



Early Childhood Council

Submission on the Early Childhood Education Regulatory Sector Review

31 August 2024



This submission is a humble attempt to document an incredibly wide range of concerns and problems raised by ECE providers, their leaders, managers, teachers and administrators. We have engaged with and encouraged our members to write independent submissions to focus on areas where they have experienced specific problems. It is not possible for the ECC submission to document every concern because there are too many. ECC.

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Early Childhood Education Regulatory Sector Review

Introduction

Early Childhood Council (ECC)'s nearly **900 independent members** own and operate over **1,400 early childhood centres across New Zealand**. We are the **largest association in the early childhood sector**. Approximately 80% of our members (and the entire subsector) are small operators who own one centre.

The ECC has engaged with its members through multiple forums. We ran a survey between 2 May to 7 June and received 124 responses. We also requested members to raise issues directly with ECC and to share submissions to the Ministry for Regulation. We delivered workshops at the ECC Conference on 9 and 10 August and members were invited to participate and give feedback on this submission in an online event on 29 August.

Our members are diverse and have extensive experience in ECE and possess deep insights and practical experience about the daily practicalities of setting up and operating ECE services.

Many of our member organisations and the centres they own are staffed by qualified ECE teachers who have established their own businesses because they are passionately committed to providing an important service for young learners and their parents. However, their personal dedication relies on the government to ensure that services can remain financially viable to operate.

For not-for-profit and charitable organisations, profit is considered revenue and this revenue is essential for improving and maintaining their ECE assets, investing in staff capability and expanding services to meet new demand.

The current Education regulations do not acknowledge the private nature of the service providers or enshrine the important principle of providers having flexibility over how they meet the educational outcomes, nor does it explicitly recognise their fundamental need to remain financially viable.

When government regulates, the most common way for the service providers to meet the obligations is to impose new obligations on their employees: either new requirements or policies or practices their employees need to observe. The nature of this relationship between the government and the private sector is not currently reflected in the regulatory system. Government should approach a private industry from a perspective of “seeking to influence” not “seeking to control”. This latter approach is how the Ministry of Education approaches its role for compulsory State schools.

The ECC agrees that a regulatory review is necessary. ECC, and large parts of the early childhood sector have long been advocating for relief from unworkable regulatory requirements and conditions that stifle good practice and distract our workers more and more from their core reason for working in our sector – quality interactions and education of young children. Regulations have become a distraction or barrier to the delivery of effective services, causing prices to rise to levels that many parents can't afford.

The Ministry for Regulation should note that ECE providers are not experts in regulatory design. While ECC has attempted to identify solutions, we completely support the need for effective regulation that is designed by experts in regulatory design.

We highlight regulations that don't contribute to making ECE services safer, of an acceptable quality or supporting our people to perform their important roles. If current regulation cannot be justified then it is not fit for purpose and should be removed (deregulation).

It is a privilege for me to serve the members of ECC and the broader sector at large in our common goal of making children's early childhood as good as it can be – with our strong backers: parents and government, without whom we wouldn't be here.

A handwritten signature in blue ink, appearing to read "Simon Laube". The signature is fluid and cursive, with a large initial 'S'.

Simon Laube
ECC CEO

Strategic Section

Education & Training Act Objectives (ETA Outcomes)

Under Section 14 of the Education & Training Act 2020, the statutory objects of the ECE regulatory system (ETA Outcomes) are for **all children to participate** and receive a strong foundation for learning, positive wellbeing and life outcomes by:

1. **Having regulated standards** that support the quality of the services provided to children
2. **Directly supporting** the health, safety and wellbeing of children
3. **Parents being able to choose** the type of ECE service they want for their child that is affordable (ie justification for the government's funder role)

ECC documented in our *Briefing to the Incoming Minister* (December 2023), that **there is currently a major challenge to the level of participation of young children in ECE** (paras 19-29 of our BIM refer). This is significant because the statutory objectives are intended to support the participation of all children. It would appear the government's activities in regulation (#1) **could be resulting in a major system's failure**.

We propose a **definition of system failure for the early childhood regulatory system** as where participation is worsened directly by government's own actions or inactions. It can be the result of increased regulation and associated costs together with insufficient funding increases - which have the net result of parents decreasingly being able to afford the cost of ECE services (because increased service costs driven by regulation are passed on to parents through higher childcare fees).

Another key finding is that there should be careful consideration about whether a government **activity is an extension of the funded service** ie mandating a higher standard



A policy like Pay Parity is essentially an extension of a service as it regulates the main workforce delivering ECE. On this basis, the accurate funding of the service "extension" is essential. The Ministry of Education effectively took a hybrid approach here: they increased funding on a nominal/average basis (not a differential basis, based on implications at the service-level) thereby blurring the line between service extension and regulation.



of service and therefore justifying increased service-level funding (eg like expanding the terms in a contract), or whether the **activity is a regulation** which increases the cost of doing business and does not typically justify increased service funding. For extensions to the service these should be negotiated between the sector and government, not imposed on the sector like regulation. It is inflationary to take a regulatory approach as providers are likely to react to regulatory changes by increasing childcare fees, or closing centres or cutting costs.

In the latter case, **over-regulation always has a tendency to result in service costs increasing for parents** (unless the parents who can no longer afford the service get

separate targeted relief to compensate – for example through initiatives like FamilyBoost and the Childcare Rebate). Over-regulation in ECE can be measured by where service costs increase and child participation decrease, as they have been for many years.

A policy like Pay Parity is essentially an extension of a service but the intervention by government had the effect of regulating the main ECE workforce who deliver ECE. On this basis, the adequate funding of the service “extension” is essential. But adequate funding was not provided with the Pay Parity policy.

The Ministry of Education effectively took a hybrid approach on Pay Parity. They increased funding on a nominal (not differential based on actual cost) basis thereby blurring the line between service extension and regulation. This blurring was worsened by the public comments by previous Minister of Education, Hon Chris Hipkins, who was open about his intention to make Pay Parity conditions “mandatory”; together with the Ministry of Education’s publication of a list of employers that had not opted into the Pay Parity policy – thereby creating competitive pressure on employers to opt-in despite the Pay Parity funding being insufficient. We will never know how many services were lost as a result of this Pay Parity policy.

Recommendations:

- Develop a framework to guide future regulation in ECE that distinguishes unfunded regulatory burdens (who parents pay for, and providers through administrative burdens and barriers to entry) and changes to the core service. The latter should include a negotiated funding increase.
- Note ECC’s definition of system failure is where the government intervenes with the net effect that participation in ECE worsens

ECC Regulatory Assessment Criteria

We have used the following assessment criteria to indicate how effective regulations are: in terms of the benefits they create and the level of administrative burden/cost they impose, together with mapping these back to the ETA Outcomes.

Regulatory Effectiveness: in this criterion we assess to what extent the current regulatory approach **creates a benefit to the current Education and Training Act outcomes in Section 14** (ETA Outcomes), based on the perceived performance of the regulation.

-2 = **Negative impact** / regulation worsens **net** ETA Outcomes

-1 = **Questionable impact** / no measurable net benefits to ETA Outcomes or no measurement at all

1 = **Potential for impact** / regulation is aligned to an ETA Outcome but the extent it contributes is unquantified or insignificant

2 = **Higher impact** / regulation is aligned to an ETA Outcomes and is likely to influence improved ETA Outcomes that are measurable including standards that “nudge” or reward behaviours that benefit children or families

Burden on Providers: in this criterion we assess to what extent the current regulatory approach **imposes an administrative burden or cost on the service providers**, relative to the regulated activity.

-2 = **Grossly unreasonable** / for regulatory approaches that regardless of their cost, provide no effective net ETA Outcomes benefits

-1 = **Heavy** / for regulatory approaches that rely on obsolete methods such as unsuitable paper-based compliance artefacts, require time-intensive administration, or are inflexible to the point that the ETA Outcome benefit of the regulated activity is no longer worthwhile

1 = **Moderate** / a supported compliance regime with standards and costs that allow the regulated activity to occur more flexibly to the benefit of the ETA Outcome

2 = **Light** / a smarter compliance regime with standards and costs that support the regulated activity keeping costs to comfortable levels for providers, including regulations that “nudge” or reward provider behaviours that maximise benefits to children or flexibility for families

Conflict comment: in this criterion we identify conflicting regulations, duplication or overlaps that make the regulation confusing, unnecessary or impossible to comply with standards. This section is provided by commentary only.

Standard comment: in this criterion we identify whether the regulation has a clear standard or can be measured consistently.

ETA Outcomes are not all the important outcomes we should care about

While ECC has applied the current ETA Outcomes in our assessment of the regulations, we have formed the view that further outcomes are also important in early childhood.

For example, there are regulations that appear to pass ECC’s assessment that we still assess should be reviewed (e.g. premises and health and safety requirements).

The Education legislation focuses overly on the education-related outcomes but from a child’s perspective other outcomes are equally or more important. For example, education cannot take place if a child feels unsafe in a centre or home. There are other more basic or

fundamental needs that must be met (and are met by quality ECE providers and their teams).

Dr Jin Russell presented to the ECC Conference on 9 August 2024 that a more suitable framework is the Life course conceptual framework of early childhood development (Black et al. ECD coming of age. Lancet. 2017). See below.

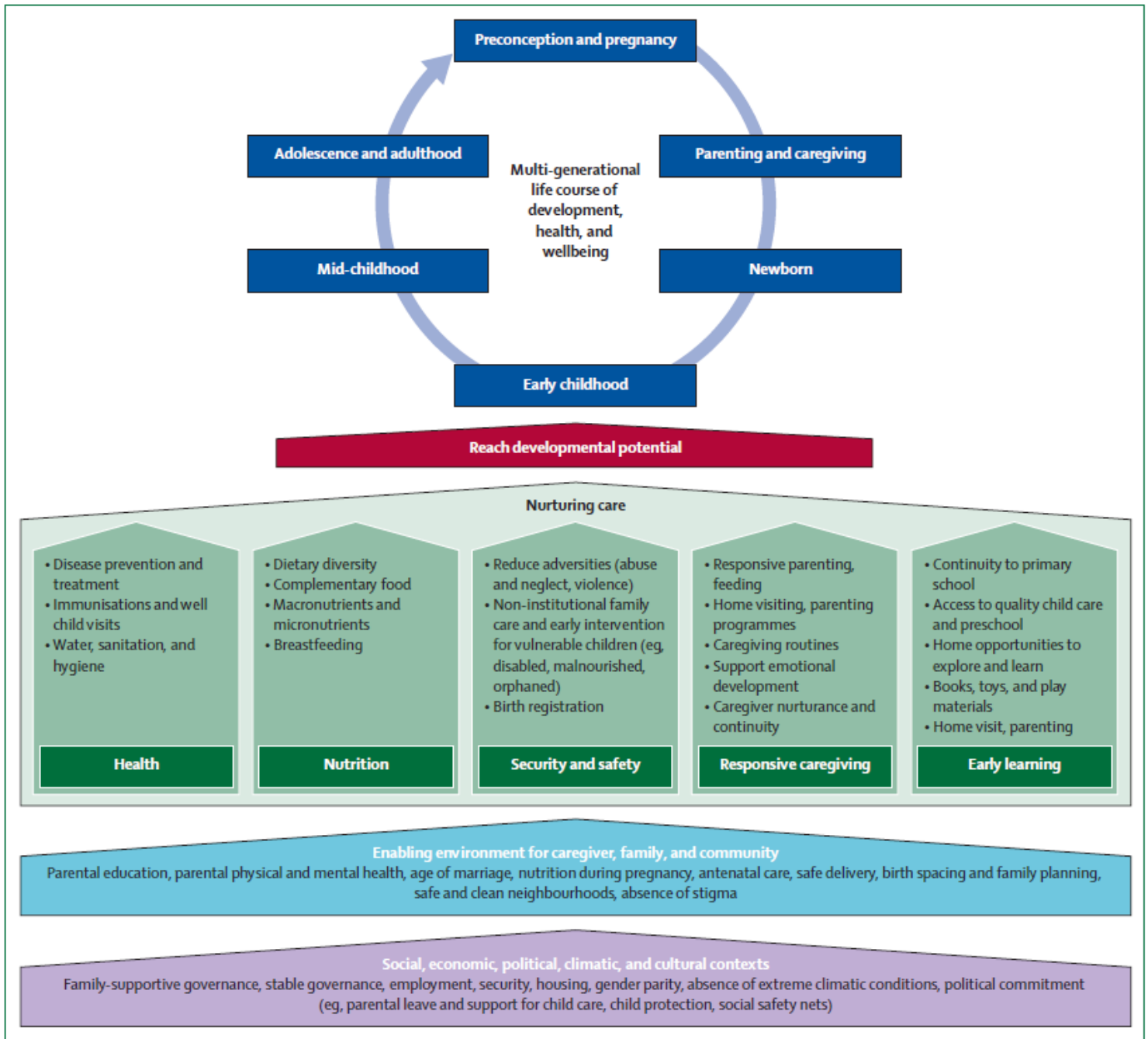


Figure 1: The effects of contexts, environments, and nurturing care through the multigenerational life course

Important aspects include the immunisation of children and meeting their nutritional needs. Security and safety is important, especially considering that participation rates of children from families facing hardship is potentially very low.

Recommendation:

- In the regulatory review, consider broader objectives than the ETA Outcomes, i.e. including child health, child nutrition, child security and safety, and responsive caregiving (in addition to early learning)

Early Learning Action Plan (2019) – no longer fit for purpose

The above *Life course framework* can be compared to the existing strategic document for the ECE sector: the Early Learning Action Plan.

Through the lens of the *Life course framework* the worsening levels of ECE participation make the actions in the Early Learning Action Plan seem self-serving and lacking a focus in children. In addition, there are a number of actions that increase regulation and generally increase the burden of delivering ECE services without any reference to the service extensions being funded. The ELAP has effectively charted a course of constantly growing regulation with decreasing funding levels (as funding adjustments are not keeping pace with inflation, and the proposed funding review was not seen as particularly important in the plan).

In addition our submission has highlighted that the Ministry does not hold data to be able to monitor the number of adults who are present in terms of Schedule 2 (adult-to-child ratios). This leads to under-counting of the adults currently working in ECE in teacher roles who are not qualified in teaching. This is problematic considering the ELAP included a recommendation to improve ratios with no specific guarantees this would be matched with funding to pay for more teachers.

ECC is increasingly uncomfortable that the ELAP continues to remain the official guiding strategic document for change in the ECE sector, especially when the data is showing more and more children are missing out on ECE and this isn't considered a problem for realising the potential of the strategy or reviewing its effectiveness.

Recommendation:

- Note that ELAP is service- and sector- focused, not child-focused, and it lacks a realistic track to deliver much of its agenda. A better focus would be to explicitly recognise the wider objectives contained in the *Life course framework*:
 - Child health
 - Child nutrition
 - The security and safety of children (i.e. ECE is beneficial where children's home environment is more challenging)
 - Responsive caregiving (this challenges our over-focus on teachers as primary carers, caring can be done by other adults too)
 - Early learning (largely irrelevant as the current regulatory system places this forefront and does not explicitly acknowledge other critical drivers of child development).

ECC meeting with the Associate Minister of Education in Feb 2024

In February 2024, the ECC met with the Associate Minister of Education, Hon David Seymour, and outlined priorities for the early childhood education (ECE) sector. This followed our December 2023 briefing to the incoming ministers that outlined what the major issues were, and its function was progressing government's consideration of potential solutions and meaningful reforms.

Our recommended actions were divided into three sections. First was specific work to address the problems with the Pay Parity policy. Second was to restore more of a partnership approach between the government as regulator and the sector – because previous governments had allowed the relationship to be dominated by low trust and heavy-handed regulation. Third we advised on further issues that we considered would make a significant difference to improve the services our members offered to children – further issues that did not fit comfortably into the two major work streams of a regulatory review and an independent funding review. A full list of the 23 recommendations is available in Annex 1.

ECC does not yet know the details of the ECE funding review or when it will be commenced. This makes it difficult to engage in the regulatory review. However, in this submission we have devised a clearer way of delineating between the regulatory review and the funding review.



This is problematic for the regulatory review because the top area of concern for our members is the Pay Parity policy. This policy has both funding and regulatory (ie workforce regulation) ramifications. It is possible to refine/remove/review the workforce regulations in a manner that is fiscally neutral but funding reform is both unavoidable and massively impactful on service provider behaviours.

The unknown potential impact of funding reform could result in the need to further review workforce regulations if they remain. In general, services should be financially viable, and meet basic standards and funding incentives should be more versatile and be directed at driving performance improvement for the government's priorities – in today's context that would be participation in ECE by all children.

Issues or concerns that were identified in our review and that have funding implications for the government have been omitted from this submission. Any reference we make to funding is due to its regulatory impact (i.e. if it increases the cost of the service it increases parent fees or the funding conditions have been used as a vehicle for regulation).

Recommendations:

- Note that ECC is not sure which recommendations already submitted are already under consideration by the Ministry for Regulation, so we provide the full list with what we currently know so the Ministry can attend to any issues we have missed from this submission.
- Note the proposal for ERO to be refocused on educational performance review, not compliance reviews.

 Early Childhood Council			
Recommendations	Pay Parity – fixing over-regulation of our workforce		
	Core problem: everyone supports paying teachers better, including ECC, but the Pay Parity policy is an unjustified intervention in the early childhood workforce, regulating employment conditions unreasonably and increasing costs for providers, government and parents while participation in early childhood is well below where it should be. If the problem is not addressed, more centres will close and more children will miss out on ECE, especially those from families with young children struggling hardest from the Cost of Living crisis. The following suite of recommendations address the problem.		
	Description of policy issue or concern	Draft Detailed approach	ECC priority
1.	Agree to a Comprehensive Independent Funding Review <ul style="list-style-type: none"> • First step – consult sector on the scope • Second step – establish review unit (with independent governance) 	The review must have a broad scope to include both universal and targeted funding streams; and it must also include private funding streams (parent fees). It cannot be controlled by the Ministry of Education because that department would be conflicted as the funder. Their expertise would still be valuable as advisory. IT programme (system design and test) also needs independent representation on it.	Top priority Future-proofing funding Medium/Long-term
2.	Give statutory recognition to the role of the Treasury as the official government funder of early childhood education services and require collective agreement outcomes and other major settlements like Equal Pay Act processes, to pass a public interest test because increases in costs will either be paid by taxpayers through increased taxes or parents of young children will pay through higher childcare fees. Also give the Treasury the statutory power to set commencement dates on agreed collective agreement and other settlement outcomes - but only after public funds have been appropriated or authorised by Parliament.	Insert new section in the Education & Training Act (ETA).	Future-proofing funding Long-term

Minister Seymour – Annotated Agenda 14 February 2024

Major issues to be considered in the Regulatory Review

Licensing Criteria

The [Licensing Criteria](#) for centre-based ECE services list 97 individual criteria, with accompanying guidance, which contain specific instructions and expectations to be met, as well as documentation requirements. If either ERO or MoE deem criteria have not been met then this can have serious consequences for ECE services and lead to a poor review or suspension and even cancellation of their licence.

Documentation is an important artefact to focus on in the Regulatory Review because it establishes the evidence base that the regulator must use to justify their judgements about compliance with regulations. ECC considers this narrow evidence-based approach to be detrimental to ECE providers, who are people-based and do not have time to document everything they do.

Many ECE operators would like to see a complete list of all the documentation requirements that exist together with the time period they need to be updated.

Unfortunately, that has proven impossible for ECC to determine – because the regulatory system is so complicated and dispersed.

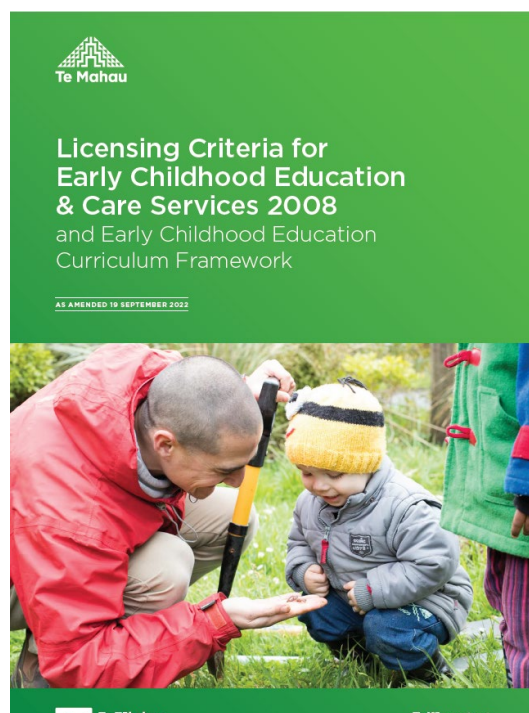
ECC's perspective is that while documentation/evidence has a place in regulation, what is more important is the sound judgement of officials. If they are satisfied based on observing actual practice in a centre, then documentation should not need to be gathered or required. They could document their observation in a file note or other system.

If there is a complaint and the Ministry investigates – the Ministry can require all regulations to be re-assessed with an enormous burden of documentation-gathering being required. We look at complaints processes closely in this submission because it has been a key area of concern for so many members.

It is very important to remember that all the requirements that apply in licensing connect to the sanctions that apply to licensing. The various licence classes are: probationary, provisional, suspended, full and cancelled. Where regulations target specific individuals like “adults” this raises major concerns as to whether any adults’ non-compliance with a regulation should be equated or connected to a service provider’s rights to continue to hold a licence or lose one.

The Ministry’s regulatory “footprint”, established through the granting of (perpetual) licences is a poor fit. Many of the characteristics of an effective or high-performing ECE centre are not evident when you consider that a licence must be obtained before a centre can open and when there are no children physically present.

ECC has had reports from members that Ministry officials have walked into their centres and walked around saying and pointing: “breach, breach, breach, breach...”. While it’s always possible that summary findings like this may be obvious and could be justified (as we do not have the full context in that case), it does highlight a linguistic concern with the regulator’s approach. You could classify the regulations into two categories with regulations that can be “**breached**” and **regulations with standards where the performance can be measured** (not binary!). There is only one reference to “breach” in the Education (Early Childhood Services) Regulations 2008. Currently Ministry officials use the terms “breach” and “non-compliance” interchangeably.



Curriculum - Criteria

The curriculum regulations are unusual because 13 of them include “documentation” requirements that are standard (ie the same). These requirements appear on a separate page and not all the individual standards get explicitly mentioned.

In addition, in the description the documents refers to two “processes”. A process is not necessarily a document so the regulations effectively imply that service providers must establish their own documentation of processes so they can demonstrate compliance with the “suite” of curriculum regulations. This requires those processes to effectively integrate all 13 regulations in a matrix. This is very poorly designed and unnecessarily complex, together with the regulated object not always being the service provider. Sometimes non-compliance can be triggered by one adult, or the service curriculum. It is poor regulation to place obligations on things like a ‘service curriculum’; in practice obligations placed on a service curriculum could be de facto obligations for the service provider (a legal entity). A service provider would appoint, engage or nominate an individual(s) to develop a service curriculum that could be assessed by the Ministry in order to gain a licence.

It is relevant that teachers are trained to deliver the curriculum and that ERO undertakes detailed reviews of all ECE services. In this context, criteria provides an unhelpful layer of unnecessary bureaucracy with the worst possible timing (prior to a centre opening – ie in the licensing process).

Overall, the curriculum criteria serve no sensible purpose and were never necessary. Criteria for granting a licence should not include consideration of curriculum, as it is impossible to assess this robustly without children (ie prior to being granted a licence and opening). Service providers need to be able to recruit their teaching teams with certainty, and allow the teams to establish the local curriculum in the first year.

C1 Curriculum consistent / professional practice

The service curriculum is consistent with any prescribed curriculum framework that applies to the service.

Documentation required: [note the following documentation note is reproduced in all the curriculum criteria but for brevity we omit repeating it]

Documentation that provides evidence of the service's compliance with criteria C1-C13.

Documentation may take a variety of forms to suit the service's operation (such as portfolios, wall displays, policies and procedures) but must include:

- *A process for providing positive guidance to encourage social competence in children (C10);*
- *A process for providing formal and informal opportunities for parents to:*
 - *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 (C12); and*

A record of information and guidance sought from agencies and/or services (C13).


With effect from 1 May 2024, the updated Early Learning Curriculum Framework¹, as per the Gazette notice 2023, became legal requirement for all licensed early childhood services.

Gazetting the updated Curriculum Framework extends implementation requirements for early learning services from two components (Principles and Strands of the early learning framework) to four (including Goals and Learning Outcomes). The gazetting of the teaching

¹ <https://www.education.govt.nz/early-childhood/licensing-and-regulations/the-regulatory-framework-for-ecce/the-early-learning-curriculum-framework-he-anga-marau-kohungahunga-2023/>

goals and learning outcomes within the Curriculum Framework implies considerable flow-on requirements for monitoring, documentation and reporting. The assumption is that the Goals and Learning Outcomes are now targets to be met.

To date, the early learning sector is largely unaware as to the practical ramifications gazetted all elements of the Curriculum Framework will have. Consultation and information have been limited to changes being made to wording in the Licensing Criteria guidance section. Gazetting has potentially added numerous tasks to be assessed and evidenced by ECEs. Given MoE's practice of acting unreasonably by using non-compliance with standards as justification for cancelling licences, ECC is very concerned that the curriculum framework provides MoE and ERO with an additional tool for sanctioning ECEs, leading to closures and financial losses for service providers. In addition, for some providers the new requirements will impose burdensome new costs on their teams to be up-skilled to comply. It is perturbing that the new early learning curriculum framework has taken a regulatory angle when it is really an improvement to the standard of the core service so should be properly funded.

 ECC Regulatory Assessment	C1 Curriculum consistent	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently. This regulation lacks substance.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider's licence. Parents should be able to choose higher standards of curriculum delivery rather than curriculum driving up all service costs. If the curriculum framework has applied to the Country Kindy case, the Ministry would have had considerable legal advantages in deciding to cancel that licence.	-2
<i>Conflict comment:</i>	<p>ERO undertakes detailed reviews of ECE providers' educational performance at a centre level (or umbrella level for larger organisations, with sampling).</p> <p>At an individual level, teachers are trained and qualified.</p> <p>It is questionable whether this service provider licence regulation is providing any value-add or benefits in excess of those achieved through ERO and training and qualifications. Similarly, the main licence assessment occurs prior to opening when there are no children present so this regulation is presumptive. With provisional licences reviewed in 12 months after opening, it is too late to cancel the licence then.</p>	
ECC Assessment:	Remove this regulation	-3

C2 Assessment / professional practice

The service curriculum is informed by assessment, planning and evaluation (documented and undocumented) that demonstrates an understanding of children's learning, their interests, whanau and life contexts.

Documentation required

Documentation that provides evidence of the service's compliance with criteria C1-C13. Documentation may take a variety of forms to suit the service's operation (such as portfolios, wall displays, policies and procedures) but must include:


- A process for providing positive guidance to encourage social competence in children (C10);
- A process for providing formal and informal opportunities for parents to:
 - 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 (C12); and
- A record of information and guidance sought from agencies and/or services (C13).

Documentation and evidence gathered during this process may take a variety of forms to suit the service's operation, and can include minutes of meetings, observations and learning stories, examples of children's work, posters and wall displays, recorded discussions, policies and procedures. For many years, Learning Stories have been the key method for assessment and documentation in ECEs. These formative communication stories between centres and homes have been an effective – and NZ specific – method of recording children's progress. The ECE sector considers summative reports and deficit thinking inappropriate for reporting on young children's learning and progress.

ERO puts considerable pressure on ECE services to collect information on children's learning in portfolios and evidence progress. Learning Stories are written by teachers during non-contact time – time that is not funded and is difficult to allocate, particularly in times of teacher shortages and every teacher in the room counts.

The new MoE teaching and assessment resource [Kowhiti Whakapae](#) has been promoted to ECE teachers as a tool to support teachers to assess children's progression in social-emotional, language and maths areas. The timing together with ERO's report on oral literacy gives rise to considerable anxiety at ECC that new curriculum expectations together with (mandatory) tools will be required to be used by teachers. This is akin to a stealthy service extension, as the time-cost has not been recognised by a service-level funding increase. It is not regulation if the government expects teachers to use it to do their jobs better.

It is also completely unclear how compliance will be measured, unless ERO's Quality Framework [Nga Ara Whai Hua](#) and [Quality Indicators](#) will be utilised for this purpose. To date ECC has not been consulted on the plans, but we are alarmed because they have established a reliable track record of low-trust towards teachers and a liberal willingness to increase the burden on providers without increasing funding.


 ECC Regulatory Assessment	C2 Assessment	Totals
<i>The regulated is...</i>	Adults	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently. Assessment is the cornerstone of education but the connection of assessment practice to a service provider's licence is tenuous.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider's licence. Parents should be able to choose higher standards of curriculum delivery rather than curriculum driving up all service costs. If the Ministry or ERO moves to increase expectations on teachers (person responsible) or centres (ERO reviews where only services using the framework are allowed to qualify for higher ratings) then this places a heavier burden on teachers.	-2

<i>Conflict comment:</i>	<p>ERO undertakes detailed reviews of ECE providers' educational performance at a centre level (or umbrella level for larger organisations, with sampling).</p> <p>At an individual level, teachers are trained and qualified.</p> <p>It is questionable whether this service provider licence regulation is providing any value-add or benefits in excess of those achieved through ERO and training and qualifications. Similarly, the main licence assessment occurs prior to opening when there are no children present so this regulation is presumptive. With provisional licences reviewed in 12 months after opening, it is too late to cancel the licence then.</p>	
ECC Assessment:	Remove this regulation	-3

C3 Interactions / professional practice

Adults providing education and care engage in meaningful, positive interactions to enhance children's learning and nurture reciprocal relationships.

Documentation required – same as all Curriculum criteria.

 ECC Regulatory Assessment	C3 Interactions	Totals
<i>The regulated is...</i>	Adults	
<i>Regulatory effectiveness</i>	<p>Negative impact – if the regulator administers this regulation efficiently then adverse licensing decisions are highly likely with no net benefit to any objectives.</p> <p>Is it even practicable to measure interactions in a regulatory system?</p>	-2
<i>Burden on providers</i>	<p>Grossly unreasonable – the sanction for non-compliance is loss of the service provider's licence. Parents should be able to choose higher standards of curriculum delivery rather than curriculum driving up all service costs.</p> <p>If the Ministry or ERO moves to increase expectations on teachers (person responsible) or centres (ERO reviews where only services using the framework can qualify for higher ratings) this places a heavier burden on teachers.</p>	-2
<i>Conflict comment:</i>	<p>ERO undertakes detailed reviews of ECE providers' educational performance at a centre level (or umbrella level for larger organisations, with sampling).</p> <p>At an individual level, teachers are trained and qualified.</p> <p>It is questionable whether this service provider licence regulation is providing any value-add or benefits in excess of those achieved through ERO and training and qualifications. Similarly, the main licence assessment occurs prior to opening when there are no children present so this regulation is presumptive. With provisional licences reviewed in 12 months after opening, it is too late to cancel the licence then.</p>	
ECC Assessment:	Remove this regulation	-4


C4 Adults' knowledge / professional practice

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.

Documentation required – same as all Curriculum criteria.

The role of Initial Teacher Education (ITE) is central to credentialing the understanding or aptitude to understand relevant theories and practice for adults who are qualified teachers. Teachers have demonstrated they have the theoretical skills to provide education, based on sound understanding of theories and practice. Currently, ITEs must ensure student teachers complete their studies able to meet the Teaching Council's [Standards for the Teaching Profession](#) 'with support'.


ITE is the appropriate place to emphasise or enhance the focus on adult knowledge of theories and practice. Graduates should be allowed to grapple with how to implement the curriculum as this helps embed their theoretical training in the real world, considering the diverse needs and culture of children. How to document evidence of learning is a significant burden on teachers.

 ECC Regulatory Assessment	C4 Adults' knowledge	Totals
<i>The regulated is...</i>	Adults	
<i>Regulatory effectiveness</i>	<p>Negative impact – if the regulator administers this regulation efficiently then adverse licensing decisions are highly likely with no net benefit to any objectives.</p> <p>It is inappropriate to assess individual adults' knowledge in the context of granting or cancelling the licence for a service provider. The appropriate remedy for a concern would be a notice to the service provider to address or clarify if there are perceived gaps in an individual's knowledge.</p>	-2
<i>Burden on providers</i>	<p>Grossly unreasonable – the sanction for non-compliance is loss of the service provider's licence. Parents should be able to choose higher standards of curriculum delivery rather than curriculum driving up all service costs.</p>	-2
<i>Conflict comment:</i>	<p>ERO undertakes detailed reviews of ECE providers' educational performance at a centre level (or umbrella level for larger organisations, with sampling).</p> <p>At an individual level, teachers are trained and qualified.</p> <p>It is questionable whether this service provider licence regulation is providing any value-add or benefits in excess of those achieved through ERO and training and qualifications. Similarly, the main licence assessment occurs prior to opening when there are no children present so this regulation is presumptive. With provisional licences reviewed in 12 months after opening, it is too late to cancel the licence then.</p>	
ECC Assessment:	Remove this regulation	-4

C5 Acknowledgement of tangata whenua / culture and identity

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.


Documentation required – same as all Curriculum criteria.

 ECC Regulatory Assessment	C5 Acknowledgement of tangata whenua	Totals
<i>The regulated is...</i>	Service provider and adults	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently. Te Whariki is a bicultural curriculum document that is consistent with Te Tiriti o Waitangi. There is no need to impose an “acknowledgement” regulation nor is an acknowledgement requirement appropriate in the context of granting or cancelling a licence for a centre.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence.	-2
<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3

C6 Culture / culture and identity

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.

Documentation required – same as all Curriculum criteria.

 ECC Regulatory Assessment	C6 Culture	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently. Te Whariki is a bicultural curriculum document that is consistent with Te Tiriti o Waitangi. There is no need to impose an “acknowledgement” regulation nor is an acknowledgement requirement appropriate in the context of granting or cancelling a licence for a centre.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence.	-2
<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3

C7 Curriculum responsive / children as learners


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.

Documentation required – same as all Curriculum criteria.

Licensing Criteria guidance states that, “The service curriculum treats all children, regardless of their age, gender, ethnicity, and abilities as competent and confident learners who are active participants in their own learning. The curriculum will enable children with special needs to be actively engaged in learning with and alongside the other children in the service”.

Out of necessity, ECEs design their own strategies for assisting children with diverse needs, as early learning support is scarce and waiting times for centralised support (e.g. early intervention service) are long. There is a great need for upskilling and more detailed training as part of initial teacher training so teachers have more tools to work with, so they can be responsive and meet children’s needs.

Curriculum responsive is at the heart of the Curriculum Framework, and an area most ECE teachers put much effort into, simply through the nature of their work. Shifting the weight of compliance, monitoring and evidencing onto this part of their work puts a lot of pressure on a workforce that is already under stress.

 ECC Regulatory Assessment	C7 Curriculum responsive	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence.	-2
<i>Conflict comment:</i>	Focus on inclusive education consistent with the National Education and Learning Priorities (barrier free access)	
ECC Assessment:	Remove this regulation	-3

C8 Language-rich environment / children as learners

The service curriculum provides a language-rich environment that supports children’s learning.


Documentation required – same as all Curriculum criteria.

As mentioned above, the new resource Kōwhiri Whakapae is one of the few free resources made available to the ECE sector. It offers much needed information and detail, covering learning areas such as literacy, oral language development and maths. There is a justifiable interest in language development in young children and the need for greater support but this should not be seen as an opportunity to introduce further areas of compliance and documentation work.

Kōwhiri Whakapae is a valuable resource but should not be turned into an assessment checkbox activity. Summative reporting is misplaced in ECE and does not add value.

There is no doubt as to the importance of language development for young children and service providers would welcome more resourcing in this area. Children will benefit directly from any added support provided in the early years. In addition, much more attention should be put on language learning and teaching oral literacy (including maths) skills during initial


teacher training. This is a specialist subject and the more teacher trainees learn about it the better the outcomes for children.

 ECC Regulatory Assessment	C8 Language-rich environment	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence. Increasing expectations on teachers has the potential to increase the burden on their roles, while employers are not funded for teacher non-contact time.	-2
<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3

C9 Range of experiences / children as learners

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.

Documentation required – same as all Curriculum criteria.


 ECC Regulatory Assessment	C9 Range of experiences	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence. In extreme cases, Ministry of Education officials require service providers to maintain access to resources, outdoor and indoor spaces – contrary to the service’s plans (e.g. late in the day children might be combined into a single group with staffing advantages to supervision, and tidy-up protocols might start in parts of the centre)	-2
<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3

C10 Behaviour management / children as learners

The service curriculum supports children’s developing social competence and understanding of appropriate behaviour.

Documentation required – same as all Curriculum criteria.

In addition to the resource He Mapuna te Tamaiti, ECE teachers now have Kōwhiri Whakapae to assist children in developing social and emotional skills. As in the above mentioned learning areas, the more resources provided during the early years, the better the outcomes for children. Teachers would benefit from more specific training and professional development and more emphasis on learning support during ITE courses. Currently we do not structure any time within the funded framework for teachers to undertake professional development or training on the job. The impact of this is that professional development including first aid training can be scheduled in evenings or weekends.

 ECC Regulatory Assessment	C10 Behaviour management	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence. In extreme cases, Ministry of Education officials require service providers to maintain access to resources, outdoor and indoor spaces – contrary to the service’s plans (e.g. late in the day children might be combined into a single group with staffing advantages to supervision, and tidy-up protocols might start in parts of the centre)	-2
<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3

Further comment


The need for professional development is not met, as there is no funding at all. However, the need for teachers to be well-trained, well-educated and on top of the latest research has never been greater. Diverse and complex needs cannot be met, which compounds problems and are then passed on to the compulsory sector.

Key recommendation: Service providers should be allocated funded hours for teachers to undertake professional development.

C11 Parents’ aspirations / Working with others

Positive steps are taken to respect and acknowledge the aspirations held by parents and whānau for their children.

Documentation required – same as all Curriculum criteria.


 ECC Regulatory Assessment	C11 Parents’ aspirations	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence. Whether or not a service provider or adult’s <i>steps</i> are “positive” are open to interpretation.	-2

<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3

C12 Opportunities for parents / Working with others

Regular opportunities (formal and informal) are provided for parents to: 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.

Documentation required – same as all Curriculum criteria.

 ECC Regulatory Assessment	C12 Opportunities for parents	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider's licence. Engagement with parents does not require regulation.	-2
<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3


C13 Seeking information / Working with others

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.

Documentation required – same as all Curriculum criteria.

Service providers are encouraged to provide holistic services and to reach out to agencies and communities to enhance provision for children. This is required to be documented. However, when centres do not have cause to reach out to agencies and services this presents an issue during reviews.

Clarification is needed in the guidance to point out that the absence of documentation does not mean children are not receiving adequate education and care.

 ECC Regulatory Assessment	C13 Seeking information	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider's licence. At times an ECE service provider has an onerous role to play in cross-government social issues. For example, custody disputes and restraining orders and	-2

	child protection investigations involving multiple agencies. The time-cost of this work is unfunded.	
<i>Conflict comment:</i>	None.	
ECC Assessment:	Remove this regulation	-3

Premises and Facilities - Criteria Comment

Anyone constructing, altering or approving the construction of ECE centres must meet the requirements of the Building Act 2004 and the Education (Early Childhood Services) Regulations 2008. <https://www.building.govt.nz/building-code-compliance/specific-buildings/early-childhood-education-centres>

Our analysis of the premises and facilities criteria has been influenced by the knowledge that in many cases the regulated party is not yet a licensed ECE provider. This means the regulated party can change significantly after opening. An issue relating to an aspect of a centre's construction can be more readily fixed prior to construction than if remedial work is required after the centre has been opened. Similarly, standards that relate to the condition of a facility cannot be assessed prior to opening.

Regulation 9(1)(e)(ii) is significant (yet isn't included in the criteria) because it creates a statutory requirement that means an ECE licence becomes invalid once the premises are found to have no current Building Warrant of Fitness (BWOFF). Post-COVID this created a major problem because ECC estimated over 100 services in Auckland had no current BWOFF due to missing maintenance checks required for their Specified Systems. The Ministry of Education and ECC devised a solution, but ECC remains concerned that the solution requires the Ministry to continue to take an understanding approach of not enforcing Regulation 9(1)(e)(ii).

The Building Act has a major problem. This is that changes to regulations do not apply to existing buildings. This means that renovations, new centres are held to significantly higher standards than older ECEs. This means that changes to building regulation have a limited ability to result in improved standards for existing ECEs, as changes only apply to those yet to seek a licence.

Numerous conflicts arise between Ministry of Education, Ministry of Health and local Government and Ministry for Business, Immigration and Employment (MBIE) rules and official opinions. For example, MBIE requirements for disabled evacuation require door handles to be low enough for persons in wheelchairs to evacuate themselves. In the ECE context, lowering door handles to satisfy this exposes children to increased risks as all children become more able to escape from the centre. All ECEs have evacuation plans that involve children having supervised evacuation – so the MBIE requirement is unnecessary for ECEs. By satisfying MBIE, ECEs are placing children at-risk. ECC's position is to encourage our members to refuse to lower door handles because the increased risks to child safety are not outweighed by the objectives in the Building Code.

Another recent example is a new standard that doors cannot be the same colour as walls – to assist identifying doors during an evacuation where lighting is non-functional. This new requirement has not been notified to ECE providers. It is unclear if it is a building regulation change or specific to one local authority. ECC encourages its members to seek clarification

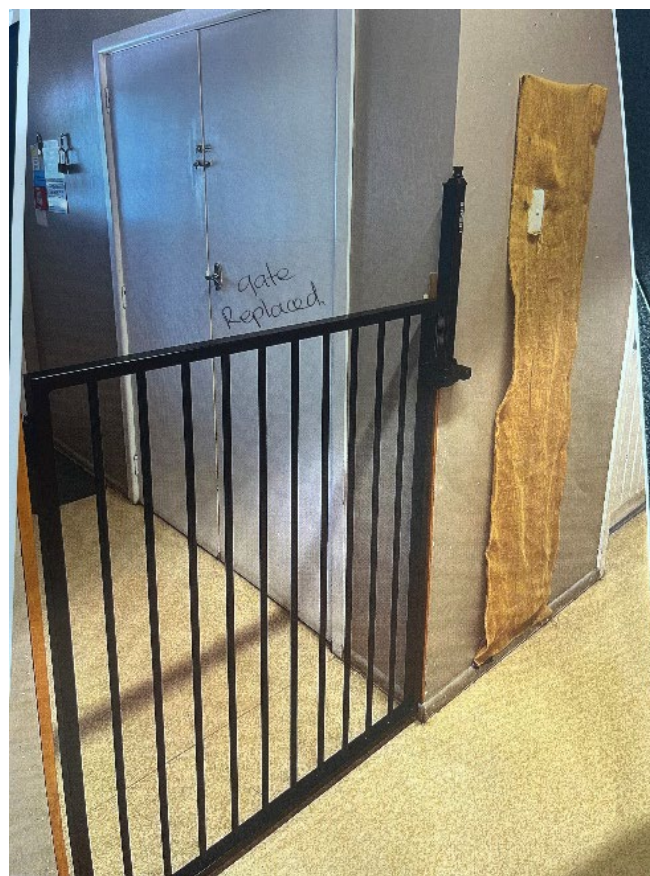


Figure 1: Gate installed due to children being able to leave the centre once the door handle had been lowered – had to be removed due to building regulation (May 2024)

about the specific regulations the various officials refer to. In some cases officials do not understand the regulations or apply standards in the wrong context.

Overall, while the premises regulations are rated relatively highly compared to other regulatory burdens, they would benefit from modernisation and the standards should be developed collaboratively with the regulator and the regulated – for example, the regulator can explain the outcome they are seeking to achieve and the industry can suggest a range of solutions that would meet it. As much as possible we need the regulatory system to provide a range of ways to comply and avoid binary standards.

The premises regulatory criteria also contain a large number of requirements that are intended for a class of licence that is no longer used (sessional licences). The Ministry’s tendencies to apply different standards based on classes that have no clear distinction is a problem. For example, ECC’s submission does not examine the criteria that apply to other service types (kindergartens, Playcentre, homebased, Kohanga Reo etc). There should be horizontal equity between the regulatory models for the various services and classes. Ideally there is one set of requirements and service types can be established to devise new ways to meet the requirements. Within the ~2,500 services we represent, there are a wide range of types of providers.

Recommendations:

- Review the premises regulatory model to modernise the standards and design new ways to meet the objectives, reconsidering the distinctions made between service types that undermine horizontal equity between providers.
- Ratios in standards for premises and facilities should be general starting points whereby the operator and the regulator can agree on the specific approach – so long as it remains effective; similarly absolute numbers in standards are very different in a small 20 place centre compared to a centre licensed for 150 places
- Review the approach to sleep and nappy regulations holistically, including facilities and appropriate supervision systems that met children’s wellbeing needs


PF1 Design and layout of premises / General

The design and layout of the premises:

- 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.

Related to clause 45(1)(a)(i) of standard.


It is unclear why PF1 contains the wording “Related to clause 45(1)(a)(i) of standard” – this appears to be a lazy reference to potential standards that are not documented, opening up the regulation to wider interpretation.

 ECC Regulatory Assessment	PF1 Design and layout of premises	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – regulation is aligned to an outcome but the extent it contributes is unquantified (leaving providers unable to weigh trade-offs and subject to unexpected costs and delays – such as	1

	from replacing a new fence with a sound-proofed fence).	
<i>Burden on providers</i>	Heavy – the sanction for non-compliance is to meet the unexpected costs, whatever they may be, or not get the licence. Changing and conflicting approaches to design means that ECE developers are in impossible non-compliance loops. They satisfy the different regulators in the right order to obtain the required approvals in sequence. The barriers and costs to developers just increase costs with no corresponding benefit for the objects.	-1
<i>Conflict comment:</i>	Conflicts are complex and overwhelming. A systematic approach to resolving conflicts is required. General building or local government requirements should be trumped by ECE-specific requirements.	
ECC Assessment:	Clarify regulatory conflicts and improve access to clear information about building standards to reduce unexpected costs and delays. There could be a tribunal or body for resolving, negotiating or disputing competing regulatory approaches.	0

PF2 Premises support effective supervision / General

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.

 ECC Regulatory Assessment	PF2 Premises support effective supervision	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – regulation is aligned to an outcome but the extent it contributes is unquantified (leaving providers unable to weigh trade-offs and subject to unexpected costs and delays – such as from room configuration and space configurations being found later, after construction, to be 'unnecessarily limited' in terms effective supervision).	1
<i>Burden on providers</i>	Heavy – the sanction for non-compliance is to meet the unexpected costs, whatever they may be, or not get the licence. Changing and conflicting approaches to design means that ECE developers are in impossible non-compliance loops. They satisfy the different regulators in the right order to obtain the required approvals in sequence. The barriers and costs to developers just increase costs with no corresponding benefit for the objects.	-1
<i>Conflict comment:</i>	Conflicts are complex and overwhelming. A systematic approach to resolving conflicts is required. General building or local government requirements should be trumped by ECE-specific requirements.	

ECC Assessment:	If this standard is to remain then an industry-approved framework is required to support the design of ECE accommodation that supports effective supervision.	0
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PF3 Building Act Compliance / General

The premises conform to any relevant bylaws of the local authority and the Building Act 2004.


Documentation required:

Code Compliance Certificate issued under Section 95 of the Building Act 2004 for any building work undertaken, or alternatively any other documentation that shows evidence of compliance.

If the premises fall under section 100 of the Building Act 2004, or section 108 of the Building Act applies:

- a copy of the current Annual Building Warrant of Fitness or

- a copy of the compliance schedule if 12 months have not elapsed since the compliance schedule was first issued.

 ECC Regulatory Assessment	PF3 Building Act Compliance	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider; landlord	
<i>Regulatory effectiveness</i>	Negative impact – regulation worsens net outcomes because it links the ECE premises requirements to the Building regulations without establishing a way to resolve conflicting standards or official judgements. The ECE Criteria would be strengthened by removing this, as it would refocus ECE service providers on the ETA Outcomes.	-2
<i>Burden on providers</i>	Not applicable – this regulation creates a link to separate regulations, it does not create another layer of regulation	0
<i>Conflict comment:</i>	Conflicts are complex and overwhelming. A systematic approach to resolving conflicts is required. General building requirements should be trumped by ECE-specific requirements.	
ECC Assessment:	PF3 should be removed as it serves no purpose and worsens ETA Outcomes.	-2


PF4 Variety of Equipment / General

A sufficient quality and variety of (indoor and outdoor) furniture, equipment, and materials is provided that is appropriate for the learning and abilities of the children attending.

Playgrounds, play equipment and sandpits must be built to precise standards NZS5828:2015: [Playgrounds](#) refers (regulated by Standards New Zealand, a part of MBIE).

There have been issues in the ECE sector with products like soft-fall materials not being available in New Zealand, and potential defects in outdoor surface products.

It would be beneficial to undertake to develop support for older ECE providers to replace existing worn playground equipment that may not be suitable.


 ECC Regulatory Assessment	PF4 Variety of Equipment	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – regulation is aligned to an outcome but the extent it contributes is unquantified. However, it is not appropriate to blend design and construction requirements with learning resource requirements (ie toys, books, other materials that children use).	1
<i>Burden on providers</i>	Moderate – a supported compliance regime with standards and costs that allow the regulated activity to occur but at questionable cost. We understand that Ministry of Education assessments of major works occurs based on plans not after playgrounds have already been completed. This lessens the cost impact on developers.	1
<i>Conflict comment:</i>	Product standards.	
ECC Assessment:	PF4 would benefit from minor refinements. However, outdoor play equipment and associated products require further attention.	2

PF5 Safe Furniture and Equipment / General

All indoor and outdoor items and surfaces, furniture, equipment and materials are safe and suitable for their intended use.

PF6 Flooring / General

Floor surfaces are durable, safe, and suitable for the range of activities to be carried out at the service and can be easily be kept clean.

 ECC Regulatory Assessment	PF5 Safe Furniture and Equipment PF6 Flooring	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – regulation is aligned to the ETA Outcomes but the approach does not support child health and safety, it increases compliance burden. These regulations get used to require service providers to replace floors, worn surfaces, repaint chipped and damaged walls. Nappy change tables and associated materials whose protective surfaces are worn trigger non-compliance events.	1


<i>Burden on providers</i>	Moderate – a supported compliance regime with standards and costs that allow the regulated activity to occur but at questionable cost. We have not seen a case of an existing provider having their licence cancelled due to worn furniture or equipment but it is theoretically possible.	1
<i>Conflict comment:</i>	Conflicts are complex and overwhelming. A systematic approach to resolving conflicts is required. General building or local government requirements should be trumped by ECE-specific requirements.	
ECC Assessment:	PF4 would benefit from minor refinements. However, outdoor play equipment and associated products require further attention.	2

PF7 Safety glass / General

<p>Any windows or other areas of glass accessible to children are either:</p> <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 Storage / General


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.

 ECC Regulatory Assessment	PF7 Safety glass PF8 Storage	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – regulations are aligned to the ETA Outcomes.	1
<i>Burden on providers</i>	Moderate – a supported compliance regime with standards and costs that allow the regulated activity to occur but at questionable cost. ECC has seen a case of an existing licensing investigation due to non-premises related matters where the Ministry required the provider to replace or cover glass that children could not touch. While consistent with the spirit of the regulation the principle of reassessing previously approved glass in this manner is potentially unreasonable. Such cases should be negotiated carefully between the provider and the Ministry as retrofitting activities could be so costly as to render the service financially non-viable.	1
<i>Conflict comment:</i>	None.	
ECC Assessment:	Acceptable with some concerns.	2

PF9 Adult workspace / General

There is space for adults working at the service to:

- use for planned breaks;
- meet privately with parents and colleagues;
- store curriculum support materials; and
- assess, plan, and evaluate.


 ECC Regulatory Assessment	PF9 Adult workspace	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently	-1
<i>Burden on providers</i>	Moderate – a supported compliance regime with standards and costs that allow the regulated activity to occur but at questionable cost. There is generally an absence of suitable adult furniture and workspaces, with computers, for teachers to complete assessment work.	1
<i>Conflict comment:</i>	None.	
ECC Assessment:	Regulating adult workspaces has not been effective at ensuring teachers have the workspaces they need. Regulation may not be the right approach.	0

PF10 Art sink / General

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 Telephone / General

There is a telephone on which calls can be made to and from the service.

 ECC Regulatory Assessment	PF10 Art sink PF11 Telephone	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – regulations are aligned to the ETA Outcomes.	1
<i>Burden on providers</i>	Moderate – a supported compliance regime with standards and costs that allow the regulated activity to occur.	1
<i>Conflict comment:</i>	None.	

ECC Assessment:	The value of these regulations cannot be quantified but the burden is relatively low.	2
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PF12 Lighting, ventilation, heating and acoustic materials / General

Parts of the building or buildings used by children have:


- lighting (natural or artificial) that is appropriate to the activities offered or purpose of each room;
- ventilation (natural or mechanical) that allows fresh air to circulate (particularly in sanitary and sleep areas);
- a safe and effective means of maintaining a room temperature of no lower than 18°C; and
- acoustic absorption materials, if necessary, to reduce noise levels that may negatively affect children's learning or wellbeing.

This regulation is one of a number of regulations that have been recently changed to increase perceived standards of services. In 2021, the minimum temperature was increased from 16°C to 18°C without impact analysis, and based on weak evidence.

During the COVID-19 pandemic, ECE services were unable to require the use of masks, children did not have access to a vaccine and testing kits were unavailable. This meant that one of the key mitigations to help manage outbreaks was effective ventilation. The ventilation and heating requirements need a comprehensive review. Average temperatures and testing protocols are required.

We have one ECC member with eight air curtains that they use to maintain the 18°C temperature. The cost of this system was in excess of \$30,000. The adults working in the centre complain that it is too hot at their height (temperature must be measured at 500cm – at child height, so it is always a lot warmer at adult height).


ECC members have been subjected to temperature tests where the Ministry officials have taken the temperature tests from “dead-zones” in rooms and by open windows. If the minimum is treated as an absolute requirement then a centre with an average daily temperature of 19°C could have its licence cancelled where the temperature momentarily drops to 17.9°C for 1 second. ECC is concerned that a single national temperature standard is impractical and is significantly more difficult to comply with in Invercargill in Winter than it would be in Auckland. Even the additional cost of heating centres to a higher minimum temperature have not been factored into the regulatory change.

 ECC Regulatory Assessment	PF12 Lighting, ventilation, heating and acoustic materials	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Negative impact – regulations significantly worsen ETA Outcomes by creating a system whereby limitless building costs can be imposed on providers. It is grossly unacceptable to be able to increase the minimum temperature from 16°C to 18°C without impact analysis of the ability of existing ECE accommodation to meet that standard. Similarly, increasing the minimum temperature does not appear to have had any positive impact on health in centres or reduction in the spread of disease, potentially it has worsened health outcomes. Whatever the case	-2

	the regulatory change and its impact are impossible to evaluate. If 2,000 existing ECE centres had to upgrade their heating systems to meet the new standard at \$30,000 each, the impact would be \$60 million. Providers have faced similar high costs from needing to undertake acoustic remediation, including from engaging acoustic experts.	
<i>Burden on providers</i>	Grossly unreasonable – relative burden (as above) not justified by measurable gains to ETA Outcomes.	-2
<i>Conflict comment:</i>	It is impossible to meet the ventilation requirements while also meeting an absolute minimum temperature requirement.	
ECC Assessment:	This regulation is a perfect example of poor regulation, yet regulation in these areas has much merit so should be replaced with workable standards.	-4

PF13 Outdoor activity space / General

Outdoor activity space is:
- 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.


 ECC Regulatory Assessment	PF13 Outdoor activity space	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider; landlord	
<i>Regulatory effectiveness</i>	Potential for impact – regulation is aligned to an outcome but the extent it contributes is unquantified (leaving providers unable to weigh trade-offs and subject to unexpected costs and delays – such as from subsequent MoE opinions relating to a resource consent that is very difficult to change).	1
<i>Burden on providers</i>	Heavy – the sanction for non-compliance is to meet the unexpected costs, whatever they may be, or not get the licence. The regulation does not present a clear standard to be complied with so only serves to create regulatory double jeopardy whereby a developer can be successful obtaining a resource consent and not be able to obtain a licence from the Ministry.	-1
<i>Conflict comment:</i>	A classic conflict scenario with a regulation that links to the resource consent process but occurs after a resource consent has already been granted, making it very difficult to comply with.	

ECC Assessment:	Clarify regulatory conflicts and improve access to clear information about outdoor space requirements to reduce unexpected costs and delays.	0
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PF14 Infant toddler safe space / General


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.

 ECC Regulatory Assessment	PF14 Infant toddler safe space	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – regulation is aligned to an outcome but the extent it contributes is unquantified (leaving providers unable to weigh trade-offs and subject to unexpected costs and delays – such as from subsequent MoE opinions relating to a resource consent that is very difficult to change). This regulation is likely to generate unintended consequences that result in fewer children under the age of two from having a place available for them. It is arbitrary to set such a rigid regulatory line between a child who is nearly two years old and one who is two years old. The concept of protecting non-mobile children from very mobile children is a good concept. This is not an area where regulation by age is necessarily effective.	1
<i>Burden on providers</i>	Heavy – the sanction for non-compliance is to meet the unexpected costs, whatever they may be, or not get the licence. This standard applies arbitrarily based on age, not need, however it's intention has merit. The cost of compliance is considerable, and unlikely to be justified relative to the benefits to children when you consider that some children below age two years old would benefit from engagement with other children older than two, yet this regulation creates unrealistic restrictions.	-1
<i>Conflict comment:</i>	None.	
ECC Assessment:	Age based regulations are too crude and regulation based on need would be more appropriate. For example, there could be an area where immobile children can be readily segregated from other children, with corresponding staffing implications if segregation is required, not if it's not.	0

PF15 Dining facilities

There is a safe and hygienic place for children to sit when eating.

 ECC Regulatory Assessment	PF15 Dining facilities	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	Unusually specific standard that does not mention the qualities of the seating or any table.	
ECC Assessment:	Noted	3

PF16 Kitchen facilities

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.

 ECC Regulatory Assessment	PF16 Kitchen facilities	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – some concerns	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	After the centre is opened: the design of the standard would benefit from a definition of what the quality of hygienic is. The temperature requirement causes issues as the Ministry tests fridges and some of those tests are not done in controlled settings.	
ECC Assessment:	Noted	3


PF17 Kitchens inaccessible

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.

 ECC Regulatory Assessment	PF17 Kitchens inaccessible	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Workable standard.	
ECC Assessment:	Noted	3


PF18 Toilet ratio

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.

 ECC Regulatory Assessment	PF18 Toilet ratio	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Moderate – centres are not necessarily built around “15” person increments, some more flexibility can be justified	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	There is a standard but it may be inflexible for services. For example a classic 40 place centre for children over 2 would need 3.06 toilets if they had six adults.	
ECC Assessment:	Review	2

PF19 Hand washing facilities ratio


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).

 ECC Regulatory Assessment	PF19 Hand washing facilities ratio	Totals
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<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Moderate – centres are not necessarily built around “15” person increments, some more flexibility can be justified	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	The standard may be overly inflexible as discussed above with the toilet ratio. As discussed separately, the regulated ratio is not monitored so it does not form a basis to measure the standard. The Staff Hour Count only includes the regulated minimums, so additional adults may be present who are not being reported.	
ECC Assessment:	Review	2


PF20 Toilet/hand washing facilities

Toilet and associated hand washing/drying facilities intended for use by children are:
Designed and located to allow children capable of independent toileting to access them safely without help; and
Adequately separated from areas of the service used for play or food preparation to prevent the spread of infection.

 ECC Regulatory Assessment	PF20 Toilet/hand washing facilities	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	No comment.	
ECC Assessment:	Noted	3

PF21 Hand drying facilities


There is means of drying hands for children and adults that prevents the spread of infection.

 ECC Regulatory Assessment	PF21 Hand drying facilities	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	

<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	PF21 and PF20 overlap and need review	
ECC Assessment:	Review	3


PF22 Toilet privacy

At least one of the toilets for use by children is designed to provide them with some sense of privacy.

 ECC Regulatory Assessment	PF22 Toilet privacy	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	One toilet for a small centre is a very different standard than for a very large centre. Some metrics are based on the centre size and some are not. There does not appear to be a method to the metrics that scale based on size of centre.	
ECC Assessment:		3


PF23 Adult toilet

There is a toilet suitable for adults to use

 ECC Regulatory Assessment	PF23 Adult toilet	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Together with PF22 this could be the same toilet. Consider whether adults should be required to use a separate toilet to children.	
ECC Assessment:		3

PF24 Tempering valve

A tempering valve or other accurate means of limiting hot water temperature is installed for the requirements of criterion HS13 to be met.

 ECC Regulatory Assessment	PF24 Tempering valve	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	This regulation appears to render HS13 unnecessary	
ECC Assessment:	Noted	3

PF25 Nappy change facilities


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:

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.


 ECC Regulatory Assessment	PF25 Nappy change facilities	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Does not acknowledge how the standard changes after opening. Prior to opening this standard looks at the physical set up for nappy change facilities. After opening, the standard would be applied by the regulator taking into account the state of the facilities and how they are being used.	
ECC Assessment:	Noted	3

PF26 Body wash facilities

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:


A procedure outlining how the service will ensure hygiene and infection control outcomes are met when washing sick and soiled children.

 ECC Regulatory Assessment	PF26 Body wash facilities	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	Conflicts with established health and safety procedures unless this procedure can be incorporated within other documentation	
<i>Standard comment:</i>	Unusual to have a procedure requirement in the PF regulatory requirements as the procedure relates to the use of the facilities	
ECC Assessment:	Review	3

PF27 Isolation area

There is space (away from where food is stored, prepared, or eaten) where a sick child can:

- Be temporarily kept at a safe distance from other children (to prevent cross-infection);
- Lie down comfortably; and
- Be supervised

 ECC Regulatory Assessment	PF27 Isolation area	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – unclear if this creates any benefit for children	-1
<i>Burden on providers</i>	Moderate – a poorly designed isolation area could become a risk if there are staffing issues and one staff member is required to be in an isolation room (or cannot afford to be).	1
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	It is naïve to design a standard that presumes a child may become seriously sick at any given point in time and not already have exposed other people in the centre to infection	
ECC Assessment:	Review	0


PF28 First aid kit

There is a first aid kit that:

Complies with the requirements of Appendix 1;


Is easily recognisable and readily accessible to adults; and

Is inaccessible to children.

 ECC Regulatory Assessment	PF28 First aid kit	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Appendix 1 contains 12 items that must be contained in the kit including phone numbers. A cold pack should not be kept in the kit it should be kept in a freezer.	
ECC Assessment:	Review all first aid requirements comprehensively	3

PF29 Design of sleeping provisions

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.

 ECC Regulatory Assessment	PF29 Design of sleeping provisions	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>		
<i>Standard comment:</i>	Does this mean a hammock is not allowed because they are not flat.	
ECC Assessment:	Review all sleep regulations	3

PF30 Mattress coverings


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:

Protects them from becoming soiled;


Allows for easy cleaning (or is disposable); and

Does not present a suffocation hazard to children.

 ECC Regulatory Assessment	PF30 Mattress coverings	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	No concerns.	
ECC Assessment:	Review all sleep regulations	3

PF31 Bedding


Clean individual bedding (such as blankets, sheets, sleeping bags, and pillow slips) is provided for sleeping or resting children that is sufficient to keep them warm.

 ECC Regulatory Assessment	PF31 Bedding	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	No concerns.	
ECC Assessment:	Noted	3

PF32 Sessional over 2 sleep space

SESSIONAL SERVICES ONLY:

A safe and comfortable place to sleep (such as a bed, stretcher, or couch) is available for children aged two and older that require sleep or rest during a session).


 ECC Regulatory Assessment	PF32 Sessional over 2 sleep space	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	

<i>Regulatory effectiveness</i>	Questionable impact – regulation no longer used	1
<i>Burden on providers</i>	Light – not relevant	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Dedicated regulations for this class of licence are no longer justified	
ECC Assessment:	Remove	3

PF33 All-day over 2 sleep space

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 other children not sleeping or resting as necessary.

 ECC Regulatory Assessment	PF33 All-day over 2 sleep space	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Space is not quantified. Unclear whether existing sleep facilities are necessary or warrant regulation.	
ECC Assessment:	Review all sleep regulations	3

PF34 All-day over 2 sleep furniture/items

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.

 ECC Regulatory Assessment	PF34 All-day over 2 sleep furniture/items	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – no concerns	1
<i>Burden on providers</i>	Light – no concerns	2
<i>Conflict comment:</i>	None.	

<i>Standard comment:</i>	'Available' is subjective. Children are unlikely to be able to access facilities that rely on adults to configure. Unclear whether existing sleep facilities are necessary or warrant regulation.	
ECC Assessment:	Review all sleep regulations	3

PF35 Sessional under 2 designated sleep space


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:

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.

 ECC Regulatory Assessment	PF35 Sessional under 2 designated sleep space	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – regulation no longer used	1
<i>Burden on providers</i>	Light – not relevant	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Dedicated regulations for this class of licence are no longer justified	
ECC Assessment:	Remove	3

PF36 Sessional under 2 cot:child ratio

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.

 ECC Regulatory Assessment	PF36 Sessional under 2 cot:child ratio	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – regulation no longer used	1
<i>Burden on providers</i>	Light – not relevant	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Dedicated regulations for this class of licence are no longer justified	

ECC Assessment:	Remove	3
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PF37 All-day under 2 sleep space


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. The space is located and designed to:

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.

 ECC Regulatory Assessment	PF37 All-day under 2 sleep space	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – unclear	1
<i>Burden on providers</i>	Light – not significant	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Standard is unclear and should be reviewed to ensure all sleep regulations actually contribute to making it comfortable for children to sleep.	
ECC Assessment:	Review all sleep regulations	3

PF38 All-day under 2 child:cot ratio

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.

 ECC Regulatory Assessment	PF38 All-day under 2 child:cot ratio	Totals
<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – unclear	1
<i>Burden on providers</i>	Light – not significant	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	Ratios are not necessarily appropriate to determine the quantity required.	
ECC Assessment:	Review all sleep regulations	3

Health and Safety - Criteria Comment

There are 34 individual criteria under the Health and Safety section of the Licensing Criteria for centre-based ECE services. Below are a select number of health and safety criteria that show how a risk assessment approach would be much more effective in achieving desired outcomes.

Along with many of the criteria are associated documentation requirements. In many cases, the documentation in the form of procedures and policies add an unnecessary amount of paperwork and confusion as to what exactly must be documented. The documentation requirement poses a huge risk for ECE service providers, as centres are critiqued for wording in their procedures and policies and there is no room for errors. The focus shifts from the actual requirement, i.e. from understanding and mitigating risk to what needs to be written and whether it is displayed in the correct location.


ECC recommends a shift away from a regulatory approach to health and safety and instead adopt a qualification system. A qualification system that aims at educating people and increase their capability is better at improving quality instead of writing policies and ticking boxes in check lists.

ECC proposes setting a requirement that all ECE employees attain a standard of proficiency in Health and Safety and undertake suitably specific training and assessment. It would be far more conducive to raise health and safety standards if employees were educated in how to assess and manage risk from harm, rather than observing requirements with a view of ERO visits and completing checklists.

First aid requirements require a more comprehensive review. There should be consideration of a first aid qualification requirement, and less regulation at the service provider level. ECC would agree that first aid requirements should be raised but as qualifications and expectations on adults increase, the original regulations at the service provider level could be redesigned.

HS1 Premises and contents safe and hygienic

Premises, furniture, furnishings, fittings, equipment, and materials are kept safe, hygienic and maintained in good condition.

 ECC Regulatory Assessment	HS1 Premises and contents safe and hygienic	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Heavy – because the sanction for non-compliance is licensing intervention	-1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Subjective standard	
ECC Assessment:	Review	0


HS2 Laundering

Linen used by children or adults is hygienically laundered.

Documentation required: A procedure for the hygienic laundering (off-site or on-site) of linen used by the children or adults.

A service provider is in breach of regulation if there is no written direction for staff that directs how laundry is to be laundered. The procedure needs to detail as to what must be laundered, how, by whom, and by what method. This is an excessive amount of documentation for a very standard operational task.

Remove the requirement for written documentation and replace it with a focus on employee training.

 ECC Regulatory Assessment	HS2 Laundering	Totals
The regulated is...	Service provider	
Regulatory effectiveness	Negative impact	-2
Burden on providers	Heavy – non-compliance is based on the procedure not the state of the laundry	-1
Conflict comment:	None.	
Standard comment:	Binary standard – either is hygienically laundered or not, with no definition of what hygienically laundered means	
ECC Assessment:	Remove	-3


HS3 Nappy changing procedure

A procedure for the changing (and disposal, if appropriate) of nappies is displayed near the nappy changing facilities and consistently implemented.

Documentation required: A procedure for the changing (and disposal, if appropriate) of nappies that aims to ensure: safe and hygienic practices; and that children are treated with dignity and respect.

Currently service providers are pre-occupied with the type of nappies they are permitted to use (e.g. cloth or disposable nappies), the permissible disposal process and whether they are allowed to engage in sustainable practices. The concern is that even if they ensure safe and hygienic practices, there is no certainty that this meets the subjective criteria of ERO or MoE reviewers.


Remove the documentation requirement and replace it with a focus on health and safety education and risk management training.

 ECC Regulatory Assessment	HS3 Nappy changing procedure	Totals
The regulated is...	Service provider	
Regulatory effectiveness	Questionable impact – effective controls around nappies are justifiable but they need to work	-1
Burden on providers	Heavy – non-compliance is based on the procedure not the state of the laundry	-1
Conflict comment:	Existing regulation is silent on more sustainable nappies (reusable) and suitable cleaning methods	
Standard comment:	Binary standard, with subjective component “consistently implemented”	
ECC Assessment:	Review	-2

HS4 Fire evacuation scheme

The premises are located in a building that has a current Fire Evacuation Scheme approved by Fire and Emergency New Zealand.


Documentation req: A current Fire Evacuation Scheme approved by Fire and Emergency New Zealand.

 ECC Regulatory Assessment	HS4 Fire evacuation scheme	Totals
The regulated is...	Service provider	

<i>Regulatory effectiveness</i>	Questionable impact – because this regulation effectively links to fire regulations that apply anyway it serves little purpose other than to create duplication	-1
<i>Burden on providers</i>	Light – does not introduce any additional burden	2
<i>Conflict comment:</i>	Consideration of the fire regulations has not been undertaken	
<i>Standard comment:</i>	Not applicable	
ECC Assessment:	Noted. Could be removed.	1

HS5 Assembly areas safe

Designated assembly areas for evacuation purposes outside the building keep children safe from further risk.


 ECC Regulatory Assessment	HS5 Assembly areas safe	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Higher impact	2
<i>Burden on providers</i>	Light	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	Subjective standard. Unclear whether non-compliance will be judged based on the planned evacuation assembly area or the ability of the adults to keep the children safe from further risks while in it.	
ECC Assessment:	Noted. There will always be further risks in a genuine evacuation.	4

HS6 Securing furniture

Heavy furniture, fixtures, and equipment that could fall or topple and cause serious injury or damage are secured.

ECE service providers in New Zealand are well aware of earthquake risks and take the care of children seriously. There is no argument with furniture needing to be secured. However, currently any assessment of this requirement is entirely subjective. ERO and MoE reviewers follow their own personal interpretation, e.g. by walking around centres and physically rattling shelves. This does not seem to be a reliable method of ascertaining children's safety.

Furniture and heavy fixtures and equipment should be fixed to an appropriate earthquake-safe, New Zealand-wide standard.

 ECC Regulatory Assessment	HS6 Securing furniture	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – regulatory sanctions for non-compliance are not an efficient approach to earthquake-strengthening centres. An educative approach is needed.	1
<i>Burden on providers</i>	Light – despite the regulatory ineffectiveness, the burden is manageable.	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	There have been significant issues with non-compliance in this area.	
ECC Assessment:	Review	3

HS7 Emergency plan and supplies

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 services's premises, which apply in a variety of emergency situations and which are consistent with the Fire Evacuation Scheme for the building.

Documentation req: A written emergency plan that includes at least:

An evacuation procedure for the premises.

A list of safety and emergency supplies and resources sufficient for the age and number of children and adults at the service and details of how these will be maintained and accessed in an emergency.

Details of the roles and responsibilities that will apply during an emergency situation.

A communication plan for families and support services.

Evidence of review of the plan on an, at least, annual basis and implementation of improved practices as required.

HS8 Emergency drills


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 req: A record of the emergency drills carried out and evidence of how evaluation of the drills has informed the annual review of the service's emergency plan.

The documentation required is substantial and complex, and each ECE service provider must develop distinctly local plans for a large number of emergency scenarios. Here, too, the argument is not with the fact that planning must be carried out, it is the review practice of finding fault with plans or finding gaps that can lead to licensing downgrades or similar consequences.

If the aim is to ensure children's safety and wellbeing in emergency situations then it is paramount to make as much training and support available as possible. It does not seem logical to use a punitive approach instead. As in most of the health and safety-related criteria, an educational approach would see desired outcomes.

In August 2022, ECC provided a submission in which we wrote: "the Ministry of Education template "Emergency Management Plan" [has] Fifteen (15) different types of drills were listed. If 15 drills are required four times per year then there will be a total of 60 drills required in a 52 week period. That is more than one drill per week for some centres. The template is actually missing a generic "Lockdown" drill.

 ECC Regulatory Assessment	HS7 Emergency plan and supplies HS8 Emergency drills	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact	-2
<i>Burden on providers</i>	Grossly unreasonable	-2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Due to the number of drills that must be practised a centre must be undertaking more than one drill per week all year.	
ECC Assessment:	Review	-4

HS9 Sleep Monitoring


A procedure for monitoring children's sleep is displayed and implemented and a record of children's sleep times is kept.

Documentation req:

1. A procedure for monitoring children's sleep. The procedure ensures that children:
 - do not have access to food or liquids while in bed; and
 - are checked for warmth, breathing, and general well-being at least every 5-10 minutes, or more frequently according to individual needs.
2. A record of the time each child attending the service sleeps, and checks made by adults during that time.

ECE centres have been penalised for incorrect wording in their policies, i.e. using 'water' instead of 'liquids'. Here, too, the intent is clear but the emphasis is on having the correct paperwork. This can also be noticed in the excessive record-keeping requirement, i.e. sleep records for each child must be kept for the current year plus one additional year.

Monitoring children's sleep is important but the associated accumulation of documentation does not add to children's safety. The focus should be on employee education and safety practices.

 ECC Regulatory Assessment	HS9 Sleep monitoring	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact	-2
<i>Burden on providers</i>	Grossly unreasonable	-2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	It is unclear if disturbing children's sleep so frequently is in the child's best interests or if there is another way to support their wellbeing. If a provider's policy says they check every 5 minutes and a check happens in 6 minutes then the Ministry regards this as non-compliance. This is unreasonable.	
ECC Assessment:	Review. Sleep regulations are completely unfit for purpose.	-4

HS10 Sleep furniture spacing

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:

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.

The space between sleep furniture such as beds or cots are required to be spaced so that adults can easily check on children's breathing and temperature, and access allows for quick action in emergencies.


Sleep rooms are not static spaces – furniture is moved as is required, depending on the number of children present and their sleep routines.

This criterion is directly related to adequate training and capability of staff to understand risk and how to mitigate it. Education in risk assessment, First Aid training and emergency and evacuation training is far more effective to ensure the health and safety of children.

 ECC Regulatory Assessment	HS10 Sleep furniture spacing	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact	-2
<i>Burden on providers</i>	Grossly unreasonable	-2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	Often centres use temporary bedding. The definition of “sufficient” is open to interpretation. Many providers have had non-compliance problems due to this and the need to replace older mattresses.	
ECC Assessment:	Review. Sleep regulations are completely unfit for purpose. Providers that facilitate children who fall asleep outside do not know if this is allowable.	-4

HS11 Storage of sleep furniture and bedding

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.

 ECC Regulatory Assessment	HS11 Storage of sleep furniture and bedding	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – regulatory sanctions for non-compliance are not an efficient approach to earthquake-strengthening centres. An educative approach is needed.	1
<i>Burden on providers</i>	Light – despite the regulatory ineffectiveness, the burden is manageable.	2
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Hygienically stored is subjective and open to interpretation.	
ECC Assessment:	Review. Sleep regulations are completely unfit for purpose.	3

HS12 Hazard and risk management

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.


Consideration of hazards must include but is not limited to:

- 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 (e.g. 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.

Documentation req: A documented risk management system.

ECE service operators must establish and maintain a comprehensive risk management system and its associated documentation and review. It forms a major part of the systematic approach to children's safety and wellbeing. ERO and MoE reviews of the efficacy of the system is done via examination of paperwork, which is substantial and subject to interpretation.

It would be in the interest of ensuring high-quality and compliant risk management if the focus were on training in risk management and Health and Safety at Work requirements instead of many individual policies and procedures. Checklists do not convey whether risk is managed well or sub-standard.


 ECC Regulatory Assessment	HS12 Hazard and risk management	Totals
<i>The regulated is...</i>	Service provider; landlord	
<i>Regulatory effectiveness</i>	Negative impact – there is an overemphasis on hazard checklists at the expense of effective hazard checking, to the detriment of hazard identification and management	-2
<i>Burden on providers</i>	Heavy – the regulation to have a documented risk management system leads to checklists and	-1
<i>Conflict comment:</i>	Health & Safety At Work Act. Under that legislation the PCBU monitors risks and manages them.	
<i>Standard comment:</i>	The standard is effectively the risk management system and the way it documents the checks and when they were done. In the worst case scenario, systems distract teachers from supervising children thereby putting children at risk directly from the regulation.	
ECC Assessment:	Remove the regulation or switch to an alternative approach that is more effective	-3

HS13 Temperature of hot water from taps children can access

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 Temperature of hot water in cylinders

Water stored in any hot water cylinder is kept at a temperature of at least 60°C.

 ECC Regulatory Assessment	HS13 Temperature of hot water from taps children can access HS14 Temperature of hot water in cylinders	Totals
<i>The regulated is...</i>	Service provider; landlord	
<i>Regulatory effectiveness</i>	Questionable impact	1
<i>Burden on providers</i>	Light	2
<i>Conflict comment:</i>	Building regulations and plumbing standards	
<i>Standard comment:</i>	Clear standard	
ECC Assessment:	Review conflicting regulations	3

HS15 Noise levels


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.

 ECC Regulatory Assessment	HS15 Noise levels	Totals
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<i>The regulated is...</i>	Prior to licensing: Unspecified. Effectively regulates construction and developer third parties After licensed: Service provider	
<i>Regulatory effectiveness</i>	Negative impact – we receive increasing cases of Ministry of Health officers insisting on impossible noise levels both inside buildings and outdoors (ie near roads)	-2
<i>Burden on providers</i>	Heavy – the sanction for non-compliance is to meet the unexpected costs, whatever they may be, or not get the licence.	-1
<i>Conflict comment:</i>	Ministry of Health has applied WHO guidelines that are not necessarily fit-for-purpose in NZ childcare centres and are not formally adopted within the regulatory system	
<i>Standard comment:</i>	Unauthorised standards are being used frequently. This creates major time and cost hazards to those establishing new centres currently.	
ECC Assessment:	Review	-3

HS16 Animals

Safe and hygienic handling practices are implemented with regard to any animals at the service. All animals are able to be restrained.

 ECC Regulatory Assessment	HS16 Animals	Totals
<i>The regulated is...</i>	Adults; Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – despite this regulation there are many ECE services with animals, with this regulation not contributing anything positive	-1
<i>Burden on providers</i>	Heavy – it is inappropriate to connect the ECE licence to the handling practices implemented with animals	-1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Animals are not necessarily hygienic so they do introduce new risks that didn't exist before their presence in the centre. It is possible that more detailed guidance is needed that is specific to the animals a centre actually has as even behaviour can vary. Adults need induction and to understand how to restrain them. "Implemented" is open to interpretation.	
ECC Assessment:	Review	-2

HS17 Excursions

Whenever children leave the premises on an excursion:

- 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 have given prior written approval to their child's participation and of the proposed ratio for:
- Regular excursion at the time of enrolment; and
- 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.

When children leave the premises on a regular or special excursion, the excursion must be approved by the Person Responsible.

Documentation req.: A record of excursions that includes:

The names of adults and children involved;

The time and date of the excursion;

The location and method of travel;


Assessment and management of risk;

Adult:child ratios;

Evidence of parental permission and approval of adult:child ratios for regular excursions;

Evidence of parental permission and approval of adult:child ratios for special excursions; and


The signature of the Person Responsible giving approval for the excursion to take place.

 ECC Regulatory Assessment	HS17 Excursions	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact – the regulation detracts from the need to keep children safe, distracting and not supporting better behaviours	-2
<i>Burden on providers</i>	Heavy – providers need clear requirements that support safe excursions without making compliance unnecessarily complex	-1
<i>Conflict comment:</i>	Where a child is being supervised by their parent or caregiver it is unclear whether the excursion is covered by regulations or whether it becomes a private setting.	
<i>Standard comment:</i>	ECC is aware that there is a lot of uncertainty about excursions and what is required/not required	
ECC Assessment:	Review	-3

HS18 Travel by motor vehicle

If children travel in a motor vehicle while in the care of the service:
 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).

Documentation req: Evidence of parental permission for any travel by motor vehicle. In most cases, this requirement will be met by the excursion records required for [criterion HS17](#). However, services that provide transport for children to and/or from the service must also gain written permission from a parent upon enrolment.

 ECC Regulatory Assessment	HS18 Travel by motor vehicle	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>		
<i>Burden on providers</i>		
<i>Conflict comment:</i>		
<i>Standard comment:</i>	[Leave blank]	
ECC Assessment:		


HS19 Food and nutrition

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.

Documentation req: A record of all food served during the service's hours of operation (other than that provided by parents for their own children). Records show the type of food provided and are available for inspection for 3 months after the food is served.


The Ministry of Health introduced new [food guidelines](#), effective from 25 January 2021. These recommend that food provided by ECE centres be developmentally appropriate for children, teachers know first aid and CPR, and that children eat in a safe physical environment. These guidelines also must be promoted to parents. This is to prevent choking on food in babies and young children. There is no argument around food being safe and developmentally appropriate. However, an overly zealous interpretation of the [Ministry of Health ECE guidelines](#) has ECE professionals fear that it will lead to unintended consequences, e.g. children don't learn to chew, children's speech development could be impacted and the range of food deemed safe becomes very limited.

ECE providers and teachers are responsible people who take children's safety and wellbeing seriously. Teachers are first aid trained and children are always supervised whilst eating. Draconian restrictions on the types of food allowed does not enhance safety or nutrition. Setting a standard that teachers have knowledge of healthy eating guidelines would serve the purpose better than imposing regulations about what to eat. There are no restrictions on the food provided by parents/caregivers in lunchboxes – thereby setting up stark contradictions for the children at lunchtime.

 ECC Regulatory Assessment	HS19 Food and nutrition	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact – the regulation detracts from the need to keep children safe and providing nutritious food, distracting and not supporting better outcomes	-2
<i>Burden on providers</i>	Heavy – providers do not need such tight regulations around food.	-1
<i>Conflict comment:</i>	Much of the more problematic guidelines have been issued by the Ministry of Health.	
<i>Standard comment:</i>	Totally unworkable standards, completely unrealistic and impractical	
ECC Assessment:	Review	-3


HS20 Food hygiene

Food is prepared, served, and stored hygienically.

 ECC Regulatory Assessment	HS20 Food hygiene	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – relatively ineffective	-1
<i>Burden on providers</i>	Light – as no clear standard the burden is negligible	2
<i>Conflict comment:</i>	Food Act	
<i>Standard comment:</i>	No clear standard. Hygienically is open to interpretation	
ECC Assessment:	Review	1

HS21 Drinking water

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.


 ECC Regulatory Assessment	HS21 Drinking water	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact – level of benefit to children slight but not insignificant	1
<i>Burden on providers</i>	Light – reasonable burden	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	Clear and reasonable standard	
ECC Assessment:	No concerns	3

HS22 Supervision while eating

Children are supervised and seated while eating.


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](#)(external link).

Where food is provided by parents, the service promotes best practices as set out in Ministry of Health: Reducing food-related choking for babies and young children at early learning services(external link) and must provide to all parents at the time of enrolment a copy of Ministry of Health: Reducing food-related choking for babies and young children at early learning services[PDF, 84 KB].

 ECC Regulatory Assessment	HS22 Supervision while eating	Totals
<i>The regulated is...</i>	Service provider Can be misinterpreted and applied directly to children (who stand up)	
<i>Regulatory effectiveness</i>	Questionable impact	-1
<i>Burden on providers</i>	Heavy	-1
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	Totally unworkable standards, completely unrealistic and impractical. The standard around “seated” is open to misinterpretation and appears to restrict children from standing up.	
ECC Assessment:	Review	-2

HS23 Bottle feeding

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.

 ECC Regulatory Assessment	HS23 Bottle feeding	Totals
<i>The regulated is...</i>	Service provider	

<i>Regulatory effectiveness</i>	Potential for impact – level of benefit to children slight but not insignificant	1
<i>Burden on providers</i>	Light – reasonable burden	2
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	It would be helpful to have a similar centre policy to support parents who breast-feed or want to make additional arrangements for serving breast milk	
ECC Assessment:	No concerns	3

HS24 Room temperature

Rooms used by children are kept at a comfortable temperature no lower than 18°C (at 500mm above the floor) while children are attending.


The Licensing criteria for centre-based education and care services 2008 stipulate that rooms used by children are kept at a temperature ‘no lower than 18°C, at 500mm above the floor, at all times while children are attending’. The Licensing criteria guidance sets this as the minimum requirement, citing World Health Organisation guidelines as the standard ([Health and Safety 24](#) refers).

However, the Licensing Criteria also require that centres provide for ventilation, by natural or mechanical means, that allows for fresh air to circulate, particularly in sanitary and sleep areas ([Premises and Facilities 12](#) refers). Whilst centres were advised during the Covid-19 pandemic that air circulation and ventilation was paramount to reduce transmission of airborne illnesses such as Covid-19 ([MoE guidelines](#) refer), this ongoing demand poses obvious challenges. The Ministry of Education [ventilation guidance](#) essentially requires periodic opening of windows and doors whilst maintaining an even temperature of 18°C.

Meeting the opposing demands such as a higher temperature and fresh air circulating at the same time requires constant monitoring, all year round, whether it makes sense from a seasonal weather perspective or not. The blanket requirement also does not take into account the type of rooms and their use, e.g. infant rooms and sleep rooms that should be warmer and play rooms that have open doors for freely accessing the outdoors.

For many community-based centres it is a financial challenge to meet the temperature requirement, with examples of having to turn on heating hours before children actually arrive at the centre.

ECC is advocating for the regulator to operate a high trust model: ECEs are capable of decision-making whether temperatures are ambient and suitable for children and adults.


 ECC Regulatory Assessment	HS24 Room temperature	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact – as discussed above the increase in the minimum temperature has caused major issues	-2
<i>Burden on providers</i>	Heavy – the burden of remediating heating systems is unmanageable and requires more support if truly the government intention	-1
<i>Conflict comment:</i>	Ventilation regulations make maintaining this temperature unrealistic	
<i>Standard comment:</i>	As discussed in PF12	
ECC Assessment:	Review	-3

HS25 First aid qualifications

There is an adult present at all times for every 25 children attending (or part thereof) that:
 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.

If a child is injured, any required first aid is administered or supervised by an adult meeting these requirements.

Documentation req: Copies of current first aid (or medical practising) certificates for adults counting towards this requirement.

 ECC Regulatory Assessment	HS25 First aid qualifications	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	-1
<i>Burden on providers</i>	Heavy – the main issues are the time required to refresh first aid qualifications and cost effective training	-1
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	1:25 is a relatively arbitrary standard. Each centre should be able to set a number that aligns roughly to this and then maintain it	
ECC Assessment:	Noted	0


HS26 Response to infectious illnesses

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 onto children and likely to have a detrimental effect on them.

Specifically:

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.

 ECC Regulatory Assessment	HS26 Response to infectious illnesses	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – during COVID-19 these regulations were superseded by separate legislation so undermining the existing framework which appears to allow centres to control COVID-19.	-1
<i>Burden on providers</i>	Heavy – often providers are at the receiving end when parents and caregivers drop off sick children despite plenty of guidance not to	-1

<i>Conflict comment:</i>	Regional Public Health Units have taken inconsistent approaches to disease outbreaks in ECEs, but they recently updated guidance to ECEs which is very helpful.	
<i>Standard comment:</i>	Absolute elimination of diseases and conditions is a very high standard to expect	
ECC Assessment:	Note	-2

HS27 Medical assistance and incident management

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.

Documentation rec:

1 A record of all injuries, illnesses and incidents that occur at the service. Records include:

The child's name;

The date, time, and description of the injury, illness or incident;


Actions taken and by whom; and

Evidence that parents have been informed.

2 A procedure outlining the service's response to injury, illness and incidents, including the review and implementation of practices as required.

ECE centres manage their own comprehensive incident management systems. The Licensing Criteria stipulate that centres develop responses on their own, without little guidance. It is not helpful if centres are penalised upon reviews if the responses are not up to individual reviewers' expectations. For example, services have been found to have breached this regulation for not calling HealthLine. That is a subjective interpretation of the regulation, and calling Healthline is not the standard required (but you could call Healthline).

Either set specific response measures that must be taken and make these explicit or refrain from penalising centres for developing their own response measures.

 ECC Regulatory Assessment	HS27 Medical assistance and incident management	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	This regulation should be working acceptably but for subjective interpretations being made by the regulator. Reporting of incidents is more complicated and should be separated from medical injuries and illnesses.	
ECC Assessment:	Note	2

HS28 Medicine administration

Medicine (prescription and non-prescription) is not given to a child unless it is given:

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.


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.

Documentation rec:

- 1 A record of the written authority from parents for the administration of medicine in accordance with the requirement for the category of medicine outlined in Appendix 3.
- 2 A record of all medicine (prescription and non-prescription) given to children attending the service. Records include:
- Name of the child
 - Name and amount of medicine given
 - Date and time medicine was administered and by whom; and
 - Evidence of parental acknowledgment. Related to clause 46(1)(b) of standard.

Caring for children who are not well or require ongoing medication is a highly complex task for ECE centres. Medicine administration is – justifiably – prescribed and the Licensing Criteria set out detailed requirements. However, this section should be re-assessed with a view of providing a clear and uncomplicated system that is manageable for parents and ECE staff. The current system is multi-layered, complicated and impractical. This has led to instances where ECE services felt compelled to record and require parent signatures for the application of sunscreen and nappy cream. At this point, medication authorisation is required at enrolment and for each individual time a child requires medication. Medication is divided up into three different categories, each with different authorisation regimes. Instead of providing safety and assurance for staff and parents, it is a source of confusion.

A uniform documentation system for all medicines would simplify the regime considerably. The current practice of three different authorisation levels for different medication is not fit for purpose.

 ECC Regulatory Assessment	HS28 Medicine administration	Totals
The regulated is...	Service provider	
Regulatory effectiveness	Negative impact	-2
Burden on providers	Heavy	-1
Conflict comment:	None.	
Standard comment:	Unworkable framework	
ECC Assessment:	Review	-3

HS29 Medicine training


Adults who administer medicine to children (other than their own) are provided with information and/or training relevant to the task.

Documentation req:

A record of training and/or information provided to adults who administer medicine to children (other than their own) while at the service.

Teachers / employees who administer medicine to children at ECE must be given relevant information and/or training. However, this requirement is a source of confusion and anxiety, as ECE service providers and employees do not know what level of training they are required to obtain, who should provide it and what the expected skill set is. For example, does this requirement include use of EpiPens, asthma inhalers or epilepsy management?


This criteria requires much more detail to be instructive and in this instance, too, the desired outcome, i.e. improved child health and safety, would be assisted by supported education and training.

 ECC Regulatory Assessment	HS29 Medicine training	Totals
The regulated is...	Service provider and adults	
Regulatory effectiveness	Negative impact	-2

Burden on providers	Heavy	-1
Conflict comment:	None.	
Standard comment:	Unworkable framework	
ECC Assessment:	Review	Review

HS30 Children washed when soiled

Children are washed when they are soiled or pose a health risk to themselves or others.

 ECC Regulatory Assessment	HS30 Children washed when soiled	Totals
The regulated is...	Service provider	
Regulatory effectiveness	Potential for impact	1
Burden on providers	Moderate	1
Conflict comment:	None.	
Standard comment:	Relatively clear.	
ECC Assessment:	Noted	2

HS31 Child Protection

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.

The policy must be reviewed every three years.

Documentation req:

1 A written child protection policy that contains:

Provisions for the service's identification and reporting of child abuse and neglect;


Information about the practices the service employs to keep children safe from abuse and neglect; and

Information about how the service will respond to suspected child abuse and neglect.

2 a procedure that sets out how the service will identify and respond to suspected child abuse and/or neglect.


Teachers and ECE professionals are instrumental in the efforts to eliminate child abuse and neglect. However, other than the requirement for a policy and procedure there is little guidance in how to identify and respond to suspected child abuse. ERO and MoE exert considerable pressure on ECE service providers to implement the Children's Act requirements but the number of services which are found not meeting requirements indicate that education and training are necessary to have an effective child protection scheme in place. Downgrading service licenses for erroneous documentation is a blunt tool and does not assist in keeping children safe.

Child protection and elimination of child abuse and neglect should be a multi-agency effort and enlist ECE services to assist in the work. A network of education and training would be much more effective in raising standards than punitive licensing measures.


 ECC Regulatory Assessment	HS31 Child Protection	Totals
The regulated is...	Service provider	

<i>Regulatory effectiveness</i>	Negative impact – there is no evidence of any non-compliance leading to any harmful impacts on children	-2
<i>Burden on providers</i>	Grossly unreasonable – it is grossly unreasonable to search out and find any minor breach in safety checking process and use this to cancel or suspend licences. The additional work required to check all staff could be a service extension rather than a pure regulation.	-2
<i>Conflict comment:</i>	The Ministry is also the regulatory authority for the safety checking legislation. Under this regulation they have the power to issue guidance.	
<i>Standard comment:</i>	The Ministry guidance is too onerous and any non-compliance with the guidance can be considered a breach or non-compliance of GMA7A. As a result, GMA7A is the most common regulation for services to be found non-compliant with. A requirement to review policies every three years becomes a non-compliance trap for providers who miss the review date.	
ECC Assessment:	Priority for review. Effective safety checking is important but the current regime is used to catch out providers for non-material instances of non-compliance	-4

HS32 Inappropriate material


All practicable steps are taken to protect children from exposure to inappropriate material (for example, of an explicitly sexual or violent nature).		
 ECC Regulatory Assessment	HS32 Inappropriate material	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Relatively clear.	
ECC Assessment:	Noted	2

HS33 Alcohol and other substances

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.		
 ECC Regulatory Assessment	HS33 Alcohol and other substances	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	“Other substance” is open to interpretation	
ECC Assessment:	Noted	2

HS34 Incident notification to the Ministry of Education

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.

 ECC Regulatory Assessment	HS34 Incident notification to the Ministry of Education	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – informing the Ministry is so unpalatable to service providers that it stops some from making borderline notifications to specified agencies.	-1
<i>Burden on providers</i>	Heavy – this regulation just adds another layer of burden when a provider is dealing with a significant matter.	-1
<i>Conflict comment:</i>	Notifying the Ministry in some cases involves sharing information with the Ministry that they do not need to know.	
<i>Standard comment:</i>	Standard is clear.	
ECC Assessment:	Review	-2

Governance, Management and Administration - Criteria Comment

The top single regulatory standard for service providers to be found non-compliant in is GMA7A. GMA7A is issued in accordance with the Children's Act: safety checking laws and associated regulations (in other words it is unnecessary to have GMA7A in the criteria as dedicated separate regulations exist). The Ministry of Education is the regulator for safety checking children's workers. Under that separate regulation they have the authority to issue guidelines for safety checking.

One of the most stark unjust practices is that the Ministry takes such a hardline approach to ECE operators with safety checking: cancelling and suspending their licences for administrative defects. ECC is not aware of any material case of an ECE safety check violation leading to an actual potential risk to children (i.e. a dangerous individual being actually employed who would not have been employed had the safety check been done properly). Similarly, schools are also required to comply with safety checking. While ECE centres are given no leeway for immaterial non-compliances, there has never been a case of the Ministry intervening to close or suspend a school board over the same violations.

In general, following a licensing visit where the Ministry finds non-compliance in other areas (the criteria where the largest number of non-compliances are found is the Health & Safety criteria) they will also include a GMA non-compliance on the basis the service is not being effectively governed and managed. In that case the non-compliance regulation they cite is Regulation 47(1)(a) and 1(c). It is important to remember that the criteria establish more specific standards to measure compliance but that each one is rooted in a more general regulation that can also become a "catch-all" provision.

This approach of assuming governance and management non-compliance underlies a real problem which is that service providers do need to prioritise governance and management so that the responsibilities are clearly set out and any employed staff are accountable for its discharge effectively.

Most of the regulations requiring services to meet parent needs appear to be working well (with the exception of financial reporting).

Recommendation:

- **Reconsider whether regulating governance and management is the most effective approach. Consider training and support instead or directions to service providers for them to consider governance or management issues. It should not be possible for the Ministry to close or suspend an ECE institution based only on its view of what governance and management should be doing.**

GMA1 Display of information / Parent involvement and information

The following are prominently displayed at the service for parents and visitors:

The Education (Early Childhood Services) Regulations 2008, and the Licensing Criteria for Early Childhood Education and Care Centres 2008;

1 The full names and qualifications of each person counting towards regulated qualification requirements;

2 The service's current licence certificate; and

3 A procedure people should follow if they wish to complain about non-compliance with the Regulations or criteria.


Documentation required:

A procedure people should follow if they wish to complain about non-compliance with the Regulations or criteria. The procedure includes the option to contact the local Ministry of Education office and provides contact details.

The complaints process is flawed, as it encourages complaints without offering an opportunity for reply or defence to ECE centre operators. There is no natural justice in the process and complaints are retained regardless of legitimacy and form a history of the ECEs track record.

Anybody can lay a complaint, i.e. parents, staff and members of the public. Complaints can be made anonymously, and MoE states that 'it will endeavour to provide the centre with as much detail about the complaint' as possible – however, the actual process is very different. Many centres have scant knowledge what the complaint is about and face an MoE investigation and in some instances, immediate downgrading of their licence until an investigation is completed ([Complaints](#)).

The justification for having a complaints process must be balanced with natural justice. Anonymous or vexatious complaints should not lead to automatic downgrading of licenses. There should also be sensible judgments as to the severity of the infraction or non-compliance – closing or downgrading a centre over missed documentation is excessive. There is a great need for guidelines for MoE and assistance available to ECEs, the power imbalance and lack of protection leaves ECEs in fear for their licence and in fear of MoE visits.

 ECC Regulatory Assessment	GMA1 Display of information	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact	-1
<i>Burden on providers</i>	Heavy	-1
<i>Conflict comment:</i>	Ministry complaints process creates conflicts	
<i>Standard comment:</i>	ECE currently has a disagreement with the Ministry that an individual who is nominated as person responsible must be displayed as a qualification. We consider person responsible a duty or role, not a qualification.	
ECC Assessment:	Review	-2

GMA2 Parent access to information / Parent involvement and information

Parents are advised how to access:

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.


Documentation required:

Written information letting parents know how to access:

Information concerning their child;

The service's operational documents; and

The most recent Education Review Office report regarding the service.

 ECC Regulatory Assessment	GMA2 Parent access to information	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1

<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Relatively clear.	
ECC Assessment:	Noted	2

GMA3 Information provided to parents / Parent involvement and information

Information is provided to parents about:

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.

Documentation required:


Written information letting parents know:

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

About any planned reviews and consultation.


 ECC Regulatory Assessment	GMA3 Information provided to parents	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact	-2
<i>Burden on providers</i>	Heavy	-1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Unworkable framework	
ECC Assessment:	Review	-3

GMA4 Parent involvement / Parent involvement and information

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).

Documentation required:

Evidence of opportunities provided for parents and adults providing education and care to contribute to the development and review of the service's operational documents.


 ECC Regulatory Assessment	GMA4 Parent involvement	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Relatively clear.	
ECC Assessment:	Noted	2

GMA5 Philosophy statement / Professional practices

A philosophy statement guides the service's operation.

Documentation required:

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

 ECC Regulatory Assessment	GMA5 Philosophy statement	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Relatively clear.	
ECC Assessment:	Noted	2

GMA6 Self-review and internal evaluation / Professional practices

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

Documentation required:


A process for reviewing and evaluating the service's operation (for example, learning and teaching practices, philosophy, policies, and procedures) by the people involved in the service. The process is consistent with criterion GMA4/GMA3, and includes a schedule showing timelines for planned review of different areas of operation.

Recorded outcomes from the review and evaluation process. Outcomes show how the service has regard for the Statement of National Education and Learning Priorities (NELP) in its operation.

ECE service providers must undertake ongoing reviews and evaluations of every aspect of their operation, evidencing quality improvement, as well as meeting national priorities. This is particularly demanding on small operators. The constant scrutiny is excessive, stressful and demanding of time and resources many ECEs do not have.

Setting goals, undertaking a variety of planned and spontaneous reviews, documenting how a service gives regard to the NELP, as well as the business planning schedules are demands that are in addition to the ongoing reviews and evaluations that must be undertaken for ERO review purposes. Altogether they form a substantial workload, with an additional layer of documentation requirements. The time and effort required to fulfil all demands are inequitable, as small operators cannot compete with larger ECE providers.

It is questionable whether a relentless review and documentation such as the above achieves the desired outcome of quality improvement. Serious considerations should be given to reducing the amount of reviews and evidencing.

 ECC Regulatory Assessment	GMA6 Self-review and internal evaluation	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact	-2
<i>Burden on providers</i>	Grossly unreasonable	-2
<i>Conflict comment:</i>	Very high level of conflict and over-regulation	
<i>Standard comment:</i>	This regulation gets used on service providers to force self-reviews. The reviews are costly and time-consuming	
ECC Assessment:	Review	-4

GMA7 Human resource management / Professional practices

Suitable human resource management practices are implemented.

Documentation required:

Processes for human resource management; including

Selection and appointment procedures;

Job/role descriptions;


Induction procedures into the service;

A system of regular appraisal;

Provision for professional development;

A definition of serious misconduct; and

Discipline / dismissal procedures.

 ECC Regulatory Assessment	GMA7 Human resource management	Totals
The regulated is...	Service provider	
Regulatory effectiveness	Negative impact	-2
Burden on providers	Grossly unreasonable	-2
Conflict comment:	Employment law is much more onerous to comply with than this regulation would imply, thereby misleading service providers and confusing the role of MBIE	
Standard comment:	No clear standard	
ECC Assessment:	Review	-4

GMA7A Safety Checking / Professional practices

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 the Act must be completed.

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.

These records must be kept by, or available to, the service provider as long as the person is employed or engaged.

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.


Documentation required:

1 A written procedure for safety checking all children's workers before employment or engagement of the worker commences that meets the safety checking requirements of the Children's Act 2014.

