



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

Summary of Underpinning Analysis: Licensing Criteria for Home-Based Education and Care Services Amendment Notice 2026

Agency responsible	Ministry of Education
Portfolio	Early Childhood Education
Date finalised	19/08/2026

Good law-making: 9(i)

The importance of consulting, to the extent that is reasonably practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation

Inconsistency identified? NO

Summary of agency analysis

The Licensing Criteria for Home-Based Education and Care Services Amendment Notice 2026 (the amendments) should be assessed as consistent with this principle. The amendments primarily reflect legislative changes that establish the Director of Regulation at the Education Review Office (ERO), and transfer responsibility for early childhood education and care licensing and certification functions to the Director of Regulation. The Ministry previously consulted with affected stakeholders on proposals relating to the establishment of the Director of Regulation role and the transfer of ECEC regulatory functions to the Director at ERO. The amendments implement decisions resulting from those consultation processes and subsequent legislative changes and do not introduce substantive new policy settings.

Good law-making: 9(j)

The importance of carefully evaluating—

- **the issue concerned; and**
- **the effectiveness of any relevant existing legislation and common law; and**
- **whether the public interest requires that the issue be addressed; and**
- **any options (including non-legislative options) that are reasonably available for addressing the issue; and**



- **who is likely to benefit, and who is likely to suffer a detriment, from the legislation**

Inconsistency identified?

NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The issue requiring action is that references throughout the Licensing Criteria no longer accurately reflect current regulatory responsibilities following the transfer of ECEC regulatory functions to the Director of Regulation at ERO. The amendments are intended to ensure the Licensing Criteria remain accurate, operable, and aligned with existing legislation.

Good law-making: 9(k)
The importance of the responsible agency identifying and developing effective arrangements for implementing the legislation
Inconsistency identified?

NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. Subject to approval, the amendment notice will be notified in the New Zealand Gazette, published on the Ministry's website and come into force on 1 September 2026. The Ministry will update guidance materials, publish the amended Licensing Criteria, and communicate the changes to the early learning sector through He Pānui Kōhungahunga. These implementation arrangements support awareness and compliance.

Good law-making: 9(l)
Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons
Inconsistency identified?

NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The amendments are technical and are required to reflect legislative changes that have already been enacted, including the transfer of ECE regulatory functions to the Director of Regulation at ERO. The amendments do not impose new substantive obligations or costs on regulated parties, and are therefore not expected to result in costs that outweigh any benefits. Given their limited scope and nature, a detailed cost-benefit assessment has not been undertaken..

Good law-making: 9(m)
Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available



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Inconsistency identified? NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The amendments are a targeted response to legislative changes that have already been enacted and are intended to maintain the effective operation of the Licensing Criteria. While a formal options analysis has not been undertaken this is because changes do not introduce new policy settings, obligations, or requirements.

Rule of Law: 9(a)(i)

The law should be clear and accessible

Inconsistency identified? NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The amendments improve clarity by updating references to regulatory agencies and decision-makers to reflect the transfer of regulatory functions to the Director Regulation at ERO. The amended Licensing Criteria will be publicly available following notification in the New Zealand Gazