

## Cabinet Paper material

### Proactive release

Minister & portfolio Hon David Seymour, Associate Minister of Education  
Name of package Paper 2: Response to the Early Childhood Education Regulatory Sector Review  
Date considered 14 April 2025  
Date of release 21 May 2025

#### These documents have been proactively released:

##### **Paper 2: Response to the Early Childhood Education Regulatory Sector Review**

Date considered: 14 April 2025

Author: Office of the Associate Minister of Education, Office of the Minister for Regulation, Cabinet Expenditure and Regulatory Review Committee

##### **Cabinet Minute CAB-25-MIN-0123**

Date considered: 14 April 2025

Author: Secretary of the Cabinet

#### Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

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**Budget Sensitive**

Office of the Associate Minister of Education

Office of the Minister for Regulation

Cabinet Expenditure and Regulatory Review Committee

**Paper 2: Response to the Early Childhood Education Regulatory Sector Review**

**Proposal**

- 1 This paper seeks Cabinet agreement to policy decisions needed to amend education legislation and respond to the recommendations of the early childhood education (ECE) regulatory sector review (the Review) [SOU-24-MIN-0050]. 9(2)(f)(iv) [REDACTED], and through changes to the Education (Early Childhood Services) Regulations 2008.
- 2 This paper also seeks Cabinet in principle agreement to transfer responsibility for performing core regulatory functions from the Ministry of Education (MOE) to the Education Review Office (ERO) to respond to the Ministry for Regulation's recommendation to clarify the roles and responsibilities of agencies. 9(2)(f)(iv) [REDACTED]
- 3 This paper should be read with the companion paper: *Paper 1: Early Childhood Education Regulatory Sector Review: recommendations and next steps*.

**Relation to government priorities**

- 4 The Coalition Agreement between the National Party and the ACT Party committed to carrying out a regulatory sector review of ECE. The proposals outlined in this paper respond to the Review's recommendations.

**Executive Summary**

- 5 In May 2024, the Cabinet Social Outcomes Committee (SOU) agreed to begin the ECE regulatory sector review (the Review) [SOU-24-MIN-0050]. On 25 March 2025, the Cabinet Expenditure and Regulatory Review Committee (EXP) endorsed the Review's 15 recommendations (refer to Appendix 1), 9(2)(f)(iv) [REDACTED] [EXP-25-MIN-0015];

- 6 Work is already underway to respond to Recommendation 9 of the Review and reduce regulatory burden for service providers by revising, clarifying and removing unnecessary licensing criteria for ECE centres. I expect this work to be completed by quarter three of 2025 and to deliver the sector with much needed regulatory relief.
- 7 This paper seeks Cabinet agreement to proposals that respond to Recommendations 1, 2, 3, 5, 6, and 8 of the Review and will improve the effectiveness of the regulatory system for children and parents and reduce regulatory burden for service providers. They include clarifying the purpose and objectives of regulation and removing duplication in the performance of core regulatory functions by consolidating responsibility within ERO. The proposals are:
- 7.1 **Proposals 1, 2 and 3:** amend the Education and Training Act 2020 (the Act) to update and clarify the purpose, objectives and guiding principles for regulating early childhood services (Recommendation 1);
  - 7.2 **Proposal 4:** agree in principle to transfer responsibility for performing core regulatory functions from MOE to ERO, and clarify the respective regulatory roles of each agency (Recommendation 2). 9(2)(f)(iv) [REDACTED];
  - 7.3 **Proposal 5:** amend the Act and associated secondary legislation<sup>1</sup> to establish a new statutory role, the Director of Regulation (DoR), that would be established within MOE initially, 9(2)(f)(iv) [REDACTED] including the transfer of ECE regulatory functions to ERO, are progressed;
  - 7.4 **Proposals 6 and 7:** amend the Act to specify the functions that must be performed by the DoR, including regular monitoring of compliance (Recommendations 3 and 6), and functions that must be performed independently of direction from the Minister;
  - 7.5 **Proposal 8 and 9:** amend the Act to ensure the DoR and Secretary for Education (the Secretary) have the necessary regulatory powers to perform their roles and functions, including clarifying the Secretary's role in prescribing licensing criteria (Recommendation 5); and
  - 7.6 **Proposals 10, 11, 12 and 13:** amend the Education (Early Childhood Services) Regulations 2008 to ensure a more proportionate approach to enforcing compliance, including providing the DoR with a set of graduated enforcement tools (Recommendation 8), public notification of non-compliance, and lifting the threshold for licence suspensions and cancellations.

- 8 I intend to progress proposals 1 – 3 and 5 – 9 by amending the Act through the Education and Training (Early Childhood Education Reform) Amendment Bill, 9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>1</sup> Education (Early Childhood Services) Regulations 2008 and Education (Playgroups) Regulations 2008.

9(2)(f)(iv)

Proposals 10 - 13 will be progressed through amendments to the Education (Early Childhood Services) Regulations 2008.

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9(2)(f)(iv)

- 10 Along with sorting out the licensing criteria, the changes in paragraph 7 go a long way towards responding to the Review's 15 recommendations and addressing the regulatory burden for the ECE sector. In addition, work to improve pathways for service providers to appeal regulatory decisions will begin imminently (Recommendation 4); and work to define the right balance of qualified teaching staff, ensure the person responsible requirements work, and sorting a system that works for home-based providers (Recommendations 10, 11 and 12) will begin in September 2025, once the necessary and urgent changes to the Act have been progressed.

## Background

- 11 On 29 May 2024, SOU agreed to begin the regulatory sector review of ECE (the Review) [SOU-24-MIN-0050]. Over 2,285 submissions were received, including from parents, teachers and ECE service providers. The Early Childhood Education Regulatory Review Report was released in December 2024. It made 15 recommendations to:

11.1 modernise the ECE regulatory system;

11.2 simplify and clarify the ECE regulatory requirements; and

11.3 improve support for the ECE sector.

- 12 On 25 March 2025, EXP considered the companion paper: *Paper 1: Early Childhood Education Regulatory Sector Review: recommendations and next steps*. Cabinet endorsed the Review's 15 recommendations (refer to Appendix 1) 9(2)(f)(iv)

[EXP-25-MIN-0015].

- 13 Work is already underway to revise licensing criteria for ECE centres (Recommendation 9) and reduce regulatory burden for service providers by clarifying



and removing unnecessary criteria. I expect this work to be completed by quarter three 2025 to deliver the sector some much needed regulatory relief.

### Analysis of proposals in response to the Review

#### Proposals 1, 2 and 3: Clarify the purpose, objectives and guiding principles for regulating ECE services

- 14 The Review found that the ECE regulatory system is out of date and recommended amending legislation to define clear outcomes, objectives and principles for regulatory decision-making (Recommendation 1). It found that current settings are contributing to inconsistent regulatory decision making and a lack of recognition of the role of ECE in supporting parental participation in labour markets and addressing information asymmetries for parents about service quality.
- 15 Best practice regulatory design requires clarity about the purpose and objectives of legislation<sup>2</sup> and this is a key feature of effective regulatory systems. I recommend the Act be amended and new provisions be added to be clear that:
  - 15.1 Proposal 1: the purpose of regulating the provision of early childhood services is to:
 

*set and implement minimum standards for the provision of quality early childhood education services that allow children to establish strong foundations for learning and positive well-being and that support the choice of parents and caregivers to participate in labour markets;*
  - 15.2 Proposal 2: the objectives of regulating the provision of early childhood services are to:
    - 15.2.1 protect the health, safety and wellbeing of children who attend early childhood education services;
    - 15.2.2 improve educational and developmental outcomes for children who attend early childhood education services;
    - 15.2.3 support accessibility and choice for parents, including by providing for licensing and certification of different types of provision;
    - 15.2.4 provide information and improve knowledge about the quality of early childhood services, including to inform parental choice; and
    - 15.2.5 implement a licensing regime that provides service providers and parents with certainty and clarity about the minimum standard of quality provision required of all early childhood services;

<sup>2</sup> Legislation Guidelines (2021 Edition); Legislation Design and Advisory Committee

- 15.3 Proposal 3: the guiding principles that must inform regulatory decision making are:
- 15.3.1 the health, safety and wellbeing of children is paramount;
  - 15.3.2 children's learning and development is essential, and supports their readiness to transition to school
  - 15.3.3 the role of parents and families in their children's education and care is respected and supported;
  - 15.3.4 regulatory best practice is expected of the regulator; and
  - 15.3.5 unnecessary regulatory cost and burden for service providers, parents and children should be avoided.

**Proposal 4: Clarify agency roles and responsibilities**

- 16 The Review identified ongoing confusion and tension between the way MOE undertakes its role of regulating and supporting the sector and ERO's role of reviewing and evaluating the sector, which includes identifying when service providers are not complying with the regulations and referring them to MOE. It found that role confusion was leading to duplication in the performance of regulatory functions and unnecessary regulatory burden for service providers. Recommendation 2 of the Review is that the roles and responsibilities of all regulatory agencies be clarified, and legislation updated.
- 17 I consider that consolidating responsibility for performing core regulatory functions within a single agency would:
- 17.1 provide certainty and clarity for parents and service providers by clearly defining regulatory responsibilities;
  - 17.2 reduce the risk of regulatory failure and inefficiency by strengthening accountability, eliminating duplication, and improving compliance oversight; and
  - 17.3 ensure regulatory resources can be used efficiently by building capability, embedding best practice, and improving coordination across the system.
- 18 After considering three alternative options (consolidating functions within MOE, within ERO, or within a new entity), I consider that transferring responsibility for core regulatory functions to ERO will best achieve the intent of the Review – to reduce regulatory burden for service providers. This includes removing unnecessary duplication within the regulatory system, improving the timeliness of the compliance action, and providing more certainty for service providers and parents.
- 19 The Review identified that ERO already has the staff, systems, and processes in place to undertake proactive monitoring of ECE service providers' compliance with the regulations due to their existing evaluation and review functions. Transferring responsibility for other regulatory functions to ERO will avoid the need to replicate this existing capacity and capability within MOE or a new entity, which also

minimises the costs to the Crown. This option will also take advantage of ERO's expertise in assessing the quality of ECE service provision and provide opportunities for more efficient interactions between ERO staff and ECE service providers.

- 20 ERO has extensive experience in monitoring and reporting on quality and compliance of early childhood provision and identifying actions required to address low quality and non-compliance. This proposed shift would resource ERO to build on strong existing capability and put in place the systems required to take enforcement action. MOE staff and systems that currently undertake these functions will transfer to ERO enabling efficiencies to be achieved.

- 21 9(2)(f)(iv)
- [Redacted text]

- 22 As such, I recommend that Cabinet agree in principle that responsibility for licensing and certificating early childhood services under the Education and Training Act 2020 and associated secondary legislation be transferred to the ERO as part of the Minister of Education's education system reforms, including responsibility for:

- 22.1 issuing, amending, and revoking licences and certificates;
- 22.2 providing information, support and guidance to service providers regarding regulatory requirements and compliance;
- 22.3 proactive monitoring of compliance, including undertaking investigations and interventions in response to complaints, accidents and incidents, where there is a breach of licensing and certification requirements;
- 22.4 enforcement of compliance, including undertaking investigations and prosecutions for offences under sections 28-30 of the Act, where appropriate;
- 22.5 reporting on compliance and enforcement to parents and other relevant parties;
- 22.6 sharing information on licensing, compliance and enforcement with other agencies, including the Secretary for Education for purposes including system stewardship, management and administration of funding, and child protection; and
- 22.7 responding to complaints and appeals regarding regulatory decision making.

- 23 I also recommend that Cabinet agree in principle that MOE continue to have responsibility for:

- 23.1 system performance and setting the strategic direction of the ECE regulatory system;

- 23.2 policy justification for legislation, regulations and standard setting, including licensing and certification criteria;
  - 23.3 administration and oversight of legislation and regulations, including regulatory stewardship of the ECE regulatory system;
  - 23.4 funding and purchases for early childhood education services and certified playgroups, including audit and mitigating and investigating fraud;
  - 23.5 support and guidance for the ECE sector;
  - 23.6 curriculum development and educational standard setting; and
  - 23.7 prosecutions under the Children's Act 2014.
- 24 As part of these changes, the legislation will be updated to remove any unnecessary duplication of powers.

25 9(2)(f)(iv) [REDACTED]

**Proposal 5: Attribute responsibility for performing regulatory functions**

- 26 To further respond to concerns about lack of role clarity, and strengthen the accountability of the regulator, I intend to amend the Act to attribute responsibility for performing regulatory functions to a specific role.
- 27 As outlined above, it is my intention that the responsibility for performing the regulatory functions attributed to this role, including those currently held by the Secretary, will eventually be held by ERO. As such, I have considered two options, which are to transfer responsibility to either:
- 27.1 the Chief Review Officer (CRO), whose current functions and powers are set out under section 463(1) of the Act<sup>3</sup>, and who is also the Chief Executive of ERO; or
  - 27.2 a new statutory role to be known as the Director of Regulation (DoR)<sup>4</sup>. In the first instance, this role would be employed by and accountable to the Secretary for Education. Once responsibility for performing regulatory functions attributed to this role has been transferred to ERO, this role would be employed by and accountable to the Chief Executive of ERO but must not also be the Chief Review Officer.

<sup>3</sup> These include that the CRO must administer reviews, either general or relating to particular matters, of the performance early childhood services. The reviews may be undertaken, either at the direction of the Minister of Education or on the CRO's own motion. Section 463(1) also requires the CRO to prepare reports for the Minister on the results of the reviews and give the Minister any other assistance and advice on the performance of early childhood services that the Minister requires.

<sup>4</sup> Further consideration may be given to the name of the statutory role during the drafting process.

- 28 In making my decision, I have considered the extent to which the changes I am making to the ECE regulatory system align with regulatory best practice, including providing role clarity, enabling independent regulatory decision-making, and ensuring the accountability of the regulator. I have also considered the extent to which the changes will minimise unnecessary regulatory burden for service providers and parents, including avoiding the risk of regulatory creep and overreach by the regulator, as well as how efficiently and effectively the changes can be operationalised by ERO.
- 29 I consider that transferring responsibility to a new statutory role aligns with regulatory best practice and the intent of the Review, including to reduce regulatory burden. Once the regulatory functions are transferred to ERO, this option will ensure that responsibility and accountability for their performance is kept clear and separate from the CRO's functions and powers under the Act for evaluation and review. This will help to minimise the risk of any unintended consequences associated with performing multiple functions, such as regulatory creep and regulatory overreach, which would result in additional regulatory cost and uncertainty for ECE service providers and parents.
- 30 There may be additional operational costs associated with implementing a DoR, however I expect these to be kept to a minimum. Additional costs, if any, and options for meeting these costs, will be addressed as part the development of ERO's future operating model.
- 31 Therefore, I recommend the Act be amended to establish a new statutory role to be known as the Director of Regulation (DoR) that is, in the first instance, employed by and accountable to the Secretary for Education for the performance of their functions and duties. Subject to final Cabinet decisions to transfer responsibility for performing regulatory functions to ERO, the DoR will be employed by and accountable to the Chief Executive of ERO but must not also be the Chief Review Officer. The transfer for responsibility for employing the DOR will occur within two months of the passing of the legislation.
- 32 Furthermore, I recommend the Act and associated secondary legislation be amended to transfer responsibility for performing the regulatory functions outlined in paragraph 22 from the Secretary to the DoR.

**Proposal 6: Require the performance of key regulatory functions**

- 33 Recommendation 3 of the Review outlines the need for a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector. Currently the performance of key regulatory functions, such as regular proactive monitoring of compliance, is not explicitly required in the Act. This creates a risk of inconsistent enforcement, limits accountability and does not align with best practice principles of regulation.
- 34 The absence of clear statutory compliance functions means that regulatory effort can be reactive rather than proactive, increasing the risk of harm before issues are detected. Other regulatory systems in New Zealand, such as workplace safety and food safety, have explicit legislative mandates requiring proactive oversight and intervention. To ensure the regulator has a clear statutory mandate for its role, I

recommend that new provisions be included in the Act to specify the core regulatory functions that must be performed by the DoR, including, but not limited to:

- 34.1 performing licensing and certification functions in accordance with the Act, regulations created under section 636 and section 637 of the Act, and criteria created under section 636(2)(b) and section 637(2)(b);
  - 34.2 undertaking proactive, regular risk-based monitoring and enforcement of compliance, including undertaking investigations and prosecutions as appropriate;
  - 34.3 providing information, support and guidance to service providers regarding regulatory requirements and compliance;
  - 34.4 providing information on compliance to parents and other interested parties, and helping build their knowledge about the quality of early childhood services;
  - 34.5 responding to complaints about service provision and undertaking investigations in response to accidents and incidents at early childhood services, where appropriate;
  - 34.6 responding to complaints and appeals from service providers regarding regulatory decisions and decision-making;
  - 34.7 collecting and providing information to the Secretary necessary for the Secretary to perform their role and functions, including in relation to system stewardship and monitoring, funding, and child protection;
  - 34.8 publishing and regularly updating information on its regulatory approach, including a regulatory strategy (Recommendation 6); and
  - 34.9 working collaboratively with other agencies that have a role in regulating early childhood services, including sharing information where appropriate.
- 35 To give effect to the above proposals, I recommend the Act be amended to be clear that the DoR must give effect to the purpose, objectives and guiding principles outlined in paragraph 15 when performing their functions and duties under the Act and associated secondary legislation.
- 36 I also recommend that the DoR be able to delegate their functions, duties and powers in writing, while retaining overall responsibility for how these are exercised.

**Proposal 7: Statutorily independent functions**

- 37 In performing their licensing and certification functions, the DoR will have responsibility for determining whether individual service providers can enter and remain in the ECE sector. As well as having implications for the supply and affordability of quality ECE services, these decisions have fiscal implications for the Crown as every licensed early childhood service must be funded under section 548(1)(a) of the Act. Certified playgroups may be funded under section 548(1)(b) of the Act.

- 38 For parents, service providers, and potential investors to have confidence in the ECE regulatory system, they need to be assured that the decisions of the regulator will be independent and free from any potential bias or undue influence, including from Government Ministers. This is also necessary to minimise the risk of judicial review of regulatory decision making. In other regulatory regimes, such as land transport, this is achieved by requiring that some regulatory functions be performed independently of influence from the Minister.
- 39 To ensure the ECE regulatory system supports best regulatory practice, I recommend that new provisions be included in the Act to require the DoR to act independently from direction of the Minister when performing the following regulatory functions:
- 39.1 licensing of early childhood services and certification of playgroups; and
- 39.2 enforcing compliance, including licence suspensions and cancellations, and undertaking investigations and prosecutions.

**Proposal 8: Update the powers of the Director of Regulation**

- 40 The Act and the associated secondary legislation will need to be amended to ensure the DoR has the necessary powers to perform their regulatory role and functions as outlined above. It is also necessary that the Secretary retain the powers needed to perform their ongoing role and functions in ECE as outlined in paragraph 23, particularly in relation to system monitoring and stewardship, funding and child protection.
- 41 I recommend the Act and associated secondary legislation be amended to give the DoR the same powers as the Secretary with respect to ECE services, that are necessary to perform their functions outlined in paragraphs 22 and 34, including in the following areas:
- 41.1 requiring service providers to keep records and make these available on request (section 22);
- 41.2 making it an offence for a service provider to cease operating a centre without telling the DoR and the Secretary (section 28(1)(b) and (c));
- 41.3 requiring, by written notice, and for the purpose of performing their functions, the service provider to provide information by a specified date (section 619); and
- 41.4 authorising any person who, in their opinion, is suitably qualified and trained, to exercise the powers of entry and inspection without a warrant (section 626(3)).

**Proposal 9: Prescription of licensing criteria**

- 42 The Act and associated secondary legislation<sup>5</sup> authorise the Minister of Education, after consultation with organisations likely to be substantially affected by the

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<sup>5</sup> Sections 636(2)(b) and 637(2)(b) of the Act, Regulation 41 of the Education (Early Childhood Services) Regulations 2008, and Regulation 17 of the Education (Playgroups) Regulations 2008.

regulations, to prescribe criteria to be used by the Secretary to assess compliance with the minimum standards imposed by the regulations (i.e. licensing criteria). Under the new arrangements outlined in paragraphs 22 and 23 above, the Secretary will retain responsibility for the setting of regulatory standards, including licensing criteria.

- 43 To create clarity, I recommend the Act and associated secondary legislation be amended to provide for the Minister to prescribe licensing criteria to be used by the DoR to assess compliance with the minimum standards imposed in the regulations, following the receipt of advice from the Secretary and after consultation with affected parties, including the DoR. I also recommend that, in providing advice to the Minister, the Secretary must outline the impacts of the proposed criteria, including upon whom they fall (Recommendation 5).
- 44 The proposals outlined in paragraphs 42 - 43 will not impact work currently underway by MOE to respond to Recommendation 9 of the Review by quarter three 2025.

#### **Proposal 10: Providing for graduated regulatory enforcement tools**

- 45 The Review found that the ECE regulatory toolkit is limited, there is an over-reliance on changing the status of the service licence to provisional to enforce compliance and that compliance activities and enforcement tools are not proportionate. The Review recommended that the regulations be updated to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk (Recommendation 8).
- 46 I recommend that the Education (Early Childhood Services) Regulations 2008 (the Regulations) be updated to include new provisions that provide the DoR with a suite of graduated enforcement tools in addition to the existing tools that they can use (alongside other non-regulatory measures) to enforce compliance with the regulations and licensing criteria, including:
- 46.1 a **record of non-compliance**, where a formal record is kept of an incident of non-compliance that was identified by the regulator and immediately addressed by the licence holder;
  - 46.2 a **written warning**, specifying the non-compliance that has been identified and the remedial action that must be taken by a specified date to avoid further compliance action;
  - 46.3 a **written direction to comply either immediately or within a period of no more than 10 days**, where non-compliance is identified that poses a health and safety risk but can be remedied safely while the service continues to operate. This will replace the current written direction<sup>6</sup> which may only be issued to remedy an immediate health and safety risk and will be repealed;
  - 46.4 **requirement to engage specialist help**, where the service provider must employ or engage a specialist or expert in a specified area to support them to address non-compliance;

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<sup>6</sup> Regulation 54A of the Education (Early Childhood Services) Regulations 2008.



- 46.5 **requirement to develop, implement and complete an improvement plan**, where the service provider must, within 15 working days, set out the specific actions that will be taken to address non-compliance, including timeframes where they will implement and complete the plan, to the satisfaction of the DoR;
- 46.6 **reclassification of the licence as provisional**, an existing tool whereby the status of the service licence is downgraded to provisional, and conditions are set that must be met within the timeframes specified by the DoR, or the licence is cancelled;
- 46.7 **suspension of the service licence**, an existing tool whereby the ECE service provider is prevented from operating until the DoR is satisfied compliance with the regulations has been achieved; and
- 46.8 **cancellation of the service licence**, an existing tool whereby the ECE service provider's licence to operate a service is permanently cancelled.

**Proposal 11: Public notification of non-compliance**

- 47 To complement the above suite of tools, and ensure that parents have access to the right information about their service provider's compliance with the regulations, I recommend the Regulations be amended to include new provisions that:
  - 47.1 enable the DoR to have discretion to issue a public notice of non-compliance, including details of the enforcement action that has been taken, if they are satisfied this is in the public interest and any one of the following enforcement actions has been taken:
    - 47.1.1 written direction to comply either immediately or within a period of no more than 10 days;
    - 47.1.2 requirement to engage specialist help; or
    - 47.1.3 requirement to develop, implement and complete an improvement plan;
  - 47.2 require the DoR to issue a public notice of non-compliance, including details of the enforcement action that has been taken, if any one of the following enforcement actions has been taken:
    - 47.2.1 reclassification of the licence as provisional;
    - 47.2.2 suspension of the service licence; or
    - 47.2.3 cancellation of the service licence.

**Proposals 12 and 13: Higher threshold for provisional licence and licence suspension**

- 48 Another key factor in ensuring the proportionality of a regulatory response is for the regulator and the regulated party to be clear about the threshold for intervention. As well as providing the DoR with access to new enforcement tools, I intend to increase

the threshold for changes to the status of the service licence, which is an existing tool, to ensure a more proportionate regulatory response to non-compliance. I recommend that Regulation 15(1) be amended so that the DoR may reclassify a probationary or full licence as provisional if satisfied that the service provider:

- 48.1 has been issued with one or more of the following enforcement actions and failed to comply:
  - 48.1.1 written direction to comply either immediately or within a period of no more than 10 days;
  - 48.1.2 requirement to engage specialist help; and
  - 48.1.3 requirement to develop, implement and complete an improvement plan; or
- 48.2 has been found to be non-compliant and has been issued with two or more of the following enforcement actions in the preceding 12 months:
  - 48.2.1 record of non-compliance;
  - 48.2.2 formal written warning;
  - 48.2.3 written direction to comply either immediately or within a period of no more than 10 days;
  - 48.2.4 requirement to engage specialist help; and
  - 48.2.5 requirement to develop, implement and complete an improvement plan.
- 49 I also recommend that the threshold that must be met to suspend a service licence be increased by amending Regulation 30(1)(a) so that the DoR must be satisfied, on reasonable grounds, that:
  - 49.1 there is an immediate risk to the health, safety or wellbeing of children attending or participating in the service; and
  - 49.2 it is not in the children's interests that the service continues to operate.

**Consultation on changes to secondary legislation**

- 50 The changes to the Regulations outlined in paragraphs 46 - 49 will be made once the Bill amending the Act has been passed. However, I recommend that the Parliamentary Counsel Office begin work to draft the amendment regulations so that public consultation can be undertaken on an exposure draft of the Regulations once the Bill has passed but before the new Act comes into effect. This will provide an opportunity to test the changes with the sector and parents.
- 51 MOE and ERO will undertake further work to determine the date that the changes to the Regulations should come into effect. These proposals are a significant change

from current practice, and it is important that ERO, as a newly established regulator, has the capability and capacity to implement the new tools.

### Response to the Review's other recommendations

- 52 This paper outlines my proposals for responding to recommendations from the Review that require urgent amendments to the Act and associated secondary legislation to reform key parts of the regulatory system, including its purpose and objectives, the roles and functions of key agencies, and appropriate enforcement tools (i.e. Recommendations 1, 2, 3, 5, 6 and 8).
- 53 As ERO prepares to assume responsibility for performing the core regulatory functions and establish their future operating model, work will be undertaken to respond to the Review's recommendations that involve strengthening and investing in the capability of the regulator, including workforce training, improving communication, compliance processes and support for service providers, and supporting regulatory decision making (i.e. Recommendations 7, 13, 14 and 15).
- 54 MOE will begin work to improve pathways for appeals (Recommendation 4) imminently. Work to respond to the remaining recommendations of the Review, including getting the right balance of qualified teaching staff, ensuring the person responsible requirements work, and sorting a system that works for home-based providers (i.e. Recommendations 10, 11 and 12) will begin from September 2025, once the necessary and urgent changes to the Act have been progressed.
- 55 An indicative implementation plan or responding to the Review's recommendations is provided in Appendix 2. I will report to Cabinet on progress in December 2025.

### Implementation

- 56 Key milestones and indicative timeframes for implementing the main proposals outlined in this paper are set out in the table below. The timeframes are subject to:
- 56.1 the passing of the Education and Training (Early Childhood Education Reform) Amendment Bill;
- 56.2 9(2)(f)(iv)
- 56.3 amendments to the Education (Early Childhood Services) Regulations 2008.
- 57 I will update Cabinet on progress against these milestones in my report back in December 2025.

Milestone/Activity	Timeframe
Cabinet policy decisions	April 2025
PCO drafting and Cabinet Legislation Committee	April – July 2025

9(2)(f)(iv)	
Introduction of Education and Training (Early Childhood Education Reform) Amendment Bill to the House	July 2025
Select Committee process for the Education and Training (Early Childhood Education Reform) Amendment Bill	August – November 2025
9(2)(f)(iv)	
Implementation of the regulatory system changes agreed in this paper	Within two months of the passage of the Education and Training (Early Childhood Education Reform) Amendment Bill
9(2)(f)(iv)	

### Cost-of-living Implications

- 58      Childcare is a major expense for many families. The fees charged by ECE services reflect the direct and indirect (compliance and administrative) costs associated with complying with the ECE regulations. The proposals aim to improve the efficiency and effectiveness of the regulatory system and therefore reduce costs for service providers. The Government has no control over the childcare fees charged by service providers.

### Financial Implications

- 59      9(2)(f)(iv)
- [Redacted text block]

- 60      9(2)(f)(iv)
- [Redacted text block]

9(2)(f)(iv)

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9(2)(f)(iv)

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9(2)(f)(iv)

### Legislative Implications

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The proposed legislation for the proposals in this paper will bind the Crown. The proposals require amendments to the Education and Training Act 2020. I intend to progress the amendments to the Act through the Education and Training (Early Childhood Education Reform) Amendment Bill, 9(2)(f)(iv)

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9(2)(f)(iv)

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Amendments to the Education (Early Childhood Services) Regulations 2008 and Education (Playgroups) Regulations 2008 will also be required. This paper seeks Cabinet approval to undertake public consultation on an exposure draft of Regulations for amendments to the Education (Early Childhood Services) Regulations 2008 to provide the DoR with a set of graduated enforcement tools.

### Impact Analysis

#### Regulatory Impact Statement

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The impact analysis requirements apply. A Regulatory Impact Statement has been completed and is attached in Appendix 3. MOE's RIA QA panel considered this statement and assessed it as failing to meet the Cabinet's quality assurance criteria for impact analysis. This assessment corresponds to the tight constraints on the options considered, the limited analysis of impacts, cost and benefits, and lack of consultation on the proposals imposed by the timeframe. Given these constraints, we consider that insufficient information and analysis has been provided to support decisions.

- 67 The Ministry for Regulation and the Ministry of Education have agreed that a Post-Implementation Report on the chosen options will be provided to Cabinet by April 2026.

### **Climate Implications of Policy Assessment**

- 68 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

### **Population Implications**

- 69 The proposals outlined in this paper are expected to lead to improved health, safety and wellbeing outcomes for children who attend early childhood services by improving the quality of early childhood regulation. The proposals also support parental participation in labour markets, particularly women, by supporting parents to have better information about, and confidence in, the quality-of-service provision.

### **Human Rights**

- 70 There are no inconsistencies of the proposals in this paper with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Use of external Resources**

- 71 No external resources were used in preparation of the policy advice in this paper.

### **Consultation**

- 72 The Ministry for Regulation, Education Review Office, Public Service Commission and Treasury were consulted on the proposals in this paper. The Department of Prime Minister and Cabinet was informed.

### **Communications**

- 73 My office will work with the Ministry of Education, Education Review Office and Ministry for Regulation to announce these proposals once Cabinet decisions have been made and affected staff at the Ministry of Education and Education Review Office have been informed.

### **Proactive Release**

- 74 I intend to proactively release this Cabinet paper once decisions have been made subject to redactions as appropriate under the Official Information Act 1982.

## Recommendations


- 75 The Associate Minister of Education recommends that the Committee:
- 1 **note** that on 29 May 2024, the Cabinet Social Outcomes Committee agreed to begin the regulatory sector review of early childhood education (the Review) [SOU-24-MIN-0050];
- 2 **note** that on 25 March 2025, the Cabinet Expenditure and Regulatory Review Committee endorsed the Review’s 15 recommendations (refer to Appendix 1),<sup>9(2)</sup>  
(f)  
(iv)  
[EXP-25-MIN-0015];
- 3 **note** that work to review licensing criteria for centres (Recommendation 9) and provide service providers with much needed regulatory relief is already underway and is expected to be completed by quarter three of 2025;
- 4 **note** this paper responds to recommendations from the Review that require urgent amendments to the Education and Training Act 2020 and associated secondary legislation to reform key parts of the ECE regulatory system, including its purpose and objectives, the roles and functions of key agencies, and appropriate enforcement tools (Recommendations 1, 2, 3, 5, 6, and 8);

## Proposals 1, 2 and 3: Purpose, objectives and principles for regulating early childhood services

- 5 **agree** to amend section 14 of the Education and Training Act 2020 to be clear that the purpose of regulating the provision of early childhood services is to:
- 5.1 set and implement minimum standards for the provision of quality early childhood services that allow children to establish strong foundations for learning and positive well-being and that support the choice of parents and caregivers to participate in labour markets;
- 6 **agree** to amend the Education and Training Act 2020 to introduce new provisions to be clear that the objectives of regulating the provision of early childhood services are to:
- 6.1 protect the health, safety and wellbeing of children who attend early childhood services;
- 6.2 improve educational and developmental outcomes for children who attend early childhood services;
- 6.3 support accessibility and choice for parents, including by providing for licensing and certification of different types of provision;
- 6.4 provide information and improve knowledge about the quality of early childhood services, including to inform parental choice; and

- 6.5 implement a licensing regime that provides ECE service providers and parents with certainty and clarity about the minimum standard of quality provision required of early childhood services;
- 7 **agree** to amend the Education and Training Act 2020 to introduce new provisions that establish the following guiding principles to inform regulatory decision making:
  - 7.1 the health, safety and wellbeing of children is paramount;
  - 7.2 children's learning and development is essential, and supports their readiness to transition to school;
  - 7.3 the role of parents and families in their children's education and care is respected and supported;
  - 7.4 regulatory best practice is expected of the regulator; and
  - 7.5 unnecessary regulatory cost and burden for service providers, parents and children should be avoided;

**Proposals 4: Clarify agency roles and responsibilities**

- 8 **note** that the Review found ongoing confusion and tension between the way the Ministry of Education undertakes its role of regulating and supporting the sector and the Education Review Office's role of reviewing and evaluating the sector, and that this was leading to duplication and unnecessary regulatory burden for service providers;
- 9 9(2)(f)(iv) 
- 10 **agree in principle** that responsibility for licensing and certifying early childhood services under the Education and Training Act 2020 and associated secondary legislation be transferred to the Education Review Office as part of the reforms outlined in recommendation 9, including responsibility for:
  - 10.1 issuing, amending, and revoking licences and certificates;
  - 10.2 providing information, support and guidance to service providers regarding regulatory requirements and compliance;
  - 10.3 proactive monitoring of compliance, including undertaking investigations and interventions in response to complaints, accidents and incidents where there is a breach of licensing and certification requirements;
  - 10.4 enforcement of compliance, including undertaking investigations and prosecutions of offences under sections 28-30 of the Education and Training Act 2020;



- 10.5 reporting on compliance and enforcement to parents and other relevant parties;
- 10.6 sharing information on licensing, compliance and enforcement with other agencies, including the Secretary for Education for purposes including system stewardship, management and administration of funding, and child protection; and
- 10.7 responding to complaints and appeals regarding regulatory decisions;
- 11 **agree in principle** that as part of the proposed changes outlined in recommendation 10, the Ministry of Education will retain responsibility for:
  - 11.1 system performance and setting the strategic direction of the early childhood regulatory system;
  - 11.2 policy justification for legislation, regulations and standard setting, including licensing and certification criteria;
  - 11.3 administration and oversight of legislation and regulations, including regulatory stewardship of the early childhood regulatory system;
  - 11.4 funding and purchases for early childhood services and certified playgroups, including audit and mitigating and investigating fraud;
  - 11.5 support and guidance for the early childhood sector;
  - 11.6 curriculum development and educational standard setting; and
  - 11.7 prosecutions under the Children's Act 2014.
- 12 **agree in principle** that the transfer of regulatory functions outlined in recommendation 10:
  - 12.1 9(2)(f)(iv) [REDACTED]
  - 12.2 9(2)(f)(iv) [REDACTED]

**Proposal 5: Responsibility for performing regulatory functions**

- 13 **agree** to amend the Education and Training Act 2020 to establish a new statutory role of Director of Regulation that, in the first instance, is employed by and accountable to the Secretary for Education for the performance of their functions and duties;
- 14 **agree in principle**, 9(2)(f)(iv) [REDACTED]  
[REDACTED] :
  - 14.1 responsibility for employing the Director of Regulation will transfer to the Chief Executive of the Education Review Office; and
  - 14.2 that the Director of Regulation must not also be the Chief Review Officer;

- 15 **agree** that the Education and Training Act 2020 and associated secondary legislation be amended to transfer responsibility for performing the roles and functions outlined in recommendation 10 from the Secretary for Education to the Director of Regulation;

**Proposal 6: Requirement to perform regulatory functions**

- 16 **agree** to amend the Education and Training Act 2020 to introduce new provisions that specify the regulatory functions that the Director of Regulation must undertake, including:
- 16.1 performing licensing and certification functions in accordance with the Education and Training Act 2020, regulations created under sections 636 and 637 of the Act, and criteria created under sections 636(2)(b) and 637(2)(b);
  - 16.2 undertaking proactive regular risk-based monitoring and enforcement of compliance, including undertaking investigations and prosecutions as appropriate;
  - 16.3 providing information, support and guidance to service providers regarding regulatory requirements and compliance;
  - 16.4 providing information on compliance to parents and other interested parties, and helping build their knowledge about the quality of early childhood services;
  - 16.5 responding to complaints about service provision and undertaking investigations in response to accidents and incidents at early childhood services where appropriate;
  - 16.6 responding to complaints and appeals from service providers regarding regulatory decisions and decision-making;
  - 16.7 collecting and providing information to the Secretary for Education necessary for the Secretary to perform their role and functions, including in relation to system stewardship and monitoring, funding, and child protection;
  - 16.8 publishing and regularly updating information on its regulatory approach, including a regulatory strategy; and
  - 16.9 working collaboratively with other agencies that have a role in regulating early childhood services, including sharing information where appropriate;
- 17 **agree** to amend the Education and Training Act 2020 and associated secondary legislation to be clear that the Director of Regulation must give effect to the purpose, objectives and guiding principles agreed in recommendations 5, 6 and 7 when performing their functions and duties under the Act and associated secondary legislation;
- 18 **agree** to amend the Education and Training Act 2020 to introduce new provisions that allow the Director of Regulation to delegate their functions, duties and powers in writing, while retaining overall responsibility for how these are exercised;

**Proposal 7: Statutorily independent functions**

- 19 **agree** to amend the Education and Training Act 2020 to introduce new provisions to require the Director of Regulation to act independently from direction of the Minister when performing the following regulatory functions:

- 19.1 licensing of early childhood services and certification of playgroups
- 19.2 enforcing compliance, including licence suspensions and cancellations, and undertaking investigations and prosecutions.

**Proposal 8: Powers of the Director of Regulation for performing regulatory functions**

- 20 **agree** to amend the following sections of the Education and Training Act 2020 to give the Director of Regulation the same powers as the Secretary for Education with respect to performing its regulatory functions for early childhood services as outlined in recommendations 10 and 16

- 20.1 Section 22, to require the service provider of a licensed early childhood service to keep records and make these available to the Director of Regulation on request;
- 20.2 Section 28(1)(b) and (c), to make it an offence for a service provider to cease operating a centre without telling the Director of Regulation and the Secretary for Education;
- 20.3 Section 619, to enable the Director of Regulation to require, by written notice, and for the purpose of performing their functions, the service provider who operates any licensed early childhood service or any certified playgroup to provide information by a specified date; and
- 20.4 Section 626(3), to enable the Director of Regulation to authorise any person who, in their opinion, is suitably qualified and trained, to exercise the powers of entry and inspection without a warrant;

**Proposal 9: Prescribing licensing criteria**

- 21 **agree** to amend sections 636(2)(b) and 637(2)(b) the Education and Training Act 2020, Regulation 41 of the Education (Early Childhood Services) Regulations 2008, and Regulation 17 of the Education (Playgroups) Regulations 2008 to provide for the Minister of Education, upon receipt of advice from the Secretary for Education and following consultation with affected parties including the Director of Regulation, to prescribe criteria to be used by the Director of Regulation to assess compliance with the minimum standards set in the regulations;
- 22 **agree** to amend the relevant sections of the Act and regulations referred to in recommendation 21 to require that the Secretary for Education, in providing advice to the Minister, must outline the impacts of the proposed licensing criteria, including upon whom they fall;

**Proposal 10: Graduated enforcement tools**

- 23 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to introduce new provisions that establish a set of graduated enforcement tools in addition to the existing tools that the Director of Regulation can use (alongside other non-regulatory measures) to enforce compliance with the regulations and licensing criteria, including:
- 23.1 a **record of non-compliance**, where a formal record is kept of an incident of non-compliance that was identified by the Director of Regulation and immediately addressed by the licence holder;
  - 23.2 a **written warning**, specifying the non-compliance that has been identified and the remedial action that must be taken by a specified date to avoid further compliance action;
  - 23.3 a **written direction to comply either immediately or within a period of no more than 10 days**, where non-compliance is identified that poses a health and safety risk but can be remedied safely while the service continues to operate;
  - 23.4 **requirement to engage specialist help**, where the service provider must employ or engage a specialist or expert in a specified area to support them to address non-compliance;
  - 23.5 **requirement to develop, implement and complete an improvement plan**, where the service provider must, within 15 working days, set out the specific actions that will be taken to address non-compliance, including timeframes where they will implement and complete the plan, to the satisfaction of the Director of Regulation;
  - 23.6 **reclassification of the licence as provisional**, an existing tool whereby the status of the service licence is downgraded to provisional, and conditions are set that must be met within the timeframes specified by the Director of Regulation, or the licence is cancelled;
  - 23.7 **suspension of the service licence**, an existing tool whereby the service provider is prevented from operating until the Director of Regulation is satisfied compliance with the regulations has been achieved; and
  - 23.8 **cancellation of the service licence**, an existing tool whereby the service provider's licence to operate a service is permanently cancelled;
- 24 **agree** to remove Regulation 54A of the Education (Early Childhood Services) Regulations 2008 that provides for the Secretary to direct a service provider to remedy an immediate health and safety risk;

**Proposal 11: Public notification of non-compliance**

- 25 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to introduce new provisions that enable the Director of Regulation to issue a public notice of non-compliance, including details of enforcement action that has been taken,

if they are satisfied this is in the public interest, and one or more of the following enforcement actions have been taken:

- 25.1 written direction to comply either immediately or within a period of no more than 10 days;
  - 25.2 requirement to engage specialist help; or
  - 25.3 requirement to develop, implement and complete an improvement plan;
- 26 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to introduce new provisions that require the Director of Regulation to issue a public notice of non-compliance, including details of the enforcement action that has been taken, if one of the following enforcement actions have been taken:
- 26.1 reclassification of the licence as provisional;
  - 26.2 suspension of the service licence; or
  - 26.3 cancellation of the service licence;

**Proposal 12 and 13: Higher threshold for provisional licence and licence suspension**

- 27 **agree** to amend Regulation 15(1) of the Education (Early Childhood Services) Regulations 2008 so that the Director of Regulation may reclassify a probationary or full licence as provisional if satisfied that the service provider has:
- 27.1 been issued with one or more of the following enforcement actions and failed to comply:
    - 27.1.1 written direction to comply either immediately or within a period of no more than 10 days;
    - 27.1.2 requirement to engage specialist help; and
    - 27.1.3 requirement to develop, implement and complete an improvement plan; or
  - 27.2 has been found to be non-compliant and has been issued with two or more of the following enforcement actions in the preceding 12 months:
    - 27.2.1 record of non-compliance;
    - 27.2.2 formal written warning;
    - 27.2.3 written direction to comply either immediately or within a period of no more than 10 days;
    - 27.2.4 requirement to engage specialist help; and
    - 27.2.5 requirement to develop, implement and complete an improvement plan; or

28 **agree** to raise the threshold that must be met to suspend a licence by amending Regulation 30(1)(a) of the Education (Early Childhood Services) Regulations 2008 to require that the Director of Regulation must be satisfied, on reasonable grounds, that:

28.1 there is an immediate risk to the health, safety or wellbeing of children attending or participating in the service; and

28.2 it is not in the children's interests that the service continues to operate;

### Financial Implications

29 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

30 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]

31 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]

32 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

33 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

34 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

### Legislative implications

35 **note** that I intend to progress the amendments to the Education and Training Act 2020 for recommendations 5, 6, 7, 13, 15, 16, 17, 18, 19, 20, 21 and 22 through the Education and Training (Early Childhood Education Reform) Amendment Bill, 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]

- 36 **agree** that the amendments to the Education and Training Act 2020 outlined in recommendation 35 come into effect within two months of the passing of the Education and Training (Early Childhood Education Reform) Amendment Bill;
- 37 9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 38 **invite** the Associate Minister of Education to issue drafting instructions for the proposals outlined above;
- 39 **authorise** the Associate Minister of Education and the Minister of Education to make additional joint decisions on policy and drafting issues arising from these proposals, as necessary;
- 40 **authorise** the Associate Minister of Education to undertake public consultation on exposure draft regulations to give effect to the proposals outlined in recommendations 23 - 28, subject to the passing of the Bill referred to in recommendation 35;
- 41 **invite** the Associate Minister of Education to report to Cabinet with amendment regulations by December 2025, including recommendations for when the amendments should come into effect;

#### **Response to the other recommendations of the Review**

- 42 **note** that work to respond to the Review's recommendations that involve strengthening and investing in the capability of the regulator, including workforce training, improving communication, compliance processes and support for service providers, and supporting regulatory decision making (Recommendations 7, 13, 14 and 15), including options for funding the associated costs, will be considered as part of the development of the Education Review Office's future operating model;
- 43 **note** that work to improve pathways for service providers to appeal regulatory decisions (Recommendation 4) will begin imminently, and work to respond to the Review's remaining recommendations, including getting the right balance of qualified staff, ensuring the person responsible requirements work, and sorting a system that works for home-based providers (Recommendations 10, 11 and 12) will begin from September 2025, once the necessary and urgent changes to the Act have been progressed; and
- 44 **note** that I will report to the Cabinet Expenditure and Regulatory Review Committee by December 2025 on progress to respond to the full suite of recommendations of the Review.

Authorised for lodgement.

Hon David Seymour

Associate Minister of Education

Minister for Regulation

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## Appendix 1: Recommendations of the Early Childhood Education Sector Regulatory Review

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

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

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

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

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

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

**Recommendation 7:** Invest in workforce training across agencies to improve regulatory effectiveness.

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

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

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

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



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

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

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

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

## Appendix 2: Indicative timeline for responding to the recommendations of the Early Childhood Regulatory Sector Review

2025					2026			
	Mar	Q2 (April – June)	Q3 (July – Sept)	Q4 (Oct – Dec)	Q1 (Jan – Mar)	Q2 (Apr – June)	Q3 (July – Sept)	Q4 (Oct – Dec)
Cabinet								
Immediate regulatory relief		Rec. 9: Revise licensing criteria						
ECE System Reform		Rec. 1: Define outcomes, objectives and principles						
		Rec. 2: Clarify agency roles and responsibilities						
		Rec. 3: Implement risk- based monitoring of compliance						
		Rec. 5: Strengthen regulatory oversight						
		Rec. 6: Establish a strategic approach to ECE regulation						
		Rec 8: Provide graduated compliance tools						
Regulatory Capability			Rec. 7: Invest in workforce training					
			Rec. 13: Strengthen communication and support					
			Rec. 14: Strengthen support for service providers					
			Rec. 15: Resources and training for decision- making					
System improvements		Rec 4: Improve pathways for appeals						
			Rec 10: Allow flexibility in workforce qualification requirements					
			Rec 11: Review person responsible requirements					
			Rec 12: Develop a plan for homebased services					

**Appendix 3: Regulatory Impact Statement**

[Attached separately]

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# Regulatory Impact Statement: Proposals responding to the ECE regulatory sector review

<b>Decision sought</b>	This regulatory impact statement (RIS) supports final Cabinet decisions on proposals that respond to recommendations of the Ministry for Regulation's early childhood education regulatory sector review
<b>Agency responsible</b>	Ministry of Education
<b>Proposing Ministers</b>	Hon David Seymour, Associate Minister for Education
<b>Date finalised</b>	11 April 2025

The regulatory proposals outlined in this paper respond to recommendations of the Ministry for Regulation's (MFR) regulatory sector review of early childhood education (ECE) (the Review) [SOU-24-MIN-0050]. The proposals seek to amend the Education and Training Act 2020 Act ('the Act'), Education (Early Childhood Services) Regulations 2008, and Education (Playgroups) Regulations 2008 to:

1. Clarify the purpose, objectives and guiding principles for regulating early childhood services;
2. Clarify the respective roles of the Ministry of Education (MOE) and the Education Review Office (ERO) in regulating early childhood services, including seeking in principle agreement to transfer responsibility for performing core ECE regulatory functions to ERO as part of wider education system reforms that will be considered by Cabinet in July 2025;
3. Allocate responsibility for performance of regulatory functions to a new statutory role (Director of Regulation);
4. Specify the regulatory functions that must be performed by the regulator, including regular proactive monitoring of compliance;
5. Ensuring independence of the regulator when they undertake their regulatory functions;
6. Provide the regulator with the necessary powers to perform their regulatory functions;
7. Enable the Secretary for Education (the Secretary) to prescribe licensing criteria to be used by the regulator to assess compliance with the minimum standards set in regulations, including undertaking consultation and providing advice to the Minister of Education on the impacts of any proposed criteria;
8. Provide the regulator with a set of graduated tools to enforce compliance;

9. Allow the regulator to issue a public notice of non-compliance after taking some types of enforcement action, and require it after taking more serious enforcement action; and
10. Establish higher thresholds for changing the status of the service licence in response to non-compliance, including issuing a provisional licence, suspending a licence and removal of a licence.

## Summary: Problem definition and options

### What is the policy problem?

The Review identified a number of problems with the ECE regulatory system<sup>1</sup>. The problems that the proposals outlined in this paper seek to address are:

1. **Outdated Framework:** the system lacks defined goals, clear outcomes and principles to guide decision-making, leading to inconsistencies.
2. **Role confusion:** the perceived overlap in the roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement.
3. **Limited compliance monitoring:** MOE, as the lead regulator, does not systematically incorporate proactive, risk-based compliance monitoring into its regulatory operations. Monitoring is carried out primarily through ERO reviews, which also focus on the overall quality of the education and care provided by the service.
4. **Limited tool variety:** there is an over-reliance on licensing as a regulatory tool, with limited options for addressing varying degrees of non-compliance.

### Views of the ECE sector and parents

Stakeholder views obtained through the MFR review included:

- Parents and non-government organisations<sup>2</sup> said that ECE in New Zealand is expensive and often unaffordable. Additionally, these stakeholders said that there was a limited range of quality ECE provision, restricting choice for parents.
- ECE service providers said the volume of regulatory requirements to comply with was a challenge. They felt that requirements were highly prescriptive, and inconsistent in interpretation and implementation.

There were varied ideas as to how to fix system issues, with ECE service providers suggesting the removal of regulations, while other groups were wary of de-regulating the ECE system as it may risk children's safety and educational outcomes.

### Reason for government intervention

The Review identified that key market failures in the ECE regulatory system include:

- information asymmetry for parents and caregivers about the quality-of-service provision that impacts their ability to make informed decisions; and

<sup>1</sup> Regulatory Review of Early Childhood Education; Ministry for Regulation; December 2024.

<sup>2</sup> The list of non-governmental organisations who submitted on MFR's Review can be found here: <https://www.regulation.govt.nz/assets/Publication-Documents/ECE-Regulatory-Review-what-submitters-said-October-2024.pdf>



- an undersupply of ECE services.

It noted that ECE is considered a merit good, meaning it offers benefits to society beyond the benefits to individual users. To maximise societal benefits, the government regulates the sector to ensure safety, quality and accessibility of services. If the regulatory framework is hindered in its ability to achieve these objectives, then government intervention may be required to remedy these concerns.

### **What is the policy objective?**

The proposals outlined in this RIS aim to address problems with the ECE regulatory system that were identified in the Review (set out above) while also achieving the following objectives:

1. Improve health, safety and educational outcomes for children participating in early childhood education; and
2. Increase the trust and confidence of parents in the regulation of ECE services; and
3. Reduce unnecessary regulatory cost and burden for ECE service providers (as well as for parents); and
4. Improve the efficiency and effectiveness of the regulator and align with regulatory best practice (this positively impacts ECE service providers and parents).

### **What policy options have been considered, including any alternatives to regulation?**

MOE provided advice to the Associate Minister of Education outlining that because of the timeframes identified, a number of steps typically required for policy analysis and legislative change, as part of good regulatory stewardship, would be removed. This has resulted in the analysis in this RIS being focused on responding to specific recommendations from the Review rather than alternative options to regulation. We advised the Associate Minister of Education that this presents a risk of future litigation and policy failure.

However, alternative options were considered in relation to:

- consolidating regulatory functions within a single agency. Options included MOE, ERO, or a new entity; and
- assigning responsibility for performing regulatory functions within ERO. Options included the Chief Review Officer (CRO), Chief Executive of ERO, a new role (e.g. Director of Regulation) or a mixed model.

Given the direction set by the Review and time constraints for developing the response, no alternative or non-regulatory options outside of those analysed by MFR have been considered for the remaining proposals.

### **What consultation has been undertaken?**

MFR undertook consultation with the ECE sector from early June to mid-September 2024 as part of their review. The agency engaged with a range of stakeholders from the ECE sector and received around 2,300 submissions as part of this consultation. Further, MFR met with 40 ECE service providers and non-government organisations and visited 16 ECE services of different types, sizes and locations.

No further stakeholder engagement or consultation has been undertaken on the proposals outlined in this paper due to constraints on timing. MOE has advised the Associate Minister

of Education of the risks of this approach. To partially mitigate the risks associated with lack of consultation, stakeholder feedback captured as part of MFR's Review has been considered in shaping and analysing the impact of the proposals.

**Is the preferred option in the Cabinet paper the same as preferred option in the RIS?**

Yes.

## **Summary: Minister's preferred option in the Cabinet paper**

### **Costs (Core information)**

**Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)**

The paper seeks agreement in principle to transfer regulatory functions from MOE to ERO.  
9(2)(f)(iv)

There are additional risks associated with the transfer of regulatory functions, including potential for continued lack of role clarity, overreach in the exercise of regulatory powers, regulatory creep through decision-making, and potential for actual or perceived political interference. The advice provided includes mitigations to reduce the likelihood of these risks occurring, including through the establishment of the new statutory role.

For regulated groups, a risk with the proposals is that the transfer of regulatory functions may lead to regulatory overreach and regulatory creep, which could create administrative cost and burden for ECE services.

There is the risk, depending on how these proposals are implemented, that clarity and certainty may not be achieved in terms of how the system is regulated by ERO and MOE, which would impact on the level of transparency in the regulatory system for ECE providers as well as parents.

### **Benefits (Core information)**

**Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)**

The proposals will improve the efficiency and effectiveness of the regulator and align with regulatory best practice. This is because unlike the current state, regulatory functions will be clearly expressed in legislation, and regulatory roles, functions and responsibilities will be clearer and provide more certainty for the regulator, regulated groups and parents.

Additionally, the purpose, objectives and principles of regulating ECE services is clearly stated, reducing confusion and providing the foundation for the regulator to be more efficient in undertaking their duties and responsibilities.

The proposals will create greater role delineation for agencies in performing their regulatory functions, which reduces duplication and regulatory inefficiency. This is crucial for improving regulatory practice.

The proposals will increase clarity and transparency of the regulator's role, functions and responsibilities which will create more trust and confidence in the ECE regulatory system.

The proposals will decrease the current duplication that exists in the system, delivering resource and cost efficiencies, and reducing burdens and confusion for ECE service providers.

The proposals to broaden the range of enforcement tools will mean that responses to compliance breaches are more proportionate to the level of risk, which will give parents greater confidence in the provision of ECE available to them.

The proposals would also make it clear that the purpose, objectives and principles of regulating ECE services is to support the choice of parents and caregivers so they can participate in labour markets, support accessibility and choice for parents around ECE provision, ensure that the ECE licensing regime provides parents with certainty and clarity about the minimum standard of quality provision, and ensure that the role of parents and families in their children's education and care is respected and supported. This will help address one of the key market failures signalled in MFR's Review that there is information asymmetry for parents around the quality of ECE service provision. This will increase trust and confidence of parents in the regulation of ECE services.

Additionally, the proposal to allow for the issuing of a public notification of compliance action will complement the graduated set of enforcement tools and ensure that parents have access to the right information about their ECE service provider's compliance with the regulations. The proposals to increase the threshold for provisional and suspended licences would mean that enforcement decisions are more rigorous and robust, creating more certainty for parents.


These proposals should not create any administrative costs or burden for regulated groups. These proposals should improve the clarity and certainty for the regulator in undertaking their regulatory functions and responsibilities, which in turn will mean regulatory decisions are timelier, more responsive and proportionate. This means that more ECE services can remain open (as the proposals will promote a lighter touch and more proportionate enforcement model). This will also support the ECE regulatory system to be more effective, so ECE services can focus on providing high quality ECE provision.

### **Balance of benefits and costs (Core information)**

**Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?**

On balance, the benefits of the proposals outlined in this RIS outweigh the costs. Although there are risks in relation to the proposals that would transfer regulatory functions from MOE to ERO, on balance, the proposals improve the efficiency and effectiveness of the regulator. The proposals improve the clarity and certainty for the regulator in undertaking their regulatory functions and responsibilities, allowing for timelier, more responsive and proportionate regulatory decisions. This clarity supports a reduction of duplication between agencies reducing regulatory burden.

9(2)(f)(iv)





## Implementation

### How will the proposal be implemented, who will implement it, and what are the risks?

The Associate Minister of Education intends to make the majority of the proposed amendments to the Act through the Education and Training (Early Childhood Education Reform) Amendment Bill, 9(2)(f)(iv)

The amendments are expected to come into effect within two months of the legislation passing, which means the changes will be implemented within MOE initially.

Proposed amendments to the Education (Early Childhood Services) Regulations 2008 to implement the new set of graduated enforcement tools will be made once the Education and Training (Early Childhood Education Reform) Amendment Bill has been passed. The Associate Minister of Education is seeking Cabinet agreement for the Parliamentary Counsel Office to draft the amendment regulations now so that public consultation can be undertaken on an exposure draft of the Regulations before the amendments to the Act come into effect. This will provide an opportunity to test the changes with the sector and parents before they are finalised.

9(2)(f)(iv)

The transfer of regulatory functions from MOE to ERO creates some risks, particularly the fact that ERO does not currently perform some of the regulatory functions, and therefore does not have experience, capability or systems in place for administering a licensing and certification regime. ERO also does not currently exercise legal powers associated with enforcing compliance with the regulations and licensing criteria, including undertaking investigations and prosecutions. However, ERO does have significant experience and capability in working with ECE services to undertake proactive monitoring of ECE services, including monitoring compliance with regulatory standards; this provides a strong foundation for the transferral of other regulatory functions.

Risks associated with existing capability and capacity will be mitigated through the transfer of relevant systems, information and staff from MOE to ERO. In addition, work is underway to develop ERO's new operating model. This will include responding to other recommendations from the Review that focus on investing in, and strengthening the capability of, the regulator. This includes workforce training, communication and compliance processes, support for service providers, and support for regulatory decision-making. 9(2)(f)(iv)

MOE and ERO intend to undertake further work to determine the date that the changes to the regulations should come into effect. These proposals are a significant change from current

practice, and it is important that ERO, as a newly established regulator, has the capability and capacity to implement the new tools when they are added to the regulatory tool kit.

### Limitations and Constraints on Analysis

There are several limitations and constraints on the regulatory analysis outlined in this RIS. These are due to limitations on the rigour and depth of analysis undertaken as part of the Review, Ministerial direction to accept the findings and recommendations of the Review, and Ministerial direction to develop and implement the policy response at pace to reduce regulatory burden on service providers. The key limitations are:

1. **Limited opportunity to test key assumptions underpinning some of the findings and recommendations of the Review and consider alternative options.** The impact of this has been mitigated to some extent by MOE and ERO having been involved in the Review and through engaging with MFR on the development of the proposals.
2. **Limited time to undertake detailed analysis of the impacts of the proposals.** The impact of this has been somewhat mitigated by drawing on analysis undertaken by MFR in the Review as well as previous work undertaken by MOE on reforming the ECE regulatory system<sup>3</sup>. ERO has also been closely involved in the development of the proposals, as they will be responsible for their implementation.
3. **Lack of consultation with key stakeholders, including service providers, parents, and Māori on the policy proposals.** No consultation has been undertaken on the proposals outlined in this RIS, aside from with key government agencies, including MFR, ERO and the Public Service Commission (PSC). However, the analysis has been informed by the significant amount of consultation and engagement undertaken by MFR as part of the Review. In particular, the Review has a sound body of evidence, informed by extensive consultation, on the problem definition, and the recommendations align with regulatory best practice.

These limitations and constraints increase the risk of policy failure and creates litigation risks for this work. However, despite the above constraints our analysis sets out a basis for decision-making for Cabinet, which enables them to respond to the recommendations stated in the Review. Furthermore, ERO, who, subject to final Cabinet decisions, will be responsible for implementing the proposals, has been closely involved in their development. MFR have provided advice and support regarding regulatory best practice.

**I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.**

**Responsible Manager(s) signature:** \_\_\_\_\_

**John Brooker**

**General Manager, Systems, Connections  
and Early Learning Policy**

**11 April 2025**

<sup>3</sup> Ministry of Education, Internal draft working paper “Regulatory approach for early learning” (July 2022).

### Quality Assurance Statement

**Reviewing Agency:** Ministry of Education

**QA rating:** Does not meet

**Panel Comment:**

The Ministry of Education's RIA QA panel considered this statement and assessed it as failing to meet the Cabinet's quality assurance criteria for impact analysis. This assessment corresponds to the tight constraints on the options considered, the limited analysis of impacts, cost and benefits, and lack of consultation on the proposals imposed by the timeframe. Given these constraints we consider that insufficient information and analysis has been provided to support decisions.



## Section 1: Diagnosing the policy problem

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

1. New Zealand's ECE sector aims to support children's learning and development and parent and whānau participation in the workforce. The ECE sector is comprised of a diverse range of ECE services, including care centres, kindergartens, kōhanga reo, home-based services, hospital-based services, playgroups and playcentres.
2. ECE services are considered a merit good which means they offer benefits to society beyond the benefits to individual users. The government intervenes in the sector through providing subsidies to improve affordability and accessibility for parents and regulates to ensure the safety and educational quality of service provision for children.
3. The government regulates the sector by setting and enforcing minimum standards for licensed ECE services and certified playgroups. These standards are set out in the ECE regulatory framework. Clear regulatory standards are important to protect children's health, safety and wellbeing in education and care services, and because research shows that high quality early learning experiences provide a platform for children to succeed as lifelong learners.

### ***Current regulatory system***

4. The ECE sector is currently governed by three different levels of regulation:
  - a. Primary legislation: Education and Training Act 2020 ('the Act');
  - b. Regulations: The Education (Early Childhood Services) Regulations 2008 ('the Regulations'), the Education (Playgroups) Regulations 2008, and the Education (Registration of Early Childhood Services Teachers) Regulations 2004; and
  - c. Licencing criteria for different service types, including the Licensing Criteria for Early Childhood Education and Care Centres 2008.
5. The ECE regulatory system is primarily managed by MOE as the lead regulator and steward. MOE is responsible for licensing ECE services and certifying playgroups, as well as enforcing compliance with the regulatory standards. ERO also has a role in the regulatory system through conducting regular reviews to evaluate service performance. As part of performing its role, ERO assesses whether the service complies with regulatory standards and associated licensing criteria and reports any incidents of non-compliance to MOE who are responsible for any enforcement action.

### ***Ministry for Regulation's ECE Regulatory Sector Review***

6. On 29 May 2024, the Cabinet Social Outcomes Committee agreed to begin a review into the early childhood education sector [SOU-24-MIN-0050]. The Minister for Regulation announced the Review in June 2024. The independent Review was undertaken by MFR. MOE and ERO were engaged in the review, along with other government agencies including the Ministry of Health and the Ministry of Business, Innovation and Enterprise.
7. The scope of the Review was broad and encompassed the regulatory systems for health and safety, child protection, food safety, buildings and workplaces as they apply to the ECE sector. The Review involved extensive consultation and engagement with a range of ECE stakeholders.

8. In December 2024, the MFR delivered their final report on the Review<sup>4</sup>. MFR's key finding was that the ECE regulatory system is out of date and is causing a range of problems for ECE service providers, whānau, children, and staff in regulatory roles. They also found that the current regulatory tools are not well suited or proportionate to the risks they are trying to manage, and the biggest risks in the ECE sector are not being adequately monitored.
9. MFR concluded in their report that changes are needed to:
  - a. Modernise the ECE regulatory system to better support the ECE market to grow and innovate and enable regulators to better ensure compliance;
  - b. Simplify and clarify the range of ECE regulatory requirements to reduce compliance burdens on ECE service providers and relieve regulatory confusion and duplication for all parties; and
  - c. Improve support for the ECE sector to communicate requirements more clearly and ensure they support ECE services to implement regulatory changes.
10. MFR outlined 30 findings and 15 recommendations in their report, which seek to address the current issues with the ECE regulatory system. The Minister of Regulation has accepted all the recommendations in the final report and will be progressing these through Cabinet in early 2025. A companion paper to the paper seeking Cabinet agreement to the proposals outlined in this RIS, is seeking Cabinet endorsement of the Review's recommendations.<sup>5</sup>

### What is the policy problem or opportunity?

11. The Review identified a range of problems with ECE regulatory system. The main problems that the proposals outlined in this RIS aim to address are:
  - a. **Outdated Framework:** the system lacks defined goals, clear outcomes and principles to guide decision-making, leading to inconsistencies.
  - b. **Role confusion:** the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement. This can have flow on impacts in terms of regulatory inefficiency and role duplication.
  - c. **Limited compliance monitoring:** MOE, as the lead regulator, does not systematically incorporate proactive, risk-based compliance monitoring into its regulatory operations. Monitoring is carried out primarily through ERO reviews, which also focus on the overall quality of the education and care provided by the service.
  - d. **Limited tool variety:** there is an over-reliance on licensing as a regulatory tool, with limited options for addressing varying degrees of non-compliance.
12. These regulatory problems have run-on impacts for those involved in the ECE sector, particularly children, including:
  - a. The lack of clear objectives and principles impedes effective regulation and creates a reactive system. This inhibits the system's ability to address long-term needs and can result in a short-sighted approach that fails to respond to the evolving demands of the ECE sector, and children more broadly.
  - b. Clear regulatory roles are crucial for ensuring accountability, predictable decision-making, and maintaining legitimate regulatory regimes. The current lack of accountability risks creating inconsistencies in enforcement and delays in

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<sup>4</sup> Regulatory Review of Early Childhood Education; Ministry for Regulation; December 2024.

<sup>5</sup> Paper 1: Early Childhood Education Regulatory Sector Review: recommendations and next steps



- regulatory responses, which directly affects service providers as well as children within those services.
- c. The current reliance on MOE for enforcement creates a reactive compliance monitoring system where investigation only happens after complaints, findings, notifications or specific incidents occur. This current approach inhibits timely risk management and potentially compromises child safety.
  - d. Over-reliance on licensing leads to a lack of transparency about why regulatory decisions are made and can also elongate the process of completing simple compliance actions. Again, this directly affects service providers, as well as the children impacted by minor or major breaches.
13. These regulatory problems contribute to the primary market failures that are impacting the ECE sector, including:
- a. Information asymmetry regarding the health and safety practices and education quality of ECE service, limiting parents' ability to make informed choices; and
  - b. Undersupply of ECE services, which may be caused by an inability to recruit qualified ECE teachers and a lack of clarity over what is required to meet the licencing criteria.

### **Stakeholder views**

14. As part of the Review, MFR undertook consultation with the ECE sector from early June to mid-September 2024. MFR engaged with a range of stakeholders including regulated parties (i.e., ECE service providers), regulators (i.e., the Ministry and ERO), unions, child advocacy organisations, research bodies, the ECE workforce and parents/caregivers who use ECE services. There were around 2,300 submissions, and MFR met with 40 ECE service providers and non-government organisations and visited 16 ECE services of different types, sizes and locations.
15. Parents and non-government organisations consulted as part of this Review said that ECE in New Zealand is expensive, and unaffordable for some. Undersupply was raised as an issue, particularly the limited range of range of quality ECE provision, meaning less choice for parents. There was also concern that ECE teachers were overworked and under-resourced (e.g., overburdened with paperwork), which aligns with the view ECE teachers share themselves.
16. ECE service providers said that the volume of regulatory requirements they had to meet was a challenge. The requirements were described as highly prescriptive and inconsistent in interpretation and implementation. For example, home-based services said that the regulated qualification requirements mean that they are unable to sustain and grow their services and attribute this to the decline in the number of home-based services.
17. Almost all groups consulted said that the current regulatory system doesn't meet the needs of children who are disabled, neurodivergent, or have medical needs. These children were either effectively excluded from the system due to lack of enrolment by ECE service providers; or their needs were not met within the ECE service they attended.
18. There remains disagreement as to how to fix these system issues. While government funding levels were discussed by many submitters, the potential solutions raised tended to be regulatory and focused on either removing regulations or introducing new

regulations. Alternative non-regulatory solutions were not discussed within the MFR summary of submissions.

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

19. The proposals outlined in this paper seek to address the problems that have been identified in the Review while also achieving the following objectives:
  - a. improving health, safety and educational outcomes for children participating in early childhood education;
  - b. increasing the trust and confidence of parents in the regulation of ECE services;
  - c. reducing unnecessary regulatory cost and burden for ECE service providers; and
  - d. improving the efficiency and effectiveness of the regulator and align with regulatory best practice.

**What consultation has been undertaken on the options?**

20. No consultation has been undertaken on the proposals detailed in this RIS due to the constraints impacting on the policy development process outlined above. However, the analysis of options has been informed by the feedback obtained through the significant engagement and consultation undertaken by MFR as part of their Review.

## Section 2: Assessing options to address the policy problem

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### What criteria will be used to compare options to the status quo?

21. The options have been assessed against the following criteria which align with Government expectations for good regulatory practice:<sup>6</sup>
  - a. Efficiency – the regulator can make the best use of their available resources and unnecessary cost and burden for regulated parties is minimised;
  - b. Effectiveness – the regulations allow processes that will produce predictable and consistent outcomes across time, and allow flexibility for regulated parties so that the desired outcomes are achieved;
  - c. Transparency – legal obligations and regulator expectations and practices are set out in ways that are easy to find, easy to navigate, and clear and easy to understand; and
  - d. Proportionality – the regulatory system is proportionate, fair and equitable in the way it treats the regulated parties.
22. The proposals will increase the trust and confidence of parents in the regulation of ECE services by addressing the current lack of clarity about the respective roles of MOE and ERO in the regulatory system. Parents will have clarity about who the regulator is and to whom they should direct their concerns or complaints about the quality of service provision. Parents will also know who to hold to account for the performance of core regulatory functions, which is not clear under the current system.
23. The proposals will also provide parents with reassurance that core regulatory functions, such as regular monitoring and enforcement of compliance with the regulatory standards will be undertaken, which they do not have under the current system. This will provide them with greater confidence that any breaches of the regulations that may impact their children's health and safety will be identified and addressed earlier than under the status quo. In addition, the Director of Regulation, will be required to provide parents with information about their service's level of compliance with the regulations, which MOE is not currently required to do. This will provide parents with valuable information that will inform their choice of ECE provider.

### What scope will options be considered within?

24. The options were identified and considered within the scope of the recommendations made by the Review. In particular, the Review made the following recommendations to address the problems outlined in paragraph 11:
  - **Recommendation 1:** Define clear outcomes, objectives and principles for ECE regulation in legislation, aligning with government priorities for early childhood education.
  - **Recommendation 2:** Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required.
  - **Recommendation 3:** Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector.

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<sup>6</sup> The Treasury New Zealand. 2017. Government Expectations for Good Regulatory Practice. URL: <https://www.regulation.govt.nz/assets/Uploads/Government-Expectations-for-Good-Regulatory-Practice.pdf>



- **Recommendation 8:** Update regulation to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk
25. There are several limitations and constraints on the analysis outlined in this RIS. These are due to limitations on the rigour and depth of analysis undertaken as part of the Review, Ministerial direction to accept the findings and recommendations of the Review, and Ministerial direction to develop and implement the policy response at pace to reduce regulatory burden on service providers. The key limitations are:
- a. **Limited opportunity to test key assumptions underpinning some of the findings and recommendations of the Review and consider alternative options.** The impact of this has been mitigated to some extent by MOE and ERO having been involved in the Review and through engaging with MFR on the development of the proposals.
  - b. **Limited time to undertake detailed analysis of the impacts of the proposals.** The impact of this has been somewhat mitigated by drawing on analysis undertaken by MFR in the Review as well as previous work undertaken by MOE on reforming the ECE regulatory system<sup>7</sup>. ERO has also been closely involved in the development of the proposals as, subject to final Cabinet decisions, they will be responsible for their implementation.
  - c. **Lack of consultation with key stakeholders, including service providers, parents, and Māori on the policy proposals.** No consultation has been undertaken on the proposals outlined in this RIS, aside from with key government agencies, including MFR, ERO and PSC. However, the analysis has been informed by the significant amount of consultation and engagement undertaken by MFR as part of the Review.<sup>8</sup> In particular, the Review has a sound body of evidence, informed by consultation, on the problem definition, and the recommendations align with regulatory best practice.
26. These limitations and constraints increase the risk of policy failure and creates litigation risks for this work. However, despite the above constraints our analysis sets out a basis for decision-making for Cabinet, which enables them to respond to the recommendations stated in the Review.

### What options are being considered?

#### Proposals 1, 2 & 3: Clarifying the purpose, objectives and principles of regulating ECE services

27. These proposals aim to address the following problem and recommendation identified in the Review:
- **The ECE system is out of date:** the system is outdated and lacks defined outcomes and objectives and principles for decision-making
  - **Recommendation 1:** Define clear outcomes, objectives and principles for ECE regulation in legislation, aligning with government priorities for early childhood education.
28. These proposals would amend the Education and Training Act 2020 to be clear that:

<sup>7</sup> Ministry of Education, Internal draft working paper “Regulatory approach for early learning” (July 2022).

<sup>8</sup> The consultation feedback on MFR’s Review can be found here: <https://www.regulation.govt.nz/about-us/our-publications/what-submitters-told-the-early-childhood-education-regulatory-review/>

### **Proposal 1**

- The purpose of regulating the provision of ECE services is to set minimum standards for the provision of quality ECE services that allow children to establish strong foundations for learning and positive well-being and supports the choice of parents and caregivers to participate in labour markets.

### **Proposal 2**

- The objectives of regulating the provision of ECE services are to:
  - protect the health, safety and wellbeing of children that attend early childhood education services;
  - improve educational and developmental outcomes for children that attend early childhood education services;
  - support accessibility and choice for parents, including by providing for licensing and certification of different types of provision;
  - provide information and improve knowledge about the quality of early childhood services, including to inform parental choice; and
  - implement a licensing regime that provides service providers and parents with certainty and clarity about the minimum standard of quality provision required of all early childhood service.

### **Proposal 3**

- The guiding principles that must inform regulatory decision-making are:
  - the health, safety and wellbeing of children is paramount;
  - children's learning and development is essential, and supports their readiness to transition to school
  - the role of parents and families in their children's education and care is respected and supported;
  - regulatory best practice is expected of the regulator; and
  - unnecessary regulatory cost and burden for service providers, parents and children should be avoided.

29. These proposals provide clarity and certainty for the regulator in performing its role, functions and responsibilities. It also makes it clear that the regulations are a minimum quality standard to avoid the risk of regulatory creep. This also indicates that, should there be a desire for higher standards of quality, this should be incentivised through non-regulatory tools and levers (e.g., funding and best practice guidance).
30. However, there is a risk of unintended consequences if the purpose, objectives or principles are either too broad or too descriptive, causing the regulator to focus on the wrong areas.

### *Option 2 – Status quo*

31. This option would mean that the current purpose statement set out in sections 4 and 14 of the Act apply. This would mean that the purpose statement continues to be narrowly focused on the regulatory outcomes related to children's education, their health and safety, and enabling parental choice of different ECE service types. There are no objectives or principles specified in the Act.
32. This option does not respond to the Review's finding that the ECE legislation is out of date and needed to be clearer around outcomes, objectives and principles for

regulatory decision-making. The current settings are contributing to inconsistent regulatory decision making and a lack of recognition of the role of ECE in supporting parental participation in labour markets and addressing information asymmetries for parents about service quality.

#### **Proposal 4: Clarifying agency roles and regulatory functions in the ECE system**

33. This proposal aims to address the following problem identified in the Review:
- **Role confusion:** the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement
34. It also responds to the following recommendation from the Review:
- **Recommendation 2:** Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required.
35. This option proposes clarifying the roles and responsibilities of MOE and ERO within the regulatory system and consolidating responsibility for performing core regulatory functions within a single agency. Sub-options that were considered included consolidating responsibility for performing all regulatory functions within MOE, ERO or a new entity.
36. Transferring responsibility to ERO was considered to best meet the intent of the Review's recommendations to remove duplication and reduce unnecessary compliance burden for service providers. It also aligns with ERO's expertise in working in the sector and provides opportunities for more efficient interactions with service providers.
37. The rationale for shifting regulatory functions into ERO is that it will:
- a. Increase clarity for all ECE providers through having a single regulator to engage with;
  - b. Increase consistency across the regulatory system through having a single regulatory workforce who can apply consistent judgements;
  - c. Reduce burdens on ECE providers by removing duplication of ERO reviews and MOE licence assessments;
  - d. Be in line with good regulatory practice by removing any conflict between regulating and supporting the sector; and
  - e. Provide greater clarity to parents on who they can look to for information on their ECE service or to raise concerns with provision.

#### *Option 1 – Clarify agency roles and consolidate regulatory functions within a single agency*

38. This option involves amending the Education and Training Act 2020 and associated secondary legislation to clarify that ERO would have responsibility for:
- a. Issuing, amending and revoking licences and certificates;
  - b. Providing information, support and guidance to ECE service providers regarding regulatory requirements and compliance;
  - c. Proactive monitoring of compliance, including undertaking investigations and interventions in response to complaints, accidents and incidents;
  - d. Enforcement of compliance, including undertaking investigations and prosecutions under sections 28-30 of the Act where appropriate;
  - e. Reporting on compliance and enforcement to parents and other relevant parties;



- f. Sharing information on licensing, compliance and enforcement with other agencies, including the Secretary for purposes including system stewardship, management and administration of funding, and child protection; and
  - g. Responding to complaints and appeals regarding regulatory decision making.
39. Under this option, MOE would continue to have responsibility for:
- a. System performance and setting the strategic direction of the ECE regulatory system;
  - b. Policy justification for legislation, regulations and standard setting, including licensing and certification criteria;
  - c. Administration and oversight of legislation and regulations, including regulatory stewardship of the ECE regulatory system;
  - d. Funding and purchases for ECE services and certified playgroups, including audit and mitigating and investigating fraud;
  - e. Support and guidance for the ECE sector;
  - f. Curriculum development and educational standard setting; and
  - g. Prosecutions under the Children's Act 2014.
40. This option responds directly to the problem identified in the Review, namely that the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement. Consolidating responsibility for performing core regulatory functions within a single agency, namely ERO, will:
- a. provide certainty and clarity for parents and service providers by clearly defining regulatory responsibilities;
  - b. reduce the risk of regulatory failure and inefficiency by strengthening accountability, eliminating duplication, and improving compliance oversight; and
  - c. ensure regulatory resources can be used efficiently by building capability, embedding best practice, and improving coordination across the system.
41. There are some risks associated with transferring the regulatory functions to ERO, including that ERO does not currently perform some of the regulatory functions. ERO also does not currently exercise legal powers associated with enforcing compliance with the standards set in regulations and licensing criteria, including undertaking investigations and prosecutions. However, ERO does have significant experience and capability in working with ECE services to undertake proactive monitoring of ECE services, including monitoring compliance with regulatory standards. This provides a strong foundation for transferring the other regulatory functions.
42. Risks associated with existing capability and capacity will be mitigated through the transfer of relevant systems, information and staff from MOE to ERO. A further risk is that it may negatively impact on MOE's ability to perform its other functions, including performance monitoring, administering funding, managing ECE supply, and administration of child protection policies. This risk can be mitigated through information sharing and practice protocols between ERO and MOE.

#### *Option 2 – Status quo*

43. This option would see MOE retain responsibility for licensing and certification of ECE services, including compliance and enforcement activity, providing guidance and support to ECE services around their regulatory requirements, and responding to complaints and appeals. ERO would perform its role in relation to the review and evaluation of ECE

services, including monitoring compliance with regulatory standards and reporting non-compliance to MOE for response.

44. This option would not address the problem identified in the Review that regulator roles and responsibilities are unclear and can lead to differing interpretations of regulatory requirements and conflicts between the Ministry and ERO as well as duplication and unnecessary regulatory burden.

#### **Proposal 5: Allocating responsibility for performing regulatory functions**

45. Combined with Proposal 4, this proposal aims to address the following problem and recommendation identified in the Review:
- **Role confusion:** the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement.
  - **Recommendation 2:** Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required.
46. This proposal aims to mitigate some of the risks associated with Proposal 4, by ensuring that responsibility for performing regulatory functions is clear, and independent of the powers and functions of the CRO in relation to evaluation and review. Three alternative options have been considered.
47. While we have presented all four options here for fullness of advice, we have ruled out Option 3 and 5. This is because Option 3 is essentially similar to Option 2 given under the Act, the Chief Executive is the CRO. Option 5 is a mixed model that opens the regulator up to changing responsibility for regulatory powers based on organisational change and therefore we do not consider it to be an enduring option.
48. It is noted that all the below options do carry the risk of regulatory decisions potentially being subject to legal challenge if regulatory decision-making extends beyond minimum standards set in legislation.

#### *Option 1 – Responsibility for regulatory functions sits with the CRO*

49. This option would see legal responsibility for performing regulatory functions being transferred to the CRO, who sits within ERO and who also retains responsibility for review and evaluation of ECE services. The CRO is the Chief Executive of ERO under the Act and is accountable to the Minister of Education under the Public Service Act 2020.
50. This option would address issues around confusion of agency roles by transferring responsibility for performing regulatory functions to ERO. This option has the benefit of being relatively easy to operationalise within ERO's existing structures. It also allows for ERO staff working in ECE to have one line of accountability.
51. It also is consistent with ECE regulatory models in the UK and Australia and aligns with MFR guidelines for good regulatory practice.
52. There are a number of risks with this option, including:
- a. Possibility of conflict or tension for the CRO when performing both their review and evaluation functions and their regulatory functions, including risk of political interference in regulatory decision-making given ability for Minister to direct the CRO under ss463(1)(a)(i) and 463(1)(c) to administer reviews, prepare reports and provide advice on the performance of ECE services;



- b. Risk of regulatory overreach and regulatory creep as a result of the combination of the CRO's functions and powers;
- c. Lack of clarity for ECE service providers about the relationship and boundaries between the CRO's dual roles, which could lead to distrust in the system; and
- d. Potential that amendment to CRO powers is required under the Act, for example, to prevent political interference in the performance of regulatory functions and decision making.<sup>9</sup> MOE recommended this amendment was made under this option. The Minister's preferred option was the CRO without this amendment included.

*Option 2 – Responsibility for regulatory functions sits with the Chief Executive of ERO*

- 53. This option would see legal responsibility for performing regulatory functions transfer to the Chief Executive of ERO under the Act. The CRO role would be changed so that it doesn't fall under the Chief Executive role, as currently set out in legislation (i.e., CRO and Chief Executive become two separate roles).
- 54. This option would address confusion about agency roles and indicates an intention to create a separation of roles and responsibilities with those of the CRO to mitigate the risk of potential conflicts impacting on regulatory decision-making. It also doesn't require the establishment of a new statutory role.
- 55. However, this option would require changes to ERO's organisational structures and may result in some duplication of effort. It also may be difficult to separate the Chief Executive and CRO functions, given that the Chief Executive of ERO is considered the 'Chief Review Officer' in the Act. This could lead to similar issues around duplication.
- 56. There is also the consideration of regulatory capability and experience (e.g., licensing and prosecutions), alongside the current work around review and evaluation. Service providers and parents may not see this option as being any different from option 1 (i.e., shifting regulatory functions to the CRO) if the two roles are not well defined in legislation and practice, which could result in lack of clarity.

*Option 3 – Create Director of Regulation role in the Act (Recommended)*

- 57. This option would mean the creation of a new statutory role in the Act ('Director of Regulation') who would have responsibility for performing regulatory functions. They would be a different role from the CRO but would still report to the Chief Executive of ERO, who would be responsible for employing and removing the Director of Regulation. The Chief Executive would be accountable for the performance of the Director of Regulation to the Minister of Education under the Public Service Act 2020.
- 58. This option would create a Director role that is similar to those used in other regulatory systems for allocating responsibility for regulatory functions that have licensing functions (such as land transport, aviation and maritime). MFR's view was that a new designated role within ERO would be regulatory best practice.
- 59. This new statutory role would mean a clearer separation of regulatory functions and powers, as compared to the CRO, which reduces the risk of unintended consequences and real or perceived conflicts. This separation of regulatory functions would help to mitigate the risk of:

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<sup>9</sup> For example, Sections 463 in relation to the ability of the Minister to direct the Chief Review Officer in relation to the exercise of regulatory powers and functions (i.e. licensing).

- a. regulatory creep and associated costs for ECE service providers and parents (i.e. undersupply or affordability in the market); and
  - b. the regulator going beyond the minimum legislative standard resulting in potential legal challenge.
60. This option also supports regulatory capability in a specific dedicated role. The Director of Regulation is held to account for their performance by the Chief Executive of ERO (who is accountable to the Minister of Education), helping to ensure good regulatory practice. The ECE sector would have clear visibility of who is responsible for regulatory roles and functions, leading to greater trust and confidence in the regulatory system and decision-making.
61. However, this option would require the establishment of new statutory role within ERO, including costs associated with appointing the new Director of Regulation. It also may have implications for the way the CRO currently performs its role in the ECE system to avoid duplication and overlap with regulatory functions and activities of the Director of Regulation.

*Option 4 – Create a Director of Regulation role in the Act, who could be the Chief Executive of ERO or the CRO*

62. This option would mean the creation of a new statutory role in the Act ('Director of Regulation') who would have responsibility for performing regulatory functions. However, this differs from the above option as the functions could still be undertaken by the CRO or Chief Executive of ERO. This role would report to the Chief Executive of ERO (if the regulatory functions are performed by someone who is not the Chief Executive), who would be responsible for employing and removing the Director of Regulation. The Chief Executive would be accountable for the performance of the Director of Regulation to the Minister of Education under the Public Service Act 2020.
63. This option allows for the Chief Executive of ERO to make the decision on regulatory independence, informed by the current operating context. This option also means that a mechanism is required to transfer legal accountabilities.
64. The risks with this option are similar to the other options outlined above. However, depending on decisions around regulatory independence, this may mean that powers are shifted to or from the Chief Executive depending on incoming/outgoing Chief Executives, which will have impacts for ERO's organisational structure. Additionally, legislation will need to be flexible enough to allow for the Chief Executive to shift regulatory powers to/from a Director for Regulation, which creates legal risk.

*Option 5 – Status quo*

65. The status quo option is described as part of Proposal 4 above.

**Proposal 6: Specifying the regulatory functions that the regulator must perform**

66. Combined with Proposals 4 and 5, this proposal aims to address the following problem and recommendation identified in the Review:
- **Role confusion:** the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement.
  - **Recommendation 3:** Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector.



*Option 1 – Amend the Act to specify the regulatory functions that the regulator must perform*

67. This option proposes amending the Act to specify the regulatory functions that the regulator (i.e., Director of Regulation) must perform, including:
- Performing licensing and certification functions set out in the Education and Training Act 2020 and regulations created under sections 636 and 637 of the Act;
  - Undertaking proactive, regular risk-based monitoring and enforcement of compliance, including undertaking prosecutions as appropriate;<sup>10</sup>
  - Providing information, support and guidance to ECE service providers regarding regulatory requirements and compliance;
  - Providing information on compliance to parents and other interested parties, and help build their knowledge about the quality of ECE services;
  - Responding to complaints about service provision and undertaking investigations in response to accidents and incidents at ECE services, where appropriate;
  - Responding to complaints and appeals from ECE service providers regarding regulatory decisions;
  - Collecting and providing information to the Secretary necessary for the Secretary to perform their role and functions in ECE, including in relation to system stewardship, funding, and child protection;
  - Publishing and regularly updating information in its regulatory approach, including a regulatory strategy; and
  - Working collaboratively with other agencies that have a role in regulating ECE services, including sharing information where appropriate.
68. This option would require the regulator to perform specific functions to create a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector. Currently these functions are not specified in the Act which creates a risk of inconsistent enforcement, limits accountability and does not align with best practice principles of regulation. Introducing these new powers would increase consistency of compliance activity across the regulatory system, and consistency of regulator decision-making, which will improve clarity and certainty, and reduce burden, for ECE service providers around compliance activity.
69. To mitigate concerns that these functions would be resource intensive (e.g., through expanding the monitoring, enforcement and compliance activities), it will be noted at Cabinet that the Associate Minister of Education or Minister of Education may seek additional funding as part of Budget 2026.

*Option 2 – Status quo*

70. This option would mean that the performance of key regulatory functions, such as regular proactive monitoring of compliance, is not specified in the Act. This creates a risk that these functions are not performed effectively, which is what the Review has identified as a problem with the current regulatory system.
71. This option would not respond to the Review's recommendation of the need to implement a more proactive, risk-based approach to compliance to improve safety and

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<sup>10</sup> Note that ERO already undertake this role, which provides further justification for transferring the ECE regulatory functions to that agency.



accountability in the ECE sector. This option also does not align with regulatory best practice and the approach taken in other regulatory systems.

### Proposal 7: Ensuring independence of the regulator

72. Combined with Proposals 4, 5, and 6, this proposal aims to address the following problem and recommendation identified in the Review:
- **Role confusion:** the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement.
  - **Recommendation 3:** Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector.

*Option 1 – Amend the Act to ensure that the regulator is undertaking their functions independently from Government Minister influence or direction*

73. This option proposes amending the Act and associated regulations to require the regulator (i.e., the Director of Regulation) to act independently when performing certain regulatory functions, including that:
- a. The regulator must perform the following functions independently from any influence or direction of Government Ministers:
    - i. Licensing of early childhood services and certifying of playgroups; and
    - ii. Enforcement of compliance, including licence suspensions and cancelations, and undertaking investigations and prosecutions.
74. This option makes it clear that the regulator, in undertaking their regulatory role, functions and responsibilities, must be cognisant of and ensure that their regulatory decision making is not influenced or steered by Government Ministers.
75. This option would mitigate the risks raised in the above proposals about the transfer of regulatory functions and its potential impact on actual or perceived political interference.

*Option 2 – Status quo*

76. This option would leave open the risk of actual or perceived political interference in the regulator's undertaking of regulatory functions and decision making.

### Proposal 8: Changes to support role clarification and shift of regulatory functions

77. Combined with Proposals 4, 5, 6 and 7, this proposal aims to address the following problem and recommendation identified in the Review:
- **Role confusion:** the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement.
  - **Recommendation 2:** Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required.
  - **Recommendation 3:** Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector.

*Option 1 – Amend the Act to ensure that the regulators have access to the appropriate powers to support their role and regulatory functions*

78. This option proposes amending the Act and associated regulations to ensure the regulator (i.e., the Director of Regulation) has the necessary powers to perform their regulatory role and functions, including:

- a. Requiring ECE service providers to keep records and make these available on request (section 22 of the Act);
- b. Making it an offence for an ECE service provider to cease operating a centre without telling the new regulator and the Secretary (section 28(1)(b) and (c) of the Act);
- c. Requiring, by written notice, and for the purposes of performing their functions, the ECE service provider to provide information by a specified date (section 619 of the Act); and
- d. Authorising any person who, in their opinion, is suitable qualified and trained, to exercise the powers of entry and inspection without a warrant (section 626(3) of the Act).

79. This option is required to give effect to the transfer of regulatory functions.

#### *Option 2 – Status quo*

80. Under the status quo, ERO would not have the necessary powers to undertake their new regulatory roles and functions. As such, the status quo is not a viable option.

### **Proposal 9: Prescription of licensing criteria**

81. This proposal aims to address the following problem and recommendation identified in the Review:
- **Role confusion:** the perceived overlap in roles of MOE and ERO sometimes leads to confusion and conflicts, particularly in compliance and enforcement.
  - **Recommendation 5:** Strengthen regulatory oversight to foster trust, transparency and effective sector stewardship.
82. This proposal would amend the Act to provide the Minister of Education with the power to:
- a. prescribe criteria to be used by the regulator to assess compliance with the minimum standards imposed in the Education (Early Childhood Services) Regulations 2008, following receipt of advice from the Secretary and after consultation with affected parties, including the Director of Regulation; and
  - b. require the Secretary to outline the impacts of the proposed criteria, including upon whom they fall.
83. This option would create a new power in the Act that would ensure that licensing criteria is thoroughly assessed against the standards imposed in the regulations, including policy objectives, costs and trade-offs.

### **Proposal 10: Providing for graduated regulatory enforcement tools**

84. This proposal aims to address the following recommendation identified in the Review:
- **Recommendation 8:** Update regulation to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk.

#### *Option 1 – Amend the Education (Early Childhood Services) Regulations 2008 to provide a graduated set of enforcement tools for the regulator to use as part of its regulatory compliance activity*

85. This option would provide a broader range of regulatory enforcement tools for the regulator to use as part of its compliance activity when regulating ECE services. These new tools would be used alongside other non-regulatory measures and includes:

- a. Record of non-compliance - where a formal record is kept of an incident of non-compliance that was identified by the regulator and immediately addressed by the licence holder;
  - b. A written warning – specifying the non-compliance that has been identified and the remedial action must be taken by a specified date to avoid further compliance action;
  - c. A written direction to comply within 10 days – where non-compliance is identified that poses a health and safety risk but can be remedied safely while the service continues to operate;
  - d. Requirement to engage specialist help – where the service provider must employ or engage a specialist or expert in a specified area to support them to address non-compliance;
  - e. Requirement to develop and implement an improvement plan – where the service provider must, within 15 working days, set out the specific actions that will be taken to address non-compliance, including timeframes, to the satisfaction of the regulator (i.e., Director of Regulation);
  - f. Additional conditions on the ECE service licence - whereby the regulator may specify additional conditions on the service providers licence (either temporarily or permanently) that must be met in order to operate. Where conditions are temporary, the requirements for the removal of the conditions must be specified;
  - g. Reclassification of an ECE service licence as provisional - whereby the status of the service licence is downgraded to provisional, and conditions are set that must be met within the timeframes specified by the regulator and in the regulations, or the licence is cancelled;
  - h. Suspension of an ECE service licence – whereby the service provider is prevented from operating until the regulator is satisfied compliance with the regulations has been achieved; and
  - i. Cancellation of an ECE service licence – whereby the service provider’s licence to operate a service is permanently cancelled.
86. This option would provide the regulator with a broader range of tools to support its compliance activity, enabling the regulator to then provide timelier and more responsive compliance monitoring and actions. This is an element of good regulatory practice and would allow a more effective ECE regulatory system. It would also provide more clarity and certainty for ECE service providers and parents around how the regulator undertakes their compliance role, function and responsibilities, creating more trust and confidence in the system.
87. This option also responds to the Review’s recommendation that the regulations be updated to allow a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk.

#### *Option 2 – Status quo*

88. This option would mean that the current limited range of ECE regulatory tools would apply, which primarily focus on changing the status of the service licence to provisional (or licence suspension or cancellation) to enforce compliance with the regulations. This is a problem as the current set of tools are not proportionate to the risk, leading to ECE service providers being concerned that they may lose their licence for a minor breach of the regulations. In the current state, it is possible for an ECE service to have their full or



probationary licence reclassified as provisional, or even suspended, for a potentially minor breach, due to the bluntness of the enforcement tools.

89. Moreover, this option would not address the issues raised in the Review that the ECE regulatory toolkit is limited, there is an over-reliance on changing the status of the service licence to enforce compliance, and that compliance activities and enforcement tools are not proportionate.

#### **Proposal 11: Allowing for the regulator to publish notification of compliance action**

90. This proposal aims to address the following problem and recommendation identified in the Review:
- **Information asymmetry:** In the current system, parents and whānau often lack access to clear, comparative information about the quality and safety of ECE services.
  - **Recommendation 8:** Update regulation to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk.

#### *Option 1 – Amend the Education (Early Childhood Services) Regulations 2008 to provide for the regulator to be able to publicly notify of compliance action for an ECE service*

91. This option would amend the Regulations to enable the regulator to have discretion to issue a public notice of non-compliance, including details of the enforcement action that has been taken, if they are satisfied this is in the public interest and any one of the following enforcement actions has been taken:
- a. Written direction to comply within 10 days;
  - b. Requirement to engage specialist help; and/or
  - c. Requirement to develop and implement an improvement plan.
92. This option requires for the regulator to issue a public notice of non-compliance, including details of the enforcement action that has been taken, if any one of the following enforcement actions has been taken:
- a. Reclassification of the ECE service licence as provisional;
  - b. Suspension of the ECE service licence; or
  - c. Cancellation of the ECE service licence.
93. This option would complement the graduated set of enforcement tools (outlined above) and ensure that parents have access to the right information about their ECE service provider's compliance with the regulations. This would address a key issue raised in the Review about the information asymmetries within the ECE regulatory system for parents and families of children in ECE.

#### *Option 2 – Status quo*

94. This option would mean that the current range of ECE regulatory tools would apply, which primarily focus on altering the licence status of ECE services (provisional, suspension, cancellation).
95. This option would not align with good regulatory practice, as not having a range of enforcement tools available for regulators means they cannot take proportionate action that addresses the different levels of risk nor encourage sector-wide improvements in compliance behaviour.

## Proposal 12: Setting a higher threshold for provisional licences

96. This proposal aims to address the following recommendation identified in the Review:

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

*Option 1 – Amend the Education (Early Childhood Services) Regulations 2008 to increase the threshold for an ECE service provider to have their licence reclassified as provisional*

97. This option would amend the Regulations so that the regulator may reclassify a probationary or full licence as provisional if satisfied that the service provider:

- a. has been issued with one or more of the following enforcement actions and failed to comply:
  - i. written direction to comply within 10 days;
  - ii. requirement to engage specialist help;
  - iii. requirement to prepare and carry out an improvement plan;
  - iv. additional conditions on the licence; or
- b. has been found to be non-compliant and has been issued with two or more of the following enforcement actions in the preceding 12 months:
  - i. record of non-compliance;
  - ii. formal written warning;
  - iii. written direction to comply within 10 days;
  - iv. requirement to engage specialist help;
  - v. requirement to develop and implement an improvement plan;
  - vi. additional conditions on the licence.

98. This option would ensure a more clear and proportionate regulatory response to non-compliance. It will also allow the regulator to have a much broader suite of tools to enforce compliance.

*Option 2 – Status quo*

99. This option would retain the current threshold for the reclassification of a provisional licence (i.e., a lower threshold). This would mean that although the threshold is proportionate in situations where a major compliance breach occurs, it is less proportionate for less serious compliance concerns, leading to the risk that some ECE services may have their licence reclassified as provisional for minor issues; this would be stressful and disruptive for ECE service providers.

## Proposal 13: Setting a higher threshold for licence suspensions

100. This proposal aims to address the following recommendation identified in the Review:

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

*Option 1 – Amend the Education (Early Childhood Services) Regulations 2008 to increase the threshold for an ECE service provider to have their licence suspended*

101. This option would amend the Regulations so that the regulator may suspend an ECE service licence, if satisfied on reasonable grounds that:

- a. there is an immediate risk to the health, safety or wellbeing of children attending or participating in the service; and
  - b. it is not in the children's interests that the service continues to operate.
102. This option would improve the proportionality of the regulations as it would provide more clarity around the licensing requirements and give the regulator more tools to manage any breaches to the licensing requirements. This would mean that enforcement decisions are more rigorous and robust, creating more certainty for ECE service providers and parents.
103. However, there is a risk that increasing the threshold may delay the suspension of some ECE service licences when serious concerns are raised about their compliance with the regulations.

*Option 2 – Status quo*

104. Similar to the proposal above, this option would retain the current threshold for suspension of a licence (i.e., a lower threshold). The current requirements are very broad and open to interpretation which can lead to situations where a licence may be suspended that are not always justified. This in turn risks legal challenge by ECE services and creates uncertainty for parents of children in ECE.

## How do the options compare to the status quo/counterfactual?

105. The Review identified problems with the status quo which is not leading to optimal outcomes as outlined in section 1 above. The below analysis of the options assessed the extent to which the proposals were better or worse than the status quo, by taking the status quo as the baseline measure.

106. The key for the options analysis table is below:

Key			
++	much better than the status quo	-	worse than the status quo
+	better than the status quo	--	much worse than the status quo
0	No change		

Proposal 1: Clarifying the purpose of regulating ECE services		
	Option 1 – Status Quo	Option 2 – Provide a clear purpose statement in the Act for regulating ECE services (this purpose statement is outlined earlier in this section)
Regulator efficiency	0	++ (Option would provide certainty and clarity for the regulator to inform decisions about how to best use available resources to achieve the purpose of the regulations. It would make it clear that the regulations are a minimum quality standard to avoid risk of regulatory creep and enable higher standards to be incentivised through other tools and levels (e.g., funding and best practice guidance))
Effectiveness of ECE regulatory system	0	++ (Option would create clarity and consistency, enabling regulator to better undertake their role and functions, and is critical for effectiveness of the ECE regulatory system)
Transparency of ECE regulations	0	++ (Option would reduce information asymmetry for parents about service quality)
Proportionality of ECE regulations	0	++ (Option would create greater proportionality of ECE regulations as specifying labour market participation in the purpose statement would allow for the regulator to consider parents' ability to work)



<b>Overall assessment</b>	0	+8
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<b>Proposal 2: Clarifying the objectives of regulating ECE services</b>		
	<b>Option 1 – Status Quo</b>	<b>Option 2 – Provide clear objectives in the Act for regulating ECE services (these objectives are outlined earlier in this section)</b>
<b>Regulator efficiency</b>	0	++ (Option would provide certainty and clarity for the regulator to inform decisions about how to best use available resources to achieve the objectives of the regulations. It would make it clear that the regulations are a minimum quality standard to avoid risk of regulatory creep and enable higher standards to be incentivised through other tools and levels (e.g., funding and best practice guidance))
<b>Effectiveness of ECE regulatory system</b>	0	++ (Option would create clarity and consistency, enabling regulator to better undertake their role and functions, and is critical for effectiveness of the ECE regulatory system)
<b>Transparency of ECE regulations</b>	0	++ (Option would reduce information asymmetry for parents about service quality)
<b>Proportionality of ECE regulations</b>	0	++ (Option would ensure consistency in how regulator performs their role and functions, and aligns with Government expectations for good regulatory practice)
<b>Overall assessment</b>	0	+8



Proposal 3: Clarifying the guiding principles of regulating ECE services		
	Option 1 – <i>Status Quo</i>	Option 2 – Provide guiding principles in the Act for regulating ECE services (these principles are outlined earlier in this section)
Regulator efficiency	0	++ (Option would provide certainty and clarity for the regulator to inform decisions about how to best use available resources to meet the principles of the regulations. It would make it clear that the regulations are a minimum quality standard to avoid risk of regulatory creep and enable higher standards to be incentivised through other tools and levels (e.g., funding and best practice guidance))
Effectiveness of ECE regulatory system	0	++ (Option would create clarity and consistency, enabling regulator to better undertake their role and functions, and is critical for effectiveness of the ECE regulatory system)
Transparency of ECE regulations	0	++ (Option would reduce information asymmetry for parents about service quality)
Proportionality of ECE regulations	0	++ (Option would ensure consistency in how regulator performs their role and functions, and aligns with Government expectations for good regulatory practice)
Overall assessment	0	+8