2 A record of all safety checks and the results.

As is the case with the Child Protection policy requirements, the safety checking requirements are difficult for ECE service providers to navigate and require a great deal of time and documentation. The requirement to have police vets completed prior to employing or engaging a person is sensible but ECE service providers must navigate considerable processing delays in the vetting process. NZ Police cannot meet the demand and does not have the flexibility to address requests for urgent processing.

Making an urgent police vetting service available for ECE services would bring considerable relief to ECE service providers who are often under pressure to fill vacancies.


 ECC Regulatory Assessment	GMA7A Safety Checking	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Negative impact – there is no evidence of any non-compliance leading to any harmful impacts on children	-2
<i>Burden on providers</i>	Grossly unreasonable – it is grossly unreasonable to search out and find any minor breach in safety checking process and use this to cancel or suspend licences. The additional work required to check all staff could be a service extension rather than a pure regulation.	-2
<i>Conflict comment:</i>	Ministry of Education has formed some interpretations that are contrary to the law. ECC and Police are in agreement over the interpretation of core versus non core checks.	
<i>Standard comment:</i>	Standards are numerous, unreasonable and hidden in guidance that carry legislative status due to the Children's Act	
ECC Assessment:	Priority review: the regulation mostly commonly found non-compliant	-4

GMA8 Annual plan / Planning and documentation

An annual plan guides the service's operation.

Documentation required:

An annual plan identifying 'who', 'what', and 'when' in relation to key tasks the service intends to undertake each year, and how key tasks will have regard to the Statement of National Education and Learning Priorities (NELP).

 ECC Regulatory Assessment	GMA8 Annual plan	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	This standard is unnecessary for larger organisations whose operations are extensive and planned using more complex structures	
ECC Assessment:	Review. Annual plan could be replaced by an annual report	2

GMA9 Annual budget / Planning and documentation

An annual budget guides financial expenditure

Documentation required:

An annual budget setting out the service's estimated revenue and expenses for the year.


The budget includes at least:

Staffing costs, including leave entitlements;

Professional development costs;

Equipment and material costs for the ongoing purchase of new equipment and consumable materials; and

Provision for operational costs (such as electricity, telephone, food purchases, and other day to day items) and maintenance of the premises as appropriate.

 ECC Regulatory Assessment	GMA9 Annual budget	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	This standard should not be imposed on private businesses	
ECC Assessment:	Review	2

GMA10 Enrolment records / Planning and documentation

Enrolment records are maintained for each child attending. Records are kept for at least 7 years.

Documentation required:

Enrolment records for each child currently attending and for those who have attended in the previous 7 years.

Records meet the requirements of the Early Childhood Education Funding Handbook and include at least:

The child's full name, date of birth, and address;

The name and address of at least 1 parent;


Details of how at least 1 parent (or someone nominated by them) can be contacted while the child attends the service;

The name of the medical practitioner (or medical centre) who should, if practicable, be consulted if the child is ill or injured;

Details of any chronic illness/condition that the child has, and of any implications or actions to be followed in relation to that illness / condition;

The names of the people authorised by the parent to collect the child; and

Any court orders affecting day to day care of, or contact with, the child.


 ECC Regulatory Assessment	GMA10 Enrolment records	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Workable.	
ECC Assessment:	Noted	2

GMA11 Attendance records / Planning and documentation

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.

Documentation required:


An attendance record that meets the requirements outlined in the Early Childhood Education Funding Handbook for children currently attending, and children who have attended in the previous 7 years.

 ECC Regulatory Assessment	GMA11 Attendance records	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1

<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Workable.	
ECC Assessment:	Review	2

GMA12 Availability of documentation / Planning and documentation

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

 ECC Regulatory Assessment	GMA12 Availability of documentation	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Potential for impact	1
<i>Burden on providers</i>	Moderate	1
<i>Conflict comment:</i>	None.	
<i>Standard comment:</i>	Workable.	
ECC Assessment:	Review	2

Major issues to be considered in the Regulatory Review

Regulated Adult-to-child ratios (minimum)

Schedule 2 of the Education (Early Childhood Services) Regulations 2008 requires services to meet minimum adult-to-child ratios. This regulation has become a **major concern** for both centre owners/managers and teachers in equal measure, because the level of staffing this sets out is not considered enough for quality care (let alone education).

It is pertinent to attend to this regulation in the Review, because it **must have a regulatory impact**.

There have been calls from the sector to increase the regulated minimum ratios, which the government has interpreted as a request to increase the funded staffing level (because actual staff are not in fact funded by government directly and all funding is distributed to service providers based on averaged staffing levels across the entire subsector).

It is, of course, much more far reaching to increase the ratios of adults as it potentially means more people on the ECE sites than have been approved in the original resource consent (safety, parking etc). The number of adults cannot be increased in one place without broader consequences in others.

ECE funding assumptions include that services must meet these ratios as a minimum requirement. Funding accountability is ensured for the Ministry through the Staff Hour Count, which only applies to some licence types (not kindergartens). This compliance reduces every Education & Care centre's operating hours into 15 minute segments. This compliance burden has the unintended consequence of requiring employers to back-fill qualified teacher positions to cover: lunch breaks, other breaks, leave and absences. This may not have been contemplated by the Ministry in setting the funding condition. It has the impact of creating a huge inefficiency in the ECE industry. However, ECC acknowledges it is also broadly desirable in terms of the ETA Outcomes because it means that providers are never caught short on staffing – but this comes at a considerable ongoing cost to the operators:

- **This issue needs to be more closely assessed from a regulatory perspective.**
Can the unintended consequences be avoided with new exceptions while the Funding Review is allowed to take place to decide if the level of government investment changes?

Increases to ratios represent a considerable cost to public finance if they were to be funded. For example, the ratio of adults required for a child under 2 years old is roughly double the ratio required for a child over 2 years old, and yet children at roughly age 2 require the same level of supervision (yet the funded staffing contribution doubles based on actual age – an arbitrary setting not based on the actual need). What looks like small settings can have big consequences: for example, the Labour Party's (discontinued) initiative to extend *20 Hours ECE* funding to two year olds was estimated to cost approximately \$1.6-1.8 billion over four years.

ECC has a major concern about the ratio settings. Based on our investigations we have formed the view that, if you put aside the Staff Hour Count (funding compliance, so not applicable for regulatory compliance), there is no way for the Ministry of Education to monitor compliance with the ratio regulations. Child attendance data is reported regularly through the Early Learning Information System but Staffing data is not reported at all. If the Ministry does not have staffing data then they cannot monitor regulatory compliance with the ratios. In addition the Ministry insists that ratios must be maintained at all times.


The whole funded ECE system is based on a building block, rooted in these regulated ratios, but regulatory compliance/performance with that regulation is not being monitored.

ECC believes that all our members over-achieve the minimum ratio levels. Tighter regulation around the ratios would be most likely to impact larger centres, not smaller centres because larger centres employ more staff and therefore have more flexibility to cover unexpected

staff absences. A smaller centre is more likely to have to call on external assistance to manage unexpected staff absences.

ECC Key Recommendation: remove the regulated ratios entirely because they are ineffective and not able to be monitored. [Note that removal of the regulation does not impact funding which contain their separate assumptions as to the ratio of adults to children; a ratio expectation could be kept in the funding settings with new funding conditions].

This regulatory change above could be combined with tweaking the Ministry’s funding conditions so that funding conditions can no longer be imposed on the hours in excess of 6 hours per day that get funded. This could be explored **through the Funding Review (discussed further below)**.

 ECC Regulatory Assessment	Adult-to-child ratios	Totals
<i>The regulated is...</i>	Service provider	
<i>Regulatory effectiveness</i>	Questionable impact – no measurable net benefits and changes in performance are not able to be monitored transparently as while children’s attendance is reported, the number of adults is not.	-1
<i>Burden on providers</i>	Grossly unreasonable – the sanction for non-compliance is loss of the service provider’s licence. Creates an insurmountable barrier to children under the age of two being enrolled, as onerous regulatory settings apply.	-2
<i>Conflict comment:</i>	Children with additional learning needs also can require significantly more intensive supervision so age-based regulation is too blunt, as they are discriminated against where they are not under the age of two. Children with additional learning needs are less likely to be enrolled at very young ages.	
<i>Standard comment:</i>	Age based standards together with the need to licence physically separate areas is a high-cost method with no measurable benefits. Restrictions of staff and children may be unnecessary.	
ECC Assessment:	Review this regulation	-3

Pay Parity Problem

The Pay Parity policies is the single most vexatious challenge facing Education & Care services.

The Pay Parity opt-in scheme in the ECE sector began on 1 January 2022. ECE centres opting into the scheme receive different funding levels depending on the level they opt into. The scheme purported to increase salaries for lower paid employees and achieve pay parity for ECE teachers. The Ministry of Education (MoE) sets out the funding conditions ([Funding Handbook 3-B-2](#) refers) that allow ECE operators to opt in or out three times a year. The conditions are numerous, complicated, and time consuming to work through, and employers do not receive any assistance in how to assess teachers’ qualifications and eligibility for pay parity.

The funding conditions are complex and require a huge amount of resources and expertise. For example, employers must assess teachers’ qualifications (incorporating both NZQA assessments and Teaching Council certification requirements), calculate teachers’ hours worked throughout their teaching career and even prior to working as teachers and collate auditable documentation.

However, the overarching complaint from the sector is that the approach to achieve pay parity for teachers comes at the expense of ECE centres' viability, because the pay parity funding rates are averaged out and do not increase based on the actual number of teachers employed, who are at the higher end of the salary scale. If a centre employs a disproportionately high number of highly qualified teachers then this is unlikely to be fully compensated by funding rates.

Indeed, ECE operators deem Pay Parity downright unaffordable and unsustainable. ECE operators commented in ECC's survey that, "In particular, small community centres, e.g. for not-for-profit charities that charge low fees, the income does not cover wages", and "The overheads incurred are the same as for larger centres but there is no flexibility. The cost of employing an experienced team vs an inexperienced team is significant, and there is the same pot of money whether teachers are on step 6 or step 10. There is also no provision to continue with the annual progression for teachers – the funding is wholly inadequate".

There are two high-level problems: (1) the funding approach does not distinguish between two services where one has achieved excellent teacher retention so has many teachers near the top of the pay parity scale (these are underfunded) and another service with poor retention, so has most teachers near the bottom of the scale (these centres could be overfunded); and (2) the inflexible employment relations settings that are bound with the funding conditions. Removed flexibility and new constraints on employers are considered generally hostile. It should be noted that the workforce restrictions that have been introduced came from kindergartens. Kindergartens are a small sub-sector that has not been growing. There is no logical reason why workforce settings in kindergartens would be suitable in all Education & Care services.

The Ministry of Education has admitted there is a gap in the quantum of pay parity funding.

Systematically the pay parity policy will increasingly become unaffordable because all teachers automatically move up a salary step every year (roughly ~4% salary increase).

Unlike the criteria, the sanction for breach of funding conditions is for the funding to be recovered and recalculated at lower rates. ECC has a recent case where four teachers were found to not have accreditation from NZQA. In the Ministry audit the proposal (before ECC got involved) was to recover \$200,000 for one funding drop alone. Sanctions at this level are high enough to be effectively "service ending".

Recommendation: De-regulate.

ECC proposes that in the regulatory review the focus is on removing workforce restrictions and restoring flexibilities for employers wherever possible. All the Pay Parity funding conditions require detailed review. Top concerns include:

- All Employed – contractors should be excluded as they are not employees. ECC has formed its own policy position on this to support owners who have been "induced" by the MoE to employ themselves (and thus covered by Pay Parity). Our recommendation has been to terminate those agreements if they are not advantageous to the owner.
- KiwiSaver – for kindergarten teachers this is included but for Education & Care services it is excluded. KiwiSaver is an unavoidable cost so should be factored-in to salary increases
- Qualification Group – irrelevant degrees and masters qualifications should not create an automatic salary increase. Whether or not a higher qualification is relevant to the role should be decided by the employer.
- Managers – qualifications of managers are not teaching qualifications. Pay Parity currently recognises managers if they have a teaching qualification. Managers should be removed from Pay Parity. Guidance and support to ECE employers

should ensure they understand that this would make it their responsibility to renumerate management (i.e. more effectively using their flexibility). For example, Education & Care employers do not even have K2, K3 and K4 roles. There are roles we have that sit between teaching and managing that are ignored – team leaders etc.

- Signing the Staff Record – a paper based accountability measure has been created. These processes should be able to be done digitally.

Person Responsible

Person Responsible is a made up role that exists only in the Ministry of Education's imagination and in the regulations.

ECC's best guess why the notion exists is so that where a significant negative incident occurs, not only the service provider's licence is at stake but also the professional reputation of the individual who was responsible at the time. *Person responsible* is the Ministry's attempt to capture who the person responsible is at any given moment. It is a sledgehammer approach to a non-existent problem.

The Associate Minister of Education has already repealed the increased regulation on person responsible that was due to take effect in August 2024. Had that regulation not been repealed, ECC estimated there were over 100 centres that would have to close because they could not comply. The reason for that was a major error in the Ministry's regulatory impact statement. They incorrectly concluded that the number of provisionally registered teachers in the ECE sector was 1% when it was actually 10%. They made an error in their analysis.

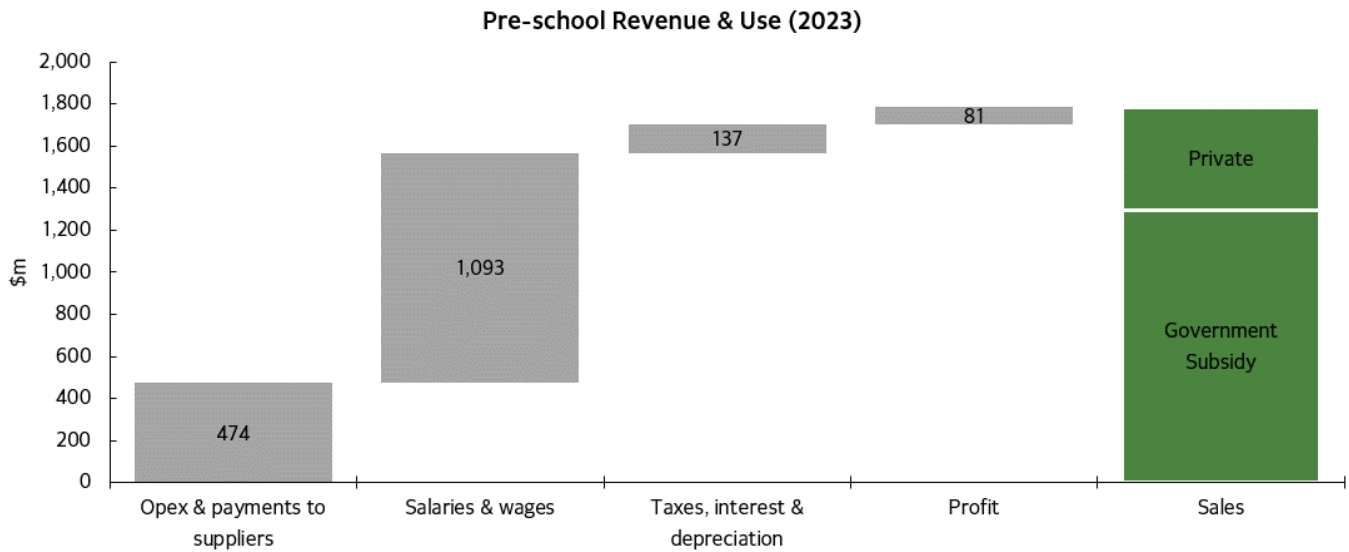
Unfortunately, increased regulation on Person Responsible was passed into law in February 2024. The Ministry's argument to the incoming government was that these changes were innocuous and merely clarified their existing expectations. However, that is absolutely wrong. Across ECC's membership all teachers have been subject to new employment agreements that now stipulate the person responsible requirements and all existing teachers are in processes to have their terms of employment amended so the employers can pass on the obligations effectively. Any teachers who refuse will need to be terminated (as they would no longer be able to fulfil their role). This is a very significant change.

Recommendation: Repeal all the Person Responsible regulations, including the changes in February 2024

Financial Reporting Requirements

There needs to be a statement of government policy added to protect the private business interests of ECE providers. Existing public and parent reporting requirements require review to ensure they are fit for purpose. Community-based providers are currently liable for very costly reporting requirements that may not be justified (costing upwards of \$5,000) whereas a private provider would be paying ~\$900 per year.

According to recent analysis, there is very little profit margin across the industry and the government revenue stream does not even cover the core costs, so a large portion of core costs are being met by parents.



Statistics NZ data

Inflation Adjustment Problem

ECC appreciates that the regulatory review is not concerned with matters of the level of funding. However, there was a convention that the Government would adjust the level of ECE funding to compensate for inflation.

It is relevant to the following proposals already mentioned in this submission:

- That regulation and service expansion costs should become more separated and that the government should negotiate with providers before changing settings that are effectively expanding the cost of service provision (i.e. to avoid the cost burden falling on parents and therefore leading to worse participation rates)
- That the cost of regulation always will fall on parents to pay, so regulations must be effective (with low administrative burden)

In recent years the Government has not provided regular funding adjustments to ensure the value of the ECE funding keeps pace with inflation. Recent rampant inflation has accelerated the loss of value. The Coalition Government has effectively continued Labour’s poor track on this point. In Budget 2024 the rate of increase needed to compensate for Labour’s inaccurate estimates of inflation (in the Budget process a Treasury forecast is used but the Treasury never checks whether its forecast was accurate – or if it was woefully off). The following shows the actual cost adjustment rates and inflation. It is important to remember that Pay Parity was implemented at the start of 2022 so its funding gap compounds problems.

(Jan)	Cost Adjustment	Actual CPI (March)
2022	1.2% (Budget 2021)	6.9%
2023	2.75% (Budget 2022)	6.7%
2024	2.92% (Budget 2023)	4%
2025	2% (Budget 2024)	TBC (CPI was tracking at 2.5% in 2023)

Country Kindy (case study)

In this high-profile case study the Ministry of Education proposed to cancel the licence of a small rural centre in the Manawatu, due to the service provider not satisfying seven conditions that related mostly to the curriculum criteria.

The service had been reviewed by ERO in April 2022 and had been evaluated at “Whangai/Establishing”. Compliance issues identified during the review were all addressed. Improvement actions were set by Country Kindy around cultural practice and tikanga Maori.

Subsequently the Ministry commenced investigations of the service. Over the period 2022 to 2024 the service provider was subject to a large number of conditions. Over the extensive time period most of the conditions were satisfied. However, not all were and the remaining conditions that the Ministry regarded as not satisfied related to the following regulations:

- Regulation 47, GMA5 Philosophy Statement
- Regulation 47, GMA6 Self Review and Internal Evaluation
- Regulation 43, C1 Curriculum consistent
- Regulation 43, C2 Assessment
- Regulation 43, C3 Interactions
- Regulation 43, C4 Adults Knowledge, and
- Regulation 47(1)(a) and 1(c) – Governance, Management and Administration standard

ECC wrote to the Ministry because the conditions that had been put in place simply restated the original regulations. ECC was interested to understand what evidence the Ministry had in its possession to make findings that the above regulations were not being complied with.

We expected the conditions to be related to regulations but to describe specific actions the Ministry wanted the service provider to take, to address the Ministry’s concerns. By issuing conditions that were simply assertions of the regulations the service provider had no way of knowing what action they should take to reassure the Ministry that they were compliant.

As already detailed in the Criteria section of this submission, the Curriculum and Governance and Management criteria do not contain specific standards, and we assess they are ineffective forms of regulation. The Ministry never provided ECC with the evidence they had relied on to form their judgements.

ECC took the Ministry to Court, appealing the decision to cancel the licence. The Ministry then granted a stay so that Country Kindy could continue operating.

During a period of heightened public attention about the case, a whistleblower contacted media and revealed that the Ministry officials working on the Country Kindy case had been deliberately seeking to persecute Country Kindy, for reasons unknown, but possibly due to jealousy as the individual working on the licensing case was an ex-ECE teacher who might have been jealous towards the owner or motivated to pressure the owner of Country Kindy to sell the business.

It is important that the alleged non-compliance concerns do not include any suggestions that children at Country Kindy were in any danger or risk. For example, the Ministry’s concern with the Philosophy Statement was because Country Kindy had sent through multiple versions of the Philosophy Statement and the Ministry didn’t know which one was the correct final version – so they considered this was non-compliant. Similarly, the non-compliance with C3 Interactions appeared to be driven by Country Kindy’s use of walkie talkies. The walkie talkies enabled effective management and communication over the relatively large site. Use of walkie talkies is not disallowed in the regulations, but in forming their subjective judgement the Ministry appeared to decide that it constituted non-compliance with the following criterion: “Adults providing education and care engage in meaningful, positive interactions to enhance children’s learning and nurture reciprocal relationships.”

