kept. Documentation required.
HS10	Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are arranged and spaced when in use so that: <ul style="list-style-type: none"> adults have clear access to at least one side (meaning the length, not the width) the area surrounding each child allows sufficient air movement to minimise the risk of spreading illness; and children able to sit or stand can do so safely as they wake.

³ Education (Early Childhood Services) Regulations 2008, reg 46.

Reference	Licensing criteria
HS11	If not permanently set up, furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) and bedding is hygienically stored when not in use.
HS12	<p>Equipment, premises and facilities are checked on every day of operation for hazards to children. Accident/incident records are analysed to identify hazards and appropriate action is taken. Hazards to the safety of children are eliminated, isolated or minimised.</p> <p>Consideration of hazards must include but is not limited to:</p> <ul style="list-style-type: none"> • cleaning agents, medicines, poisons, and other hazardous materials • electrical sockets and appliances (particularly heaters) • hazards present in kitchen or laundry facilities • vandalism, dangerous objects, and foreign materials (for example broken glass, animal droppings) • the condition and placement of learning, play and other equipment • windows and other areas of glass • poisonous plants; and • bodies of water. <p>Documentation required.</p>
HS13	The temperature of warm water delivered from any taps that children can access independently is no higher than 40°C, and comfortable for children at the centre to use.
HS14	Water stored in any hot water cylinder is kept at a temperature of at least 60°C.
HS15	All practicable steps are taken to ensure that noise levels do not unduly interfere with normal speech and/or communication, or cause any child attending distress or harm.
HS16	Safe and hygienic handling practices are implemented with regard to any animals at the service. All animals are able to be restrained.
HS17	<p>When children leave the premises on an excursion:</p> <ul style="list-style-type: none"> • assessment and management of risk is undertaken, and adult:child ratios are determined accordingly. Ratios are not less than the required adult:child ratio • the first aid requirements in criterion HS25 are met in relation to those children and any children remaining at the premises • parents/caregivers have given prior written approval to their child's participation and of the proposed ratio for: <ul style="list-style-type: none"> o regular excursions at the time of enrolment and o special excursions prior to the excursion taking place; and • there are communication systems in place so that people know where the children are, and adults can communicate with others as necessary. <p>When children leave the premises on a regular or special excursion, the excursion must be approved by the Person Responsible.</p> <p>Documentation required.</p>
HS18	<p>If children travel in a motor vehicle while in the care of the service:</p> <ul style="list-style-type: none"> • each child is restrained as required by Land Transport legislation; • required adult:child ratios are maintained; and • the written permission of a parent of the child is obtained before the travel begins (unless the child is travelling with their parent). <p>Documentation required.</p>

Reference	Licensing criteria
HS19	<p>Food is served at appropriate times to meet the nutritional needs of each child while they are attending. Where food is provided by the service, it is of sufficient variety, quantity and quality to meet the nutritional and developmental needs of each child. Where food is provided by parents, the service encourages and promotes healthy eating guidelines.</p> <p>Documentation required.</p>
HS20	<p>Food is prepared, served and stored hygienically.</p>
HS21	<p>An ample supply of water that is fit to drink is available to children at all times, and older children are able to access this water independently</p>
HS22	<p>Children are supervised and seated while eating.</p> <p>Where food is provided by the service, foods that pose a high choking risk are not to be served unless prepared in accordance with best practice as set out in Ministry of Health: Reducing food-related choking for babies and young children at early learning services.</p> <p>Where food is provided by parents, the service promotes best practices as set out in the Ministry of Health's guide and must provide to all parents at the time of enrolment a copy of the pamphlet: Reducing food-related choking for babies and young children at early learning services.</p>
HS23	<p>APPLIES ONLY TO SERVICES LICENSED FOR UNDER 2 YEAR OLDS: Infants under the age of 6 months and other children unable to drink independently are held semi-upright when being fed. Any infant milk food given to a child under the age of 12 months is of a type approved by the child's parent.</p>
HS24	<p>Rooms used by children are kept at a comfortable temperature no lower than 18°C (at 500mm above the floor) while children are attending.</p>
HS25	<p>There is an adult present at all times for every 25 children attending (or part thereof) that:</p> <ul style="list-style-type: none"> holds a current First Aid qualification gained from a New Zealand Qualification Authority accredited first aid training provider or is a registered medical practitioner or nurse with a current practising certificate or is a qualified ambulance officer or paramedic. <p>If a child is injured, any required first aid is administered or supervised by an adult meeting these requirements.</p> <p>Documentation required.</p>
HS26	<p>All practicable steps are taken to ensure that children do not come into contact with any person (adult or child) on the premises who is suffering from a disease or condition likely to be passed on to children and likely to have a detrimental effect on them.</p> <p>Specifically:</p> <ul style="list-style-type: none"> the action specified in Appendix 2 is taken for any person (adult or child) suffering from particular infectious diseases and children who become unwell while attending the service are kept at a safe distance from other children (to minimise the spread of infection) and returned to the care of a parent or other person authorised to collect the child without delay.
HS27	<p>All practicable steps are taken to get immediate medical assistance for a child who is seriously injured or becomes seriously ill, and to notify a parent of what has happened.</p> <p>Documentation required.</p>