Proposal 4: Clarifying agency roles and functions in the ECE system		
	Option 1 – Status Quo	Option 2 – Transfer licensing and certificating of ECE services to ERO
Regulator efficiency	0	++ (Option would reduce duplication of agencies' activities which would ensure that regulatory resources are used efficiently and effectively and reduce regulatory burden for ECE service providers)
Effectiveness of ECE regulatory system	0	+ (Option ensures clarity about which agency is responsible for performing core regulatory functions, which mitigates risk of regulatory failure. However, there is a risk of conflict with existing functions and powers that needs to be managed)
Transparency of ECE regulations	0	+ (Option would provide certainty and clarity for parents and ECE service providers around agencies' roles and responsibilities. However, option could create confusion if regulatory functions conflict with ERO's current role)
Proportionality of ECE regulations	0	0 (Option does not impact on proportionality of ECE regulations)
Overall assessment	0	+4

Proposal 5: Allocating responsibility for performing regulatory functions					
	Option 1 – <i>Status Quo</i>	Option 2 – Shift regulatory functions to CRO	Option 3 - Shift responsibility to Chief Executive of ERO	Option 4 – Create new statutory role in ERO (recommended)	Option 5 – Create new statutory role in ERO, who could be Chief Executive of ERO or CRO
<b>Regulator efficiency</b>	0	++  (Option would mean that ERO staff will have one accountability line and one delegation line, which could lead to operational efficiency gains)	+  (Option would lead to one accountability line for both regulatory and review functions but two delegation lines, which could lead to some operational efficiency gains)	0  (Option would lead to two separate accountability lines and two delegation lines and staff would report to different people on regulatory and review matters. This could lead to higher operational costs)	0  (Unable to properly weight criteria as it is largely dependent on where regulatory functions will sit within ERO)
<b>Effectiveness of ECE regulatory system</b>	0	+  (Option would be consistent with ECE regulatory models in UK and Australia <sup>11</sup> . However, option may lead to risk of lack of role clarity and regulatory creep from regulatory decision being influenced by decisions on broader quality, leading to an unintended rise in standards)	+  (Option would mean regulatory function is separated from CRO functions which provides greater role clarity and reduces risk of unintended consequences and real/perceived conflicts in roles)	++  (Option would not compromise on regulatory capability as it sets up a new statutory role with a clear purpose to undertake a regulatory function that is separate from the review function; Director of Regulation is solely focused on regulation which supports good regulatory practice)	0  (Unable to properly weight criteria as it is largely dependent on where regulatory functions will sit within ERO)
<b>Transparency of ECE regulations</b>	0	-  (Possibility that this option may lead to lack of clarity and confusion for ECE	+  (Option would provide more certainty and clarity for parents and ECE services on agency	++  (Option would provide more certainty and clarity for parents and ECE services on agency	0  (Unable to properly weight criteria as it is largely dependent

<sup>11</sup> However, there are some differences between the New Zealand, Australian and United Kingdom regulatory systems.

		services and parents if the ECE regulatory function is being performed by the CRO (i.e., who reviews ECE services). This could increase the risk of legal challenge)	responsibilities (as no risk of conflicting roles)	responsibilities as no risk of conflicting roles)	on where regulatory functions will sit within ERO)
<b>Proportionality of ECE regulations</b>	0	0 (Option may have an impact on proportionality if regulatory creep/overreach eventuates, leading to higher regulatory standards)	0 (Option may have an impact on proportionality as separation of roles could prevent risk of regulatory creep/overreach leading to different regulatory standards being created)	0 (Option may have an impact on proportionality as separation of roles could prevent risk of regulatory creep/overreach leading to different regulatory standards being created)	0 (Option does not impact on proportionality of ECE regulations)
<b>Overall assessment</b>	0	+2	+3	+4	Unable to score

Proposal 6: Specifying the regulatory functions that the regulator must perform		
	Option 1 – <i>Status Quo</i>	Option 2 – Specify regulatory functions in the Act (these functions are outlined earlier in this section)
Regulator efficiency	0	++ (Option would make regulatory functions clearer for regulating agencies, providing a foundation for decisions about the use of regulatory resource and regulatory practice to be more efficient)
Effectiveness of ECE regulatory system	0	++ (Option would make regulatory functions clear so the regulator can undertake their functions more effectively, which will ensure effectiveness in the system)
Transparency of ECE regulations	0	++ (Option would provide certainty and clarity for parents and ECE service providers about the functions of the regulator. It will also provide a mechanism for the regulator to be held to account for their performance)
Proportionality of ECE regulations	0	0 (Option does not impact on the proportionality of the ECE regulations)
Overall assessment	0	+6

Proposal 7: Ensuring independence for the regulator when they undertake their regulatory functions		
	Option 1 – Status Quo	Option 2 – Specify regulator independence in the Act (these proposed requirements are outlined earlier in this section)
Regulator efficiency	0	++ (Option would make regulatory functions and decision-making clearer for regulating agencies, reducing perceived risk of political interference or influence, which provides a foundation for decisions about the use of regulatory resource and regulatory practice to be more efficient)
Effectiveness of ECE regulatory system	0	++ (Option would make regulatory functions clear so the regulator can undertake their functions more effectively and without risk or perceived risk of political interference, which will ensure effectiveness in the system)
Transparency of ECE regulations	0	++ (Option would provide certainty and clarity for parents and ECE service providers about the independence of the regulator, ensuring greater trust and confidence in regulatory decision making)
Proportionality of ECE regulations	0	0 (Option does not impact on the proportionality of the ECE regulations)
Overall assessment	0	+6

Proposal 8: Changes to support role clarification and shift of regulatory functions		
	Option 1 – <i>Status Quo</i>	Option 2 – Ensure regulatory powers are outlined in the Act to support regulator role and functions <i>(these powers are outlined earlier in this section)</i>
Regulator efficiency	0	++ (Option would make regulatory functions clearer for regulating agencies, providing a foundation for decisions about the use of regulatory resource and regulatory practice to be more efficient)
Effectiveness of ECE regulatory system	0	++ (Option would make regulatory functions clear so the regulator can undertake their functions more effectively, which will ensure effectiveness in the system)
Transparency of ECE regulations	0	++ (Option would provide certainty and clarity for parents and ECE service providers about the functions of the regulator. It will also provide a mechanism for the regulator to be held to account for their performance)
Proportionality of ECE regulations	0	0 (Option does not impact on the proportionality of the ECE regulations)
Overall assessment	0	+6



Proposal 9: Prescription of licensing criteria		
	Option 1 – <i>Status Quo</i>	Option 2 – Ensure the Act enables the Secretary to prescribe licensing criteria to be used by the regulator to assess compliance with minimum standards (this proposal is further outlined earlier in this section)
Regulator efficiency	0	++ (Option would make regulatory functions clearer for the regulator when assessing licensing criteria, as it ensures consideration of impacts of the proposed criteria which will support better efficiency)
Effectiveness of ECE regulatory system	0	++ (Option would mean that regulatory decisions on the proposed licensing criteria is considerate of the potential impacts of the criteria, which is critical for effectiveness in regulating the system)
Transparency of ECE regulations	0	++ (Option would ensure that any potential impacts of the licensing criteria is considered which will give parents and ECE service providers more confidence in the system)
Proportionality of ECE regulations	0	++ (Option will increase the proportionality of the licensing criteria as it considers potential impacts of any proposed criteria)
Overall assessment	0	+8



Proposal 10: Providing for graduated regulatory enforcement tools		
	Option 1 – Status Quo	Option 2 – Provide for graduated set of enforcement tools in the Education (Early Childhood Services) Regulations 2008 for regulator to use as part of its compliance activity (these tools are outlined earlier in this section)
Regulator efficiency	0	++ (Option would provide the regulator with a broader range of tools to support its compliance activity, enabling the regulator to provide more timely and responsive actions around compliance issues)
Effectiveness of ECE regulatory system	0	++ (Option would provide the regulator with a broader range of tools to support its compliance activity, enabling the regulator to then provide timelier and more responsive compliance monitoring and actions. This is an element of good regulatory practice and would allow a more effective ECE regulatory system)
Transparency of ECE regulations	0	++ (Option provides more clarity and certainty for ECE service providers and parents around how the regulator undertakes their compliance role, function and responsibilities, creating more trust and confidence in the system)
Proportionality of ECE regulations	0	++ (Option would provide the regulator with a broader range of tools to support its compliance activity so that it can better respond to a range of compliance matters)
Overall assessment	0	+8

Proposal 11: Allowing for the regulator to publish notification of compliance action		
	Option 1 – Status Quo	Option 2 – Provide for the regulator to publicly notify of compliance action in the Education (Early Childhood Services) Regulations 2008 (the criteria for issuing the notification are outlined earlier in this section)
Regulator efficiency	0	++ (Option would provide the regulator with another tool in its compliance toolkit to support its compliance activity, enabling the regulator to provide more timely and responsive actions around compliance issues)
Effectiveness of ECE regulatory system	0	++ (Option would provide the regulator with a broader range of tools to support its compliance activity, enabling the regulator to then provide timelier and more responsive compliance monitoring and actions. This is an element of good regulatory practice and would allow a more effective ECE regulatory system)
Transparency of ECE regulations	0	++ (Option would ensure that parents have access to the right information about their ECE service provider's compliance with the regulations. This gives parents trust and confidence in the ECE system)
Proportionality of ECE regulations	0	++ (Option would provide the regulator with a broader range of tools to support its compliance activity so that it can better respond to a range of compliance matters)
Overall assessment	0	+8

Proposal 12: Setting a higher threshold for provisional licences		
	Option 1 – Status Quo	Option 2 – Amend the Education (Early Childhood Services) Regulations 2008 to increase the threshold for an ECE service provider to have their licence reclassified as provisional (the criteria for reclassifying the service licence are outlined earlier in this section)
Regulator efficiency	0	<p>+</p> <p>(Option would create clarity and certainty for the regulator around the criteria for issuing a provisional licence, enabling the regulator to apply this compliance action more consistently. However, there is a risk that increasing the threshold may delay some ECE service licences from being reclassified as provisional when concerns are raised about their operation)</p>
Effectiveness of ECE regulatory system	0	<p>++</p> <p>(Option would provide the regulator with a broader range of tools to support its compliance activity, enabling the regulator to then provide timelier and more responsive compliance monitoring and actions. This is an element of good regulatory practice and would allow a more effective ECE regulatory system)</p>
Transparency of ECE regulations	0	<p>++</p> <p>(Option would ensure that parents have access to the right information about their ECE service provider's compliance with the regulations. This gives parents trust and confidence in the ECE system)</p>
Proportionality of ECE regulations	0	<p>++</p> <p>(Option would amend the criteria for reclassifying a service licence to provisional so that it is more proportionate to the severity of the compliance action)</p>
Overall assessment	0	+7

Proposal 13: Setting a higher threshold for suspension of licences		
	Option 1 – Status Quo	Option 2 – Amend the Education (Early Childhood Services) Regulations 2008 to increase the threshold for an ECE service provider to have their licence suspended (the criteria for suspending the service licence are outlined earlier in this section)
Regulator efficiency	0	<p>+</p> <p>(Option would create clarity and certainty for the regulator around the criteria for suspending a service licence, enabling the regulator to apply this compliance action more consistently. However, risk that increasing the threshold may delay some ECE service licences from being suspended when concerns are raised about their operation)</p>
Effectiveness of ECE regulatory system	0	<p>++</p> <p>(Option would provide the regulator with a broader range of tools to support its compliance activity, enabling the regulator to then provide timelier and more responsive compliance monitoring and actions. This is an element of good regulatory practice and would allow a more effective ECE regulatory system)</p>
Transparency of ECE regulations	0	<p>++</p> <p>(Option would ensure that parents have access to the right information about their ECE service provider's compliance with the regulations. This gives parents trust and confidence in the ECE system)</p>
Proportionality of ECE regulations	0	<p>++</p> <p>(Option would amend the criteria for suspending a service licence so that it is more proportionate to the severity of the compliance action)</p>
Overall assessment	0	+7

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

107. Given the aforementioned limitations on options analysis, alternative options were not considered for most of the proposals. This means that most of the proposals assessed are the preferred option (as they were analysed against the status quo). These options are outlined above.

**Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?**

108. Yes.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

<b>Affected groups</b> (identify)	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	A risk for regulated groups is the options around the allocation of regulatory functions. There is the risk that these options may create regulatory overreach and regulatory creep, which would create administrative cost and burden for ECE services.	Low – the options to transfer regulatory functions to CRO or Chief Executive of ERO have been identified as not being the preferred option.	Medium – it is difficult to properly assess the level of risk of these proposals due to lack of consultation with key stakeholders and constraints on the analysis undertaken. However, the analysis has been informed by the significant amount of consultation and engagement undertaken by MFR as part of the Review.
Regulators	As part of the proposals, Cabinet agreement will be sought to shift regulatory functions from MOE to ERO, which will initiate an organisational change process. There will be costs associated with undertaking this change process.  9(2)(f)(iv)	Low-Medium impact – these proposals will create administrative burden for agencies in operationalising these changes. 9(2)(f)(iv)	Medium – it is difficult to properly assess the level of risk of these proposals due to constraints on the analysis of the impacts of these proposals. However, this limitation has been mitigated by drawing on analysis undertaken by MFR in the Review as well as



	9(2)(f)(iv)		<p>previous work undertaken by MOE on reforming the ECE regulatory system. ERO has also been closely involved in the development of the proposals, as they will be responsible for their implementation.</p> <p>9(2)(f)(iv)</p>
Parents and children in ECE	There is the risk, depending on how these proposals are implemented, that clarity and certainty may not be achieved in terms of how the system is regulated by ERO and MOE, which would impact on the level of transparency in the system and in turn how confident parents are of the system.	Low	Medium – as mentioned above, there are constraints on this analysis, but those have been mitigated by analysis undertaken by MFR and previous consultation they have undertaken on the ECE regulatory system.
Non-monetised costs	Medium		
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	These proposals should not create any administrative costs or burden for	Medium impact – although these proposals focus more	Medium – see above

	<p>regulated groups. These proposals should improve the clarity and certainty for the regulator in undertaking their regulatory functions and responsibilities, which in turn will mean regulatory decisions are timelier, more responsive and proportionate. This means that more ECE services can remain open (as the proposals will promote a lighter touch and more proportionate enforcement model).</p> <p>This will also support the ECE regulatory system to be more effective, so ECE services can focus on providing high quality ECE provision.</p>	<p>on clarifying regulatory functions and responsibilities, regulated groups will see the regulator being able to provide a more efficient regulatory response to issues within the ECE system.</p>	
Regulators	<p>The proposals will improve the efficiency and effectiveness of the regulator and align with regulatory best practice. This is because unlike the current state, regulatory functions will be clearly expressed in legislation, and regulatory roles, functions and responsibilities will be clearer and provide more certainty for the regulator, regulated groups and parents. Additionally, the purpose, objectives and principles of regulating ECE services is clearly stated, reducing confusion and providing the foundation for the regulator to be more efficient in undertaking their duties and responsibilities.</p>	<p>Medium impact – 9(2)(f)(iv)</p>	<p>Medium – see above</p>

	<p>The proposals support greater role delineation for agencies in performing their regulatory functions, which reduces regulatory inefficiencies and duplication. This is crucial for improving good regulatory practice.</p> <p>The proposals will increase clarity and transparency of the regulator's role, functions and responsibilities which will create more trust and confidence in the ECE regulatory system. The proposals to broaden the range of enforcement tools will mean that responses to compliance breaches are more proportionate to the level of risk.</p>		
Parents and children in ECE	<p>The proposals would make it clear that the purpose, objectives and principles of regulating ECE services is to support the choice of parents and caregivers so they can participate in labour markets, support accessibility and choice for parents around ECE provision, ensure that the ECE licensing regime provides parents with certainty and clarity about the minimum standard of quality provision, and ensure that the role of parents and families in their children's education and care is respected and supported. This will help address one of the key market failures signalled in the Review that there is information asymmetry for</p>	<p>Low-Medium – the proposals would make it clear in ECE legislation that a core function of regulating ECE services is to improve information provided to parents (such as on quality of ECE provision and compliance activity undertaken), which enables parent choice and reduces information asymmetry.</p>	<p>Medium – see above</p>

	<p>parents around the quality of ECE service provision. This will increase trust and confidence of parents in the regulation of ECE services.</p> <p>Additionally, the proposal to allow for the issuing of a public notification of compliance action will complement the graduated set of enforcement tools and ensure that parents have access to the right information about their ECE service provider's compliance with the regulations. The proposals to increase the threshold for provisional and suspended licences would mean that enforcement decisions are more rigorous and robust, creating more certainty for parents.</p>		
<b>Non-monetised benefits</b>	Medium		

## Section 3: Delivering an option

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### How will the proposal be implemented?

109. The Associate Minister of Education intends to make the majority of the proposed amendments to the Act through the Education and Training (Early Childhood Education Reform) Amendment Bill (the Bill), 9(2)(f)(iv) [REDACTED]. These proposals will come into effect within two months of the legislation passing within MOE.
110. 9(2)(f)(iv) [REDACTED]
111. Proposed amendments to the Education (Early Childhood Services) Regulations 2008 to implement the new set of graduated enforcement tools will be made once the Bill has been passed. The Associate Minister of Education is seeking Cabinet agreement for the Parliamentary Counsel Office to draft the amendment regulations now so that public consultation can be undertaken on an exposure draft of the Regulations before the amendments to the Act come into effect. This will provide an opportunity to test the changes with the sector and parents before they are finalised. MOE and ERO intend to undertake further work to determine the date that these changes should come into effect; given they are a significant change from current practice, it is important that the new regulator has sufficient capacity and capability to implement the new tools.
112. The transfer of regulatory functions from MOE to ERO creates some risks, particularly the fact that ERO does not have the experience, capability, or systems currently in place for administering a licensing and certification regime. ERO also does not currently exercise legal powers associated with enforcing compliance with the regulations and licensing criteria, including undertaking investigations and prosecutions. However, ERO does have significant experience and capability in working within ECE services to undertake proactive monitoring with the regulatory standards and identify actions to address non-compliance and low quality. This provides a strong foundation for the transferral of other regulatory functions.
113. The risks associated with existing capability and capacity will be mitigated through the transfer of relevant systems, information and staff from MOE to ERO. Work is also underway to develop ERO's new operating model, which aims to respond to other recommendations from the Review that focus on investing in and strengthening the capacity of the regulator. This includes workforce training, communication and compliance processes, support for service providers, and support for regulatory decision-making. 9(2)(f)(iv) [REDACTED].
114. MOE will use its usual channels to communicate the changes to the Act and regulations, including print and social media, and through professional learning and development



material. MOE will also communicate these changes through the early learning bulletin. MOE already has well-established networks and communication channels with the sector to support the implementation of proposed regulatory changes, including the Early Childhood Advisory Committee.