It is extraordinary that such minor issues were enough for the Ministry of Education to intervene and cancel Country Kindy's licence.

ECC's view is the case highlights:

- The Ministry as regulator behaved **unreasonably** because the licence was cancelled based on evidence that was not shared with Country Kindy or ECC.
- Even if the decision to cancel was justified by evidence, cancelling the licence on the basis of the regulations was a **disproportionate** sanction.
- Country Kindy is a small provider with only 22 children on its roll. If ECC had not intervened to help defend Country Kindy the Ministry would continue this. unreasonable behaviour with disproportionate sanctions and target other members of ECC.
- Through engagement with our members, who operate 1,500 centres, we were aware that our leaders were fearful of the Ministry and increasingly concerned that what was happening to Country Kindy could happen to them.
- Once the whistleblower emerged ECC members became even more alarmed because it is their worst fear that the Ministry would be motivated with a desire to persecute a provider.

Recommendation: the behaviour of the regulator – the Ministry of Education – has contributed to the failings in the ECE regulatory system, so effective leadership of the regulator is an essential part of any new regulatory model.

[Ombudsman Complaint #1: licence size and opening hours \(case study\)](#)

In 2022, ECC complained to the Ombudsman that the Ministry of Education was putting pressure on service providers to agree to reduce their Maximum Rolls and/or Opening Hours. ECC complained on behalf of a number of members but none of them agreed for their identities to be shared because they feared retribution from the Ministry.

On Maximum Rolls, the Ministry's approach was that due to the Required Staff regulation, services were close to breaching the 50% ECE qualified staff requirement. The number is calculated based on the maximum roll and not the actual roll. By reducing the maximum roll the Ministry's argument was that the service provider would be less likely to breach the regulation, and that when their rolls improved the providers could apply to increase the maximum roll again. Many service providers agreed and reduced their rolls.

There are two ECC members who agreed to this who when they subsequently reapplied for maximum roll increases were subjected to complete licence reassessments. One of the members has since had to sell that centre due to the hardship this imposed, and the other is currently likely to have the same result.

In addition, the Ministry changed the regulations so that any change to the number of licensed places required network approval. While Minister Seymour has proposed to repeal that new law, it meant the assurances the Ministry gave to providers who reduced their rolls were untrustworthy.

The Ombudsman's view was that this administrative behaviour by the Ministry was not unreasonable. They agreed to look at the matter again if a specific member was willing to complain.

On opening hours, the Ministry approached providers whose opening hours on their websites didn't match the actual licence to change the licence to match their actual opening hours. ECC's perspective was that providers should have the widest possible opening hours agreed in the licence and then use the flexibility to set different hours within those margins. We did not recognise that the Ministry of Education had any legal right to force a provider to make the change.

The Ombudsman's view was that this administrative behaviour by the Ministry was not unreasonable. In the investigation the Ministry characterised their communications with providers as merely "discussions" – ie that the service providers had every right not to agree.

From ECC's perspective we consider the "discussions" argument to be disingenuous because providers are fearful of retribution from the Ministry, so tend to go along with Ministry proposals.

[Ombudsman Complaint #2: Ministry of Education Pay Parity Calculator \(case study\)](#)

In December 2023, ECC complained to the Ombudsman that the Ministry had published a Pay Parity Calculator on their website that produced inaccurate estimates of a teacher's pay parity service because the calculator used years of service not hours of service as required in the Funding Handbook.

ECC developed its own calculator in early 2022 which enabled owners to estimate the relative costs of opting into Pay Parity. In the ECC calculator the salary assessments are recorded and the owner can track when salary increases will be required (by pay period).

The Pay Parity policy is complicated to understand, so the importance of accurate and clear information and advice is paramount. Teachers will use the Ministry calculator and this will give them an inaccurate sense of what pay parity step they should be on. This leads to unnecessary issues between teachers and employers.

More than 95% of all service providers are currently on one of the three types of Pay Parity funding. This means that the timing of the December 2023 release by the Ministry is particularly poor as most providers have already done their calculations. So it is likely that teachers and non-ECC members will use the Ministry calculator and suffer problems.

The Ombudsman's view was that the Ministry's calculator was not unreasonable because if you read the fine print you can understand that doesn't provide an accurate result.

Across the two Ombudsman cases, ECC now believes that the Ombudsman is not a viable way to have the administrative conduct of public officials scrutinised. In many respects, the cases above are connected to the behaviour of a regulator so potentially the Ministry for Regulation could become the investigator of issues of regulatory conduct in the future.

Recommendation: the Ministry for Regulation should investigate complaints about regulator behaviour in the future, not the Office of the Ombudsman

[Ministry of Education Complaints Process and Unannounced Visits](#)

The Ministry of Education operates a complaints process whereby any person can complain to the Ministry about an ECE service or issues relating to one. Complaints could be made by a parent or teacher etc.

- <https://www.education.govt.nz/early-childhood/running-a-service/complaints-in-early-learning/>

In the Ministry's process, these individuals who complain are given the right to remain anonymous.

If the Ministry considers there is substance to a complaint they will investigate the complaint. This investigation can include a visit to the ECE service which could be notified in advance or done with no notification (ie by surprise).

Under Regulation 15(1)(c) the Ministry takes a licensing intervention against the service provider if they believe the complaint warrants investigation. This means that following

investigation where it is found that there was no fault or substance to the complaint, the service provider has already been subjected to a sanction. This law is unreasonable.

In addition, the Ministry does not have a statutory duty to share the contents of the complaint with the service provider. This means the service provider has not been allowed a right of reply and their perspective on the matter is unlikely to be taken into account during the Ministry's investigation. Under common law, the complaints process should comply with the principles of natural justice. These give you the right to be heard and to have access to relevant information and time to provide it before final decisions are taken. To-date, ECC is not aware of any service providers seeking to challenge a Ministry investigation under breach of natural justice, but we anticipate a case will occur.

The Ministry also does not have a **statutory function** to be undertaking complaint investigations. The function of investigating complaints is not specifically included in any of the Ministry's departmental appropriations.

Under the ECE criteria it is the service provider who must operate a complaints process. Because the details of the complaints are not shared with service providers it is difficult to ascertain if the complaint went through the service's complaints process or not.

ECC is unsure what the best solution to this problem is. It is paramount that a legitimate complaint about service providers must have an avenue and we cannot expect people to complain directly to a perpetrator if the perpetrator is the service provider. That avenue could be directly to the Ombudsman, not to the Ministry, however.

ECC believes the Ministry function has emerged organically over a long period of time, starting off as a database of correspondence and growing into a fully-fledged complaints process - after people started to analyse the correspondence received to understand how many complaints the Ministry had received. This means the complaints process lacks a clear purpose and is not a function contemplated by the public funds appropriated for the Ministry to use. An equivalent example would be Ministry of Health developing its own framework for ECE centres in health facilities. There are services operating in Health facilities but establishing a new function is not a matter that should rest with a department – it requires ministerial oversight and needs to compete for limited public funding.

Recommendation: the Ministry's complaints process and unannounced visits contravene principles of natural justice so need review. There must be a clear channel for people to complain about service providers but the current process undermines the statutory complaints processes established by ECE services (where complaints circumvent them).

[Licensing versus regulating and monitoring](#)

The current ECE regulatory framework provides countless regulations, standards and is operationalised through officials with a large degree of subjectivity and inconsistency.

The sanctions are relatively blunt. A licence can be reclassified as "provisional", "suspended" or "cancelled". A licence is granted prior to the service commencing operations and mostly gets revisited if there are complaints or concerns raised (a licence has no expiry date). It is uncommon for a probationary licence to not be upgraded to a full licence. A suspended licence is significant and can occur with as little as 24 hours notice.

The effect of a suspension is sudden (temporary) closure and funding is stopped. This means a suspension, even if made on mistaken grounds, can have the effect of closing the centre permanently because while the centre cannot operate most of the business overheads (like teacher salaries) continue to be incurred. These salaries would need to be paid by reserves as the ECE funding is not going to be forthcoming, even if it is later found that the reason for the suspension wasn't justified.

It is currently allowed practice for the Ministry of Education to cancel a licence for any technical non-compliance, even if the non-compliance is immaterial. For example, the situation we described where services manage ventilation but sometimes this results in the temperature reducing to below the minimum allowed level of 18°C – that circumstance whereby the adults in the centre may be acting in the best interests of the children can provide the circumstances for the Ministry to intervene. This is not fair.

There needs to be more transparency around the Ministry's process of using its interventions with more communication and notices issued to service providers prior to intervention. The current regulations are not the core problem because a responsible regulator could act more reasonably in using them. For example, issuing requests in writing, documenting Ministry concerns or making non-binding directions. A framework for intervening could be developed and published so providers understand when the Ministry is escalating towards an intervention. Random and unpredictable interventions with no warning simply serve to sow mistrust in the Ministry and will lead to more services closing and children missing out on ECE.

A serious or significant breach of regulations should be treated differently to something that is not material. Our members rely on the Ministry intervening to deal with rogue operators. Rogue operators who act unlawfully or put children at real risk, damage the public perception about the level of safety for children in ECE and make the significant government investment look questionable. Just because a child has been injured or has escaped from a centre, does not necessarily mean that the service provider has acted improperly. Even the best systems and plans can be fallible, and all we should expect is for those systems and plans to be continuously improved.

In a new regulatory model there will need to be a balance struck between routine monitoring of regulatory compliance (ideally with self-monitoring and automated reporting) and targeted interventions based on risk profiling. It should not be possible to cancel a licence for a non-material regulatory concern.

The current criteria are intended to be used to assess whether a group should be granted a licence to operate an ECE service. Potentially an entirely separate regulatory monitoring system could be designed for services once they are actually operating.

Recommendations:

- **the ECE regulatory function needs to provide clearer warnings and there should be information about the regulator's expectations so providers know when their case is being escalated with the risk of receiving potentially severe sanctions.**
- **a separate regulatory monitoring system could be established that operates separately the current licensing regime.**

[Ministry of Education support versus sanctions](#)

Ministry of Education advisors are perceived by ECE operators as making decisions in an ad hoc and subjective manner, with inconsistent interpretations of rules. ECE operators are fearful of having their licence downgraded, even for minor infractions. It is a serious trust issue if people do not want to approach a government agency for assistance or information because they feel they would put themselves at risk.

Too often there are discrepancies between MoE's and ERO's interpretation of regulations. Reviewers are perceived as authoritarian, not interested in other perspectives and punitive in their reactions. The downgrading of licences is wielded like punishment and the result of decision-making by an individual.

The Ministry for Business, Immigration and Employment (MBIE) has a more effective functional set up in relation to employment law than the Ministry of Education has in relation to ECE services.

Under the MBIE model, separate teams provide education to employers and support employers to raise standards in their industries. They encourage industries to self-regulate and develop codes of practice so that employment rights are maintained and enhanced.

However, MBIE also operates the Labour Inspectorate which has extensive investigative powers in Part 11 of the Employment Relations Act. Similarly, the Labour Inspector can issue “enforceable undertakings” and issue infringement fines.

In 2023, the Labour Inspectorate commenced an investigation into ECE. A sample of about 34 centres in Auckland were investigated. ECC supported its members who were investigated. We understand that overall ECE employers’ compliance with employment law was satisfactory across the ECC member employers but that non-ECC members were less likely to be compliant with basic employment law. The types of things MBIE was checking included whether employees had employment agreements, and were being paid above minimum wage (including were the payroll systems effective for holiday pay etc).

MBIE’s conclusion seemed to be that it was advantageous for ECE operators to belong to associations like ECC.

ECC members remember a time when they could contact the Ministry of Education for help and support. However, many are fearful now that when they contact the Ministry of Education they will be investigated and subject to intervention (ie potentially resulting in suspension/cancellation of licence). The Ministry of Education considers ECE providers are private business and on this basis do not merit its support. This short-sighted stance risks turning the Ministry of Education’s ECE regulatory function into one giant “inspectorate”, which is not as effective as supporting the sector to raise standards more generally.

In many regards, the Ministry of Education’s regulatory powers are also too limited as we are not confident that the Ministry would be able to intervene quickly enough in a serious case, as their staff would probably be bogged down in a lot of unnecessary licensing matters and might not triage an urgent case correctly.

Recommendations:

- **the ECE regulatory function should include both education and investigative powers, like MBIE’s approach to employment law**
- **the regulator should have a single point of accountability for all ECE related matters and a formal dispute resolution service to respond to complaints from providers**

[Checklists, policies, paperwork and more paperwork](#)

The current ECE regulatory framework provides countless regulations, standards and comes to life through conversations, instructions and official requests by email from officials to those responsible for centre management. There is a large degree of subjectivity and inconsistency between Ministry of Education regional offices, for example Christchurch and Auckland.

In the Criteria section of this submission we have identified numerous standards and documentation that is required to demonstrate compliance. We have also identified that the Ministry has a preference for making regulatory decisions and findings where they are able to sample or obtain written documentary evidence that corroborates their preferred finding.

At its worst, this pattern of regulator behaviour is training the ECE sector to document everything they do. A good example would be a hazard check-list which would be used everyday and ticked off. Pools of water from rain the night before should be identified as a

hazard, even though it really is not. Unusual hazards like a downed electrical wire, rock or foreign object might be overlooked because it is non-standard. The hazard identification process has become dominated by checklists, when really it is a process where the ECE staff should be thoughtful and exercise judgement – “is this environment as safe as it could be for young children?” and “if I was a young child, would that be interesting/i.e. hazardous for me?” Once again, a regulation intended to keep children safe instead becomes a time-consuming administrative task.

The best way to break this cycle is to move away from a single focus on documentary evidence and allow the Ministry to trust what teachers and managers tell them. Any burden of documentation could be the job of the regulator – not the regulated party. It is inefficient to require the regulated service provider to produce documents to prove things unless the documents already existed – like identification documents and centre policies.

Paper-based compliance systems like the requirement in the funding handbook for parents to sign all changes to attendance “in pen” are anachronistic and should be removed. There should be a regulatory principle that evidence can be electronic/digital and digitally signed.

Recommendations:

- **Establish a protocol for the regulator to document findings that does not always require an ECE provider to make changes to a policy or find a written artefact that reflects the position the regulator wants to see.**
- **Establish a way for the regulator to issue a direction or seek a clarification that is clear, together with a secure communication channel for the regulated party to respond.**
- **Ensure there is a support department within the regulators’ office that the regulated party can gain clarifications from, so the regulator can focus on regulating separately to supporting the regulated party to understand how it should respond.**
- **Reconsider the heavy use of checklists and other paperwork that is administratively burdensome on the ECE providers. Where paperwork is most efficient for the provider then it should still be an option.**

Supporting the workforce, because getting “enough” qualified teachers is not a realistic solution

ECC has researched the origins of the teacher shortage. This problem continues today and yet official data does not shine much light on what the extent of the shortage actually is. In 2016, work was underway on a workforce strategy and this continued on and became a deliverable in the ELAP that never progressed.

According to our records, the shortage first started being reported in 2006 after the Government strategy “Pathways to the Future” was released (2005). As part of those reforms, funding rates were devised that included a weighting for qualified teachers – the current five “funding bands” (0-24%; 25-49%; 50-79%; 80-99% and 100%). In 2010 the 100% funding band was removed and the top band was renamed 80%+. The 100% funding band was reintroduced in 2020.

The funding bands were highly influential in driving service provider behaviours; over time, more and more services have been able to reach the highest bands. There were not enough teachers to meet the demand, and there appears no end to that problem. Our conclusion is the shortage is a policy-made problem and that the solution could be right in front of us.

According to ECC’s BIM to the Incoming Minister (pages 17 and 42), participating children between 2016 and 2022 reduced by 1.5% in Education & Care services (129,488 down to 128,436) while, in the same period, the number of registered teachers in those centres increased by 12% (15,625 to 17,559). According to the teacher data there are 10,034 adults

being reported as usual teaching staff who are not registered teachers. The total number is considerable as it's more than 50% of the size of the existing teacher workforce. In common parlance these individuals can be called "unqualified teachers". This is an obnoxious title to attach as it labels someone, whose job is to work with children as a responsible adult, to being "not-something-else" that implies their inferiority. We do not need to be making value judgements about the worth of one group of adults compared to another when both have the same responsibilities and expectations to care and educate our young children. Young children will not be so fast to form such flawed judgements – they will value all the adults who seek to help, care and educate them.

In this recommendation, ECC is recommending a more positive category or label is used for these other workers. We suggest "Assistant Teachers". Over time we propose these individuals are supported to be qualified with Level 4 or 6 qualifications that are broadly based on teaching qualifications but adjusted to that lower level (a teaching qualification is at Level 7). This creative solution will give status to people who deserve it and present an opportunity to further strengthen the ECE workforce through new qualifications, and importantly it will present a solution to the teacher shortage. We may not need 100% qualified teachers to reach a sufficient quality if we can supplement qualified teachers with qualified assistant teachers. There would be funding implications if changes were made to the funding system but assistant teachers could take on many of the roles teachers currently hold unless there was a good reason why this was not advisable.

These individuals could be registered with the Teaching Council thereby shifting a significant volume of Police vetting requests (10,000 assistant teachers) from employers to the Teaching Council. With a Teaching Council vet, the individual would be able to move between centres more readily without requiring new Police vets.

There are concerns with the cost of registration and the fact that in the private ECE sector, many employers pay these costs for their employees (whereas state schools are prohibited from paying those costs). Because of the ECE convention it means the cost of registration is inflationary for childcare fees.

Recommendation:

Establish a new category of worker in ECE called "assistant teacher" to positively rebrand the "unqualified teacher" position, and to support those individuals with appropriate qualifications based on teaching qualifications, with pathways for assistant teachers to improve their qualifications to teaching qualifications while working.

In addition, the same solution is long-overdue for supporting capable new centre managers. With approximately 80-90% of centre managers being qualified teachers, these individuals often end up covering for teacher absences. ECC considers many of the compliance incidents that occur in centres are rooted in management lapses or capability needs. Because there is no regulatory requirement to have a full time manager, full time managers that can teach are often effectively covering both roles. We need to start to unravel this problem by establishing recognition for management qualifications for centre managers. Teaching qualifications help them to understand one aspect of the business only.

Recommendation:

Officially recognise qualifications for centre managers and support and encourage services to take these up.

Unlawful regulation of service hours that are not funded

In our investigations for the Regulatory Review, members have frequently raised the 6 hour daily funding limit as a major concern. Initially we have set this aside for consideration in the Funding Review, as it is out-of-scope if it affects the levels of funding.

However, a number of insights we have established in this submission suggests a different approach is justified and that the Ministry of Education has *strayed* into regulation through funding conditions in an alarming and concerning way.

It is a common complaint that Education & Care services have to over-staff to meet the funding band requirements, or else they lose a significant amount of funding. For example, to cover lunch breaks and other breaks, additional teachers are required, who need to be equivalent to the staff they are covering for. For example, in a service at the 100% funding band a certificated teacher is replaced with another certificated teacher. This increases cost pressures on employers without a significant added benefit to teaching/learning. Whereas Kindergartens are assumed to be 100% certificated teachers however they are not regulated to ensure they meet that standard. Kindergartens are employing untrained/unqualified educators to cover lunch breaks and other breaks.

It is important to note (refer to the ratio recommendation above), that there is no actual reporting in place to check that services are meeting adult-to-child ratios. There is however the Staff Hour Count for funding purposes. In the Staff Hour Count ALL the hours are submitted for the count.

ECC considers this funding condition is unlawful on the grounds that a funding condition should only be able to be attached to a Funded Child Hour (refer to Section 548 of ETA – conditions may be imposed on grants). It is legitimate for the government to set conditions on the funding services actually can claim, but where services are not eligible to claim funding then the government cannot use a funding condition to regulate those unfunded service hours. Yet that is exactly what the Ministry is doing.

The impact on parents and services is EXTREME. For parents it means the government funding regime is “extended” into all the hours they have to fund at 100% private-payer cost. Parents should have more control on the quality of the service being offered if they pay the entire cost.

For services, it creates an EXTREME burden too. It means that every break a teacher has the employer has to back-fill their role. This includes the teachers’ lunch breaks.

Key Recommendation:

- Note that removal of this funding condition would have an unaffordable impact on government finances because so many services would be able to staff 6 hours per day at 100% qualified staff but this would be an equitable result considering kindergartens are not subject to the Staff Hour Count (they are *presumed* to comply with the qualification requirements)
- The Ministry for Regulation should issue a finding or direction that it is inappropriate for the funder of the service to use funding conditions to regulate hours of service delivery paid by private parties (parents and families)

We note that there must be some limit to the educational gratification (at premium cost) that children can absorb in early childhood in one day. Potentially additional hours over and above that threshold (eg 6 hours) could be hours where parents need to pay for lower-cost childcare (that isn’t subsidised by government). 6 hours per day is effectively an arbitrary number, so it could be scaled. Government has limited its funding to services for 6 hours per day (up to 30 per week) since the funding subsidy was first devised in *Before Five* (1990s).