Reference	Licensing criteria
HS28	<p>Medicine (prescription and non-prescription) is not given to a child unless it is given:</p> <ul style="list-style-type: none"> • by a doctor or ambulance personnel in an emergency or • by the parent of the child or • with the written authority (appropriate to the category of medicine) of a parent. <p>Medicines are stored safely and appropriately, and are disposed of or sent home with a parent (if supplied in relation to a specific child) after the specified time.</p> <p>Documentation required.</p>
HS29	<p>Adults who administer medicine to children (other than their own) are provided with information and/or training relevant to the task.</p> <p>Documentation required.</p>
HS30	<p>Children are washed when they are soiled or pose a health risk to themselves or others.</p>
HS31	<p>There is a written child protection policy that meets the requirements of the Vulnerable Children Act 2014. The policy contains provisions for the identification and reporting of child abuse and neglect, and information about how the service will keep children safe from abuse and neglect, and how it will respond to suspected child abuse and neglect.</p> <p>The policy must be reviewed every three years.</p> <p>Documentation required.</p>
HS32	<p>All practicable steps are taken to protect children from exposure to inappropriate material (for example, of an explicitly sexual or violent nature).</p>
HS33	<p>No person on the premises uses, or is under the influence of, alcohol or any other substance that has a detrimental effect on their functioning or behaviour during the service's hours of operation.</p>
HS34	<p>Where there is a serious injury or illness or incident involving a child while at the service that is required to be notified to a specified agency, the service provider must also notify the Ministry of Education at the same time.</p> <p>Documentation required.</p>
Criteria related to the governance, management, and administration standard⁴	
GMA1	<p>The following are prominently displayed at the service for parents and visitors:</p> <ul style="list-style-type: none"> • the Education (Early Childhood Services) Regulations 2008, and the Licensing Criteria for Early Childhood Education and Care Centres 2008 • the full names and qualifications of each person counting towards regulated qualification requirements • the service's current licence certificate and • a procedure people should follow if they wish to complain about noncompliance with the Regulations or criteria. <p>Documentation required.</p>
GMA2	<p>Parents are advised how to access:</p> <ul style="list-style-type: none"> • information concerning their child • the service's operational documents (such as its philosophy, policies, and procedures and any other documents that set out how day to day operations will be conducted) and • the most recent Education Review Office report regarding the service. <p>Documentation required.</p>

⁴ Education (Early Childhood Services) Regulations 2008, reg 47.

Reference	Licensing criteria
GMA3	<p>Information is provided to parents about:</p> <ul style="list-style-type: none"> • how they can be involved in the service • any fees charged by the service • the amount and details of the expenditure of any Ministry of Education funding received by the service and • any planned reviews and consultation. <p>Documentation required.</p>
GMA4	<p>Parents of children attending the service and adults providing education and care are provided with opportunities to contribute to the development and review of the service's operational documents (such as philosophy, policies, and procedures and any other documents that set out how day to day operations will be conducted).</p> <p>Documentation required.</p>
GMA5	<p>A philosophy statement guides the service's operation.</p> <p>Documentation required.</p>
GMA6	<p>An ongoing process of self-review and internal evaluation helps the service maintain and improve the quality of its education and care.</p> <p>Documentation required.</p>
GMA7	<p>Suitable human resource management practices are implemented.</p> <p>Documentation required.</p>
GMA 7A	<p>Before a person is employed or engaged as a children's worker, as defined in the Children's Act 2014, a safety check as required by that Act must be completed.</p> <p>A detailed record of each component of the safety check must be kept, and the date on which each step was taken must be recorded, including the date of the risk assessment required to be completed after all relevant information is obtained.</p> <p>These records must be kept by, or available to, the service provider as long as the person is employed or engaged.</p> <p>Every children's worker must be safety checked every three years. Safety checks may be carried out by the employer or another person or organisation acting on their behalf.</p> <p>Documentation required.</p>
GMA8	<p>An annual plan guides the service's operation.</p> <p>Documentation required.</p>
GMA9	<p>An annual budget guides financial expenditure.</p> <p>Documentation required.</p>
GMA10	<p>Enrolment records are maintained for each child attending. Records are kept for at least 7 years.</p> <p>Documentation required.</p>
GMA11	<p>An attendance record is maintained that shows the times and dates of every child's attendance at the service. Records are kept for at least 7 years.</p> <p>Documentation required.</p>
GMA12	<p>Required documentation is made available as appropriate to parents and Government officials having right of entry to the service under section 626 of the Education and Training Act 2020.</p>



**Ministry for Regulation
Te Manatū Waeture**