115. There is the possibility that the sector may raise concerns about how ERO will manage any actual, potential or perceived conflicts between its new regulatory function and its current review function. Concerns may also be raised as to how such changes may impact MOE's performance as the lead agency for ECE. No stakeholder consultation has been undertaken on the proposals set out in this paper, due to timing constraints; though, this is partly mitigated by the stakeholder feedback captured as part of the Review which was used to help inform the final proposals. Additionally, MOE and ERO intend to work with the sector to provide support around these regulatory changes.

**How will the proposal be monitored, evaluated, and reviewed?**

116. Under the proposed decisions ERO would have responsibility for responding to complaints from providers, parents and other stakeholders. However, since MOE still retains responsibility for regulatory stewardship there will be collaboration between the two agencies if any issues are raised around system performance.
117. Additionally, Recommendation 4 of the Review states that pathways for providers to appeal regulatory decisions should be improved, and this should include consideration of whether to establish an independent dispute resolution mechanism. Consideration of this recommendation is intended to begin imminently.



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Response to the Early Childhood Education Regulatory Sector Review

**Portfolios**                      **Regulation / Education**

On 14 April 2025, following reference from the Cabinet Social Outcomes Committee (SOU), Cabinet:

- 1        **noted** that in May 2024, SOU agreed to begin the regulatory sector review of early childhood education (the Review) [SOU-24-MIN-0050];
- 2        **noted** that in March 2025, the Cabinet Expenditure and Regulatory Review Committee endorsed the Review's 15 recommendations (attached as Appendix 1 to the submission under CAB-25-SUB-0123), <sup>9(2)(f)(iv)</sup> [REDACTED] [EXP-25-MIN-0015];
- 3        **noted** that work to review licensing criteria for centres (Recommendation 9) and provide service providers with much needed regulatory relief is already underway, and is expected to be completed by quarter three of 2025;
- 4        **noted** that the paper under CAB-25-SUB-0123 responds to recommendations from the Review that require urgent amendments to the Education and Training Act 2020 (the Act) and associated secondary legislation to reform key parts of the early childhood education (ECE) regulatory system, including its purpose and objectives, the roles and functions of key agencies, and appropriate enforcement tools (Recommendations 1, 2, 3, 5, 6, and 8);

#### **Proposals 1, 2 and 3: Purpose, objectives and principles for regulating early childhood services**

- 5        **agreed** to amend section 14 of the Act to be clear that the purpose of regulating the provision of early childhood services is to 'set and implement minimum standards for the provision of quality early childhood services that allow children to establish strong foundations for learning and positive well-being, and that support the choice of parents and caregivers to participate in labour markets';
- 6        **agreed** to amend the Act to introduce new provisions to be clear that the objectives of regulating the provision of early childhood services are to:
  - 6.1        protect the health, safety, and wellbeing of children who attend early childhood services;

- 6.2 improve educational and developmental outcomes for children who attend early childhood services;
  - 6.3 support accessibility and choice for parents, including by providing for licensing and certification of different types of provision;
  - 6.4 provide information and improve knowledge about the quality of early childhood services, including to inform parental choice; and
  - 6.5 implement a licensing regime that provides ECE service providers and parents with certainty and clarity about the minimum standard of quality provision required of early childhood services;
- 7 **agreed** to amend the Act to introduce new provisions that establish the following guiding principles to inform regulatory decision making:
- 7.1 the health, safety, and wellbeing of children is paramount;
  - 7.2 children's learning and development is essential, and supports their readiness to transition to school;
  - 7.3 the role of parents and families in their children's education and care is respected and supported;
  - 7.4 regulatory best practice is expected of the regulator; and
  - 7.5 unnecessary regulatory cost and burden for service providers, parents and children should be avoided;

#### **Proposals 4: Clarify agency roles and responsibilities**

- 8 **noted** that the Review found ongoing confusion and tension between the way the Ministry of Education undertakes its role of regulating and supporting the sector and ERO's role of reviewing and evaluating the sector, and that this was leading to duplication and unnecessary regulatory burden for service providers;
- 9 **noted** that the Minister of Education intends to consider matters related to the roles and functions of the Ministry of Education and ERO alongside the wider reforms of the education system, and that any changes to agency roles <sup>9(2)(f)(iv)</sup>
- 10 **agreed in principle** that responsibility for licensing and certifying early childhood services under the Act and associated secondary legislation be transferred to ERO as part of the reforms outlined in paragraph 9 above, including responsibility for:
- 10.1 issuing, amending, and revoking licences and certificates;
  - 10.2 providing information, support, and guidance to service providers regarding regulatory requirements and compliance;
  - 10.3 proactive monitoring of compliance, including undertaking investigations and interventions in response to complaints, accidents and incidents where there is a breach of licensing and certification requirements;

- 10.4 enforcement of compliance, including undertaking investigations and prosecutions of offences under sections 28-30 of the Act;
- 10.5 reporting on compliance and enforcement to parents and other relevant parties;
- 10.6 sharing information on licensing, compliance, and enforcement with other agencies, including the Secretary for Education for purposes including system stewardship, management and administration of funding, and child protection; and
- 10.7 responding to complaints and appeals regarding regulatory decisions;
- 11 **agreed in principle** that as part of the proposed changes outlined in paragraph 10 above, the Ministry of Education will retain responsibility for:
  - 11.1 system performance and setting the strategic direction of the early childhood regulatory system;
  - 11.2 policy justification for legislation, regulations, and standard setting, including licensing and certification criteria;
  - 11.3 administration and oversight of legislation and regulations, including regulatory stewardship of the early childhood regulatory system;
  - 11.4 funding and purchases for early childhood services and certified playgroups, including audit and mitigating and investigating fraud;
  - 11.5 support and guidance for the early childhood sector;
  - 11.6 curriculum development and educational standard setting; and
  - 11.7 prosecutions under the Children's Act 2014;
- 12 **agreed in principle** that the transfer of regulatory functions outlined in paragraph 10 above:
  - 12.1 9(2)(f)(iv) [REDACTED]
  - 12.2 9(2)(f)(iv) [REDACTED]

**Proposal 5: Responsibility for performing regulatory functions**

- 13 **agreed** to amend the Act to establish a new statutory role of Director of Regulation that, in the first instance, is employed by and accountable to the Secretary for Education for the performance of their functions and duties;
- 14 **agreed in principle**, subject to final Cabinet decisions on paragraph 10 above, 9(2)(f)(iv) [REDACTED]:
  - 14.1 responsibility for employing the Director of Regulation will transfer to the Chief Executive of ERO; and
  - 14.2 the Director of Regulation must not also be the Chief Review Officer;

- 15 **agreed** that the Act and associated secondary legislation be amended to transfer responsibility for performing the roles and functions in paragraphs 10.1 – 10.7 above from the Secretary for Education to the Director of Regulation;

**Proposal 6: Requirement to perform regulatory functions**

- 16 **agreed** to amend the Act to introduce new provisions that specify the regulatory functions that the Director of Regulation must undertake, including:
- 16.1 performing licensing and certification functions in accordance with the Act, regulations created under sections 636 and 637 of the Act, and criteria created under sections 636(2)(b) and 637(2)(b);
  - 16.2 undertaking proactive regular risk-based monitoring and enforcement of compliance, including undertaking investigations and prosecutions as appropriate;
  - 16.3 providing information, support, and guidance to service providers regarding regulatory requirements and compliance;
  - 16.4 providing information on compliance to parents and other interested parties, and helping build their knowledge about the quality of early childhood services;
  - 16.5 responding to complaints about service provision, and undertaking investigations in response to accidents and incidents at early childhood services where appropriate;
  - 16.6 responding to complaints and appeals from service providers regarding regulatory decisions and decision-making;
  - 16.7 collecting and providing information to the Secretary for Education necessary for the Secretary to perform their role and functions, including in relation to system stewardship and monitoring, funding, and child protection;
  - 16.8 publishing and regularly updating information on its regulatory approach, including a regulatory strategy; and
  - 16.9 working collaboratively with other agencies that have a role in regulating early childhood services, including sharing information where appropriate;
- 17 **agreed** to amend the Act and associated secondary legislation to be clear that the Director of Regulation must give effect to the purpose, objectives, and guiding principles agreed in paragraphs 5, 6 and 7 above when performing their functions and duties under the Act and associated secondary legislation;
- 18 **agreed** to amend the Act to introduce new provisions that allow the Director of Regulation to delegate their functions, duties, and powers in writing, while retaining overall responsibility for how these are exercised;

**Proposal 7: Statutorily independent functions**

- 19 **agreed** to amend the Act to introduce new provisions to require the Director of Regulation to act independently from direction of the Minister when performing the following regulatory functions:
- 19.1 licensing of early childhood services and certification of playgroups;



- 19.2 enforcing compliance, including licence suspensions and cancellations, and undertaking investigations and prosecutions;

**Proposal 8: Powers of the Director of Regulation for performing regulatory functions**

- 20 **agreed** to amend the following sections of the Act to give the Director of Regulation the same powers as the Secretary for Education with respect to performing its regulatory functions for early childhood services as outlined in paragraphs 10 and 16 above:
- 20.1 section 22, to require the service provider of a licensed early childhood service to keep records and make these available to the Director of Regulation on request;
- 20.2 section 28(1)(b) and (c), to make it an offence for a service provider to cease operating a centre without telling the Director of Regulation and the Secretary for Education;
- 20.3 section 619, to enable the Director of Regulation to require, by written notice, and for the purpose of performing their functions, the service provider who operates any licensed early childhood service or any certified playgroup to provide information by a specified date; and
- 20.4 section 626(3), to enable the Director of Regulation to authorise any person who, in their opinion, is suitably qualified and trained, to exercise the powers of entry and inspection without a warrant;

**Proposal 9: Prescribing licensing criteria**

- 21 **agreed** to amend sections 636(2)(b) and 637(2)(b) of the Act, regulation 41 of the Education (Early Childhood Services) Regulations 2008, and regulation 17 of the Education (Playgroups) Regulations 2008 to provide for the Minister of Education, upon receipt of advice from the Secretary for Education and following consultation with affected parties including the Director of Regulation, to prescribe criteria to be used by the Director of Regulation to assess compliance with the minimum standards set in the regulations;
- 22 **agreed** to amend the relevant sections of the Act and regulations referred to in paragraph 21 above to require that the Secretary for Education, in providing advice to the Minister, must outline the impacts of the proposed licensing criteria, including upon whom they fall;

**Proposal 10: Graduated enforcement tools**

- 23 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to introduce new provisions that establish a set of graduated enforcement tools in addition to the existing tools that the Director of Regulation can use (alongside other non-regulatory measures) to enforce compliance with the regulations and licensing criteria, including:
- 23.1 a record of non-compliance, where a formal record is kept of an incident of non-compliance that was identified by the Director of Regulation and immediately addressed by the licence holder;
- 23.2 a written warning, specifying the non-compliance that has been identified and the remedial action that must be taken by a specified date to avoid further compliance action;

- 23.3 a written direction to comply either immediately or within a period of no more than 10 days, where non-compliance is identified that poses a health and safety risk but can be remedied safely while the service continues to operate;
  - 23.4 a requirement to engage specialist help, where the service provider must employ or engage a specialist or expert in a specified area to support them to address non-compliance;
  - 23.5 a requirement to develop, implement, and complete an improvement plan, where the service provider must, within 15 working days, set out the specific actions that will be taken to address non-compliance, including timeframes where they will implement and complete the plan, to the satisfaction of the Director of Regulation;
  - 23.6 reclassification of the licence as provisional, an existing tool whereby the status of the service licence is downgraded to provisional, and conditions are set that must be met within the timeframes specified by the Director of Regulation, or the licence is cancelled;
  - 23.7 suspension of the service licence, an existing tool whereby the service provider is prevented from operating until the Director of Regulation is satisfied compliance with the regulations has been achieved; and
  - 23.8 cancellation of the service licence, an existing tool whereby the service provider's licence to operate a service is permanently cancelled;
- 24 **agreed** to remove regulation 54A of the Education (Early Childhood Services) Regulations 2008 that provides for the Secretary for Education to direct a service provider to remedy an immediate health and safety risk;

#### **Proposal 11: Public notification of non-compliance**

- 25 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to introduce new provisions that enable the Director of Regulation to issue a public notice of non-compliance, including details of enforcement action that has been taken, if they are satisfied that this is in the public interest, and one or more of the following enforcement actions have been taken:
- 25.1 a written direction to comply either immediately or within a period of no more than 10 days;
  - 25.2 a requirement to engage specialist help; or
  - 25.3 a requirement to develop, implement, and complete an improvement plan;
- 26 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to introduce new provisions that require the Director of Regulation to issue a public notice of non-compliance, including details of the enforcement action that has been taken, if one of the following enforcement actions have been taken:
- 26.1 reclassification of the licence as provisional;
  - 26.2 suspension of the service licence; or
  - 26.3 cancellation of the service licence;

**Proposal 12 and 13: Higher threshold for provisional licence and licence suspension**

- 27 **agreed** to amend regulation 15(1) of the Education (Early Childhood Services) Regulations 2008 so that the Director of Regulation may reclassify a probationary or full licence as provisional if satisfied that the service provider has:
- 27.1 been issued with one or more of the following enforcement actions and failed to comply:
    - 27.1.1 a written direction to comply either immediately or within a period of no more than 10 days;
    - 27.1.2 a requirement to engage specialist help; and
    - 27.1.3 a requirement to develop, implement, and complete an improvement plan; or
  - 27.2 has been found to be non-compliant and has been issued with two or more of the following enforcement actions in the preceding 12 months:
    - 27.2.1 a record of non-compliance;
    - 27.2.2 a formal written warning;
    - 27.2.3 a written direction to comply either immediately or within a period of no more than 10 days;
    - 27.2.4 a requirement to engage specialist help; and
    - 27.2.5 a requirement to develop, implement, and complete an improvement plan;
- 28 **agreed** to raise the threshold that must be met to suspend a licence by amending regulation 30(1)(a) of the Education (Early Childhood Services) Regulations 2008 to require that the Director of Regulation must be satisfied, on reasonable grounds, that:
- 28.1 there is an immediate risk to the health, safety or wellbeing of children attending or participating in the service; and
  - 28.2 it is not in the children's interests that the service continues to operate;

**Financial implications**

- 29 9(2)(f)(iv) [REDACTED]
- 30 9(2)(f)(iv) [REDACTED]
- 31 9(2)(f)(iv) [REDACTED]

32 9(2)(f)(iv)

33 9(2)(f)(iv)

34 9(2)(f)(iv)

### Legislative implications

35 **noted** that the Associate Minister of Education intends to progress the amendments to the Act for paragraphs 5, 6, 7, 13, 15, 16, 17, 18, 19, 20, 21 and 22 above through the Education and Training (Early Childhood Education Reform) Amendment Bill, 9(2)(f)(iv)

36 **agreed** that the amendments to the Act outlined in paragraph 35 above will come into effect from within two months of the passing of the Education and Training (Early Childhood Education Reform) Amendment Bill;

37 9(2)(f)(iv)

38 **invited** the Associate Minister of Education to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions under CAB-25-MIN-0123;

39 **authorised** the Associate Minister of Education and the Minister of Education to make additional joint decisions on policy and drafting issues arising from the matters under CAB-25-SUB-0123, as necessary;

40 **authorised** the Associate Minister of Education to undertake public consultation on exposure draft regulations to give effect to the policies outlined in paragraphs 23 – 28 above, subject to the passing of the Bill referred to in paragraph 35 above;

41 **invited** the Associate Minister of Education to report to Cabinet with amendment regulations by December 2025;

## Response to the other recommendations of the Review

- 42 **noted** that work to respond to the Review's recommendations that involve strengthening and investing in the capability of the regulator, including workforce training, improving communication, compliance processes and support for service providers, and supporting regulatory decision making (Recommendations 7, 13, 14 and 15), including options for funding the associated costs, will be considered as part of the development of ERO's future operating model;
- 43 **noted** that work to improve pathways for service providers to appeal regulatory decisions (Recommendation 4) will begin imminently, and work to respond to the Review's remaining recommendations, including getting the right balance of qualified staff, ensuring the person responsible requirements work, and sorting a system that works for home-based providers (Recommendations 10, 11 and 12) will begin from September 2025, once the necessary and urgent changes to the Act have been progressed;
- 44 **noted** that the Minister for Regulation and Associate Minister of Education will report to the Cabinet Expenditure and Regulatory Review Committee by December 2025 on progress to respond to the full suite of recommendations of the Review.

Rachel Hayward  
Secretary of the Cabinet