A new model whereby ECE services oscillate within a continuum of education and care is already contemplated by the current universal system (of ECE), and that even in this modified approach, a service operating at “care” levels may instil significant educational benefits to children; and the ECE service delivering care outside education hours could be providing children with a safer option than had their families or home carers been caring for

them. Aside from diminishing the educational benefits from longer hours, enhanced child-focused benefits would more than make up for this.

Food Regulation

Numerous criteria deal with food, including around ensuring that where the centre has the facilities to prepare food they are at a required standard. The Ministry of Health has issued highly problematic guidance that has been incorporated into the Ministry of Education regime. In this guidance it makes it effectively illegal for whole apples to exist in centres (unless they arrive in lunchboxes), or lose your licence. An apple tree could drop an apple and that apple would pose an imminent danger to all the children in the centre. The centre could be shutdown due to this.

We have clearly reached an absurd point. It is correct however that whole fruit can be choked on. Even adults die from choking every year. Starship Hospital says that 10 in 10,000 children will die each year from unintentional suffocation each year. An ECE service is possibly one of the safest place these children can be. They do not include ECE services as being a potential cause. Cords, string and plastic bags are potential hazards – not apples.

ECC's perspective is the emphasis should be on supporting children to eat nutritious food and we have lost our way considering food to be primarily a source of danger. ECE staff with more capable first aid capabilities would assist. Dedicated ECE centre manager qualifications that included devising and managing safe food delivery in ECE would really help. We do not need to be taking a regulatory approach on this. Food is not the enemy.

Recommendation:

- Reclarify the Ministry of Health guidance as guidance, not a regulatory basis to cancel a licence

Overall our verdict is that the Food Act regulations are workable but we perceive a reluctance from ECE providers to offer food. This response is to be expected when food has been used as a compliance tool against them and all the funding margins have been squeezed by over-regulation. However, ECE providers and the regulatory review has an opportunity to refocus on setting regulations that allow for nutritious food to be delivered in ECE. Where it works, it is highly cost-effective and time-saving for parents – while being nutritious for the children.

Initial Teacher Education issues with placements, practicum

It is a requirement of initial teacher education (ITE) that teaching students undertake four to six week placements as part of their studies, up to twice a year, with frequency and duration set individually by ITE providers. There are no regulatory or Teaching Council regulations stating that teachers on practicums cannot be employed.

Student teachers should be supported to learn by being employed at assistant teacher rates. This would help both students who need every financial assistance and incentive in the current difficult climate, as well as employers who would then have established an employment relationship with a potential future teacher. It would also enable more people to consider studying and help relieve the teacher shortage in New Zealand.

Sometimes existing employee undertake ITE whilst working and earning, which requires that this employee be on practicum placements at a different ECE centre. The existing centre must fill this space at an added cost, whilst the employee works somewhere else for free. Neither centre receives any funding for training or for bridging gaps whilst ensuring new teachers can enter the profession.

Recommendations:

- Enable teaching students to be employed while on placements, by recognising them formally as part of the paid working team
- Allow students on practicum to work at their current centre, if they are already employed there.

Initial Teacher Education language requirements

It is a requirement for teachers in New Zealand to be registered. The Requirements for Teacher Registration, Practising Certificates and Limited Authority to Teach Policy (Registration Policy) are set out by the Teaching Council Aotearoa New Zealand policy

Requirements for Teacher Registration policy:

https://teachingcouncil.nz/assets/Files/Registration-and-certification/TC-Requirements-for-Teacher-Registration-Practising-Certificates-and-Limited-Authority-to-Teach_2022.pdf

The policy came into effect in April 2020. All applications for registration, practising certificates and Limited Authority to Teach are processed using the policy.

One of the requirements qualified teachers have to fulfil prior to registration is to have evidence of a high standard of English or te reo Māori competency. The Teaching Council accepts a range of evidence and information, for example NZ University Entrance, all primary schooling and at least three years secondary schooling completed in the English language and while living in NZ, and others: [Competency of English language](#).

The Teaching Council goes to great lengths to be inclusive and sensitive to the variety of prospective teachers' skills and competencies. However, in modern-day New Zealand, teachers or prospective teachers come from a wide range of backgrounds, and the language competency requirements have become a challenging barrier that needs attention. In particular, teachers from the Realm and other Pacific countries find language competency tests and evidence requirements to be significant hurdles.

This issue is most urgent in centres with teachers and children speaking in Pacific languages. For these centres it is often their philosophy and purpose to focus on Pacific languages and culture. English is not their core requirement, other languages are.

The Ministry of Education, the Teaching Council and other agencies have been repeatedly approached by Pasifika language nest providers, who feel under severe pressure. There are not enough teachers who meet the English language requirement and are registered and certificated but are proficient in Pasifika language and culture. It is prohibitively time-consuming and expensive to acquire test results and evidence. In the interim, Pasifika centres are under threat of closing because of lack of suitable staff.

Recommendation:

- Note the Teaching Council is actively reviewing this issue and has proposed a potential solution. ECC supports this.


ECC recommendations to exclude third party relievers from Pay Parity

On 20 June, ECC urgently raised with the Associate Minister of Education a proposal to **exclude third party relief teacher agencies from the Pay Parity policy**.

The inclusion of these teachers in the Pay Parity policy's coverage creates unjustifiable incentives for teachers of ECE employers to leave their employment and become employees or contractors of third party relief teacher agencies, thereby worsening the shortage of ECE teachers our operators are experiencing.

Under current settings, third party agencies can charge-back the relief teachers to the ECE employer at higher rates and because of the shortage the operators have few alternatives. The benefits of Pay Parity should have been restricted to ECE teachers employed in ECE services. In the worst case scenarios, ECE employers are required to engage third party relief teachers at Full Parity salary rates (plus an additional margin for the third party employer), when the ECE employer may not be on any Pay Parity rate themselves, thereby subjecting an employer for whom Pay Parity was non-viable to the Pay Parity policy because of desperation.

In addition, third party relief teacher agencies are not legally responsible or accountable to the Ministry of Education for actually paying the higher salary rates. This creates equity issues as ECE operators are accountable and get subjected to intrusive MoE audits. It is not a level playing field, and currently disadvantages ECE employers for no good reason.

 ECC Regulatory Assessment	Third Party Relievers Covered by Pay Parity (Funding Handbook, 3-B-2)	Totals
<i>Regulatory effectiveness</i>	Negative impact	-2
<i>Burden on providers</i>	Not applicable (third party employers are not regulated)	0
<i>Conflict comment:</i>	None	
<i>Standard comment:</i>	Not measurable. Ministry lacks any data on relievers so should constrain its workforce regulations to ECE employers	
ECC Assessment:	Remove the regulation	-2

[ECC warnings to curtail review of the curriculum](#)

On 22 August 2024, ECC raised major concerns with the Prime Minister about a suspected upcoming curriculum reform. This was based on an ERO report that recommended curriculum review together with an announcement of curriculum assessment tools for ECE teachers. We also called out the Government for the negative financial pressures on ECE providers that are significantly exacerbated by Pay Parity’s salary progression setting (see inflation adjustment section above). The sufficiency of Pay Parity funding and the lack of effective cost adjustments are two important issues that are not in-scope of the regulatory review. As soon as there is a hint of new regulation or new requirements (ie new work that would need to be done by teachers), the funding challenges become a central concern to employers because current service levels are challenging to maintain let alone increased expectations.

Annex 1: Matters Already Raised with the Associate Minister of Education

<p>Section 1 (Recs 1-10): Pay Parity – fixing over-regulation of our workforce</p>	<p>Core problem: everyone supports paying teachers better, including ECC, but the Pay Parity policy is an unjustified intervention in the early childhood workforce, regulating employment conditions unreasonably and increasing costs for providers, government and parents while participation in early childhood is well below where it should be.</p> <p>If the problem is not addressed, more centres will close and more children will miss out on ECE, especially those from families with young children struggling hardest from the Cost of Living crisis. The following suite of recommendations address the problem.</p>
<p>Section 2 (Recs 11-16): Regulation Review – restoring a partnership approach that places children first, not officials</p>	<p>Core problem: the regulations are not the problem, it is how they are administered by the regulator (the Ministry of Education) which is the problem.</p> <p>Under a collaborative approach, the Ministry should support providers to comply through provision of information, training and advice. Where providers do not act reasonably there should be a warning system for providers and the Ministry should retain its powers to reclassify licences.</p> <p>The ECE regulations do not operate in isolation like a bubble. Providers are responsible for meeting employment law requirements, together with wider obligations such as local government (resource consents, building consents), fire regulations, health requirements and health & safety at work.</p> <p>Over time, improved standards should be developed in partnership with the sector.</p>
<p>Section 3 (Recs 17-23): Other</p>	<p>Problems: while confirming a funding review and undertaking regulatory review will address many of the core problems, there are some remaining concerns that need consideration to promote better performance of both the sector and the Ministry as regulator.</p>

<p>Section 1 (Recs 1-10): Pay Parity – fixing over-regulation of our workforce</p>	<p>Core problem: everyone supports paying teachers better, including ECC, but the Pay Parity policy is an unjustified intervention in the early childhood workforce, regulating employment conditions unreasonably and increasing costs for providers, government and parents while participation in early childhood is well below where it should be.</p> <p>If the problem is not addressed, more centres will close and more children will miss out on ECE, especially those from families with young children struggling hardest from the Cost of Living crisis. The following suite of recommendations address the problem.</p>
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Recommendations				
	Description	Rec Approach (Updated)	Priority / Timeframe	Current Status as at 31 Aug 2024
<p>1.</p>	<p>Agree to a Comprehensive Independent Funding Review</p> <ul style="list-style-type: none"> • First step – consult sector on the scope • Second step – establish review unit (with independent governance) 	<p>The review must have a broad scope to include both universal and targeted funding streams, and it must also include private funding streams (parent fees).</p> <p>It cannot be controlled by the Ministry of Education because that department would be conflicted as the funder. Their expertise would still be valuable as advisory.</p> <p>IT programme (system design and build) also needs independent representation on it; including representatives from the sector and the technology providers.</p> <p>ECE is a public good and all OECD countries are monitored based on ECE performance metrics. There should be engagement with Opposition parties on the terms of reference in an attempt to avoid “cancel culture” if and when political leadership changes.</p>	<p>Top priority</p> <p>Future-proofing funding</p> <p>Medium/Long-term</p>	<p>No progress – <i>implication is manageable because the review was always going to take longer than the current Parliamentary term so will still be able to be completed (with a new funding system operational in 2027 or 2028).</i></p>

2.	<p>Give statutory recognition to the role of the Treasury as the official government funder of early childhood education services and require collective agreement outcomes and other major settlements like Equal Pay Act processes, to pass a public interest test because increases in costs will either be paid by taxpayers through increased taxes or parents of young children will pay through higher childcare fees.</p> <p>Also give the Treasury the statutory power to set commencement dates on agreed collective agreement and other settlement outcomes - but only after public funds have been appropriated or authorised by Parliament.</p>	Insert new section in the Education & Training Act (ETA).	Future-proofing funding Long-term	Could be included in the scope of the funding review
3.	<p>Protect against a repeat of Pay Parity by preventing collective agreements from changing pay and conditions without consideration of the funding impact on providers. Fiscal concerns should be a valid part of the process. It should no longer be possible to increase the cost of provision without consideration of the funding implications.</p> <p>Create a legal duty on the Ministry to calculate material increases to regulated service costs including a requirement to publicly release the estimated impacts and how any funding adjustment was calculated after the policy has been announced (if Budget Sensitive).</p>	Education & Training Act (ETA) Section 548: insert new subsection.	Future-proofing funding Long-term	Could be included in the scope of the funding review
4.	<p>Restore the status quo which gave legal autonomy to licensed Education & Care employers to determine workforce conditions without unreasonable interference (<i>Labour amended Section 548</i>).</p>	Repeal subsection 5A, 5B and 5C in ETA	Restoring status quo: which promotes employer flexibilities Long-term	No progress
5.	<p>Remove preferential policies for kindergarten associations that make the government responsible as the employer of kindergarten teachers but excludes the majority of ECE teachers.</p>	Repeal “free kindergarten” from section 12 of the Public Service Act.	Equity between employers delivering	No progress

		Remove the definition of “free kindergarten” in ETA Section 1 (Section 26).	materially the same services Long-term	
6.	As an interim measure, create an explicit exclusion so third party employed relief teachers are no longer covered by the Pay Parity policy and those employed directly are to be capped. This will reduce the attractiveness of becoming a relief teacher and prompt restructuring by relief teacher agencies, with teachers expected to return to permanent roles.	New funding handbook condition in Chapter 3-B-2: “Relief teacher exemption (<i>heading</i>): Relief teachers employed by third parties (not licensed ECE providers) and who are registered are excluded from the salary scales in the Funding Handbook, including: Pay Parity, Extended Pay Parity and Full Parity (but they are not excluded from Step 1).”	Urgent Short-term refinement	Under consideration
7.	As an interim measure, review the current Education & Care pay scale system (and qualification groups) so that the hierarchy of qualifications is fairer for NZ-trained teachers and so additional qualifications must be considered relevant for the role before they can be counted; and salary progression is paused	Introduce discretion for employers to enable them to ensure that trained teachers with higher qualifications no longer automatically gain pay increases and that overseas teachers cannot start higher than Step 1 and can progress subject to agreed performance outcomes.	Short-term refinement	Needs consideration in the regulatory review
8.	As an interim measure, exclude management roles and owners from the Pay Parity policy, to promote employer flexibilities and because a single pay step was never a reasonable scale for management staff.		Short-term refinement	Needs consideration in the regulatory review
9.	Cut Ministry of Education funding audits to pre-2020 levels		Short-term refinement	Overtaken by the Ministry’s internal change proposals
10.	Take advice on simplifying the Frequent Absence Rule requirements and replacing them with a less administratively burdensome accountability measure.		Short-term refinement	Needs consideration in the regulatory review

<p>Section 2 (Recs 11-16): Regulation Review – restoring a partnership approach that places children first, not officials</p>	<p>Core problem: the regulations are not the problem, it is how they are administered by the regulator (the Ministry of Education) which is the problem.</p> <p>Under a collaborative approach, the Ministry should support providers to comply through provision of information, training and advice. Where providers do not act reasonably there should be a warning system for providers and the Ministry should retain its powers to reclassify licences.</p> <p>The ECE regulations do not operate in isolation like a bubble. Providers are responsible for meeting employment law requirements, together with wider obligations such as local government (resource consents, building consents), fire regulations, health requirements and health & safety at work.</p> <p>Over time, improved standards should be developed in partnership with the sector.</p>
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Recommendations				
	Description	Rec Approach (Updated)	Priority / Timeframe	Current Status as at 31 Aug 2024
11.	<p>Repeal Network Management legislation or at least limit Network Management so it does not apply to ECE services currently operating, so they can apply for licence changes without requiring network analysis; saving considerably on unnecessary MoE back-office functions</p>	<p>Repeal additions to Part 2, ETA</p> <p>Link</p>	<p>Urgent</p> <p>Short-term change</p>	<p>Completed</p>
12.	<p>Repeal the changes to Person(s) Responsible or at least delay the August 2024 changes for an additional <u>two years</u>, so the closure of over 100 centres can be avoided.</p> <p>Note that the Ministry’s “clarification” in Feb 2024 has the potential to be used to reclassify licences (see recommendation 14 below).</p>	<p>Part 3, Education (Early Childhood Services) Amendment Regulations (No 2) 2023</p> <p>Link</p>	<p>Urgent</p> <p>Short-term change</p>	<p>Partially Completed (further repeal recommended)</p>
13.	<p>Repeal the Ministry’s proposal to introduce a 30-day application process for ownership changes, or at least defer the change for <u>two years</u> so that the small centres closing due to Pay Parity have the same opportunity to sell that others have enjoyed to-date; saving considerably on unnecessary MoE back-office functions.</p>	<p>Proposal 4</p> <p>Link</p>	<p>Urgent</p> <p>Short-term change</p>	<p>Completed</p>

14.	<p>Insert statutory requirements that: recognise that risk is a fact of life and the removal of all risk is not envisaged possible, and that service providers have autonomy to determine how they manage risks so long as they remain compliant with sometimes competing/contradictory regulatory frameworks, including: the Education (Early Childhood Services) Regulations 2008, Children’s Act, Building Code, Health, Employment law and Health & Safety at Work.</p> <p>The opinion and judgement of officials about how a particular service chooses to manage risks should have equal weight and not greater weight than sector opinions and judgements if they are reasonable. This applies to both the Ministry and ERO.</p> <p>Official interpretations should be allowed to emerge over time but these should be written and accessible publicly so providers are not surprised by new meanings or face inconsistent official approaches around NZ.</p>	New regulations in the Education (Early Childhood Services) Regulations 2008	Medium-term change	Needs consideration in the regulatory review
15.	<p>Insert a statutory requirement that Ministry of Education licence decisions will meet minimum standards including introducing the concept that decisions are consistent with the principles of natural justice.</p> <ul style="list-style-type: none"> Regulatory processes are to be reviewed so they comply with principles of natural justice which includes providing clear information to providers about the Ministry’s concern and what information the Ministry relied on. Providers to have the opportunity to provide more information as part of the process. <p>Provide a right of appeal to the Minister where a provider’s licence is suspended or cancelled.</p>	New section in ETA: “Regulator to comply with minimum standards set by the Minister”	Medium-term change	Needs consideration in the regulatory review
16.	<p>Create a new regulatory power to clarify that the Ministry can provide a written notice to a service provider to seek them to strengthen their regulatory compliance together with notice of further review.</p> <p>The change will mean that failure to comply with a notice will become grounds for licence interventions, rather than</p>	New section in ETA: “Regulator may issue notices to service providers that will prompt the service provider to review their compliance.”	Medium-term change	Needs consideration in the regulatory review

<p>licence interventions occurring without proper warning and for non-compliance issues that are too minor in nature.</p> <p>This will have the effect of replacing licence cancellation/reclassification <u>with a warning</u> before licence sanctions:</p> <p>Daily Hazard checks missed (HS12) – failure to complete the check can lead to notice to the centre to improve</p> <p>Sleep chart errors (HS9) – failure to undertake sleep monitoring or missing a signature can lead to notice to the centre to improve</p> <p>Bed configuration (BF30 and 31) – worn mattresses can no longer result in licence reclassification</p> <p>Safety Checking (GMA7A) – failure to Police check, Safety Check can lead to notices to the centre to improve.</p> <p>Temperature monitoring shows temperatures lower than 18°C (PF24) – failure to maintain the minimum temperature can lead to notices to the centre to improve. A testing regime to be developed with the sector, considering average temperatures and temperature fluctuations to be taken into account. If the heating system was compliant previously but is unable to achieve 18°C in cold climates, there may be leeway to allow the previous minimum temperature to apply 16°C together with time to upgrade the system.</p> <p>Medicine administration (HS28) – failure to record medicine administration can lead to notices but no longer a licence reclassification unless ministerial approval is sought</p> <p>The investigation of potentially vexatious complaints or accidents/incidents will no longer be grounds for reclassification as provisional (r.15(1)(c) and (ca).</p>	<p>Amend: r.30 (suspension of licences); r. 15 (reclassification as provisional).</p>		
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Section 3 (Recs 17-23): Other	Problems: while confirming a funding review and undertaking regulatory review will address many of the core problems, there are some remaining concerns that need consideration to promote better performance of both the sector and the Ministry as regulator.
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Recommendations				
	Description	Rec Approach (Updated)	Priority / Timeframe	Current Status as at 31 Aug 2024
17.	Review whether New Zealand’s approach to safety checking and Police vetting remains fit for purpose or whether an alternative like the BlueCard would be justified, and whether a more targeted approach to child protection may also be necessary.		Medium-term change	Needs consideration in the regulatory review
18.	Agree to remove the inconsistent immigration rules in the Accredited Employer Work Visa so that the median wage is no longer applicable.	Refer to Hon Stanford (Immigration)	Urgent Short-term refinement	In progress (MBIE)
19.	Direct Statistics NZ to expand its sample of childcare providers to collect information on childcare fees (not just measuring price changes). Alternatively, rely on IRD data collected for the Family Boost policy. This new information would be beneficial and complement the funding system review		Medium-term refinement	No progress
20.	Direct the Ministry of Education to reveal the cost of the failed Pay Parity Funding Review and Consultation Process, and to advise the sector openly about the review’s failure.			No progress
21.	Change the Ministry’s classification system for community-based ECE providers and private providers, and move to a system that adheres to proper statistical standards.			Needs consideration in the regulatory review
22.	Appoint a public servant who has single-point accountability for early learning, so there is better accountability and so the Ministry can adopt a high-trust relationship with the sector, with more time allowed for transitioning changes.			No progress
23.	Refocus the role of the Education Review Office so it is no longer focused on compliance and instead focused on educational improvement.			Needs consideration in the regulatory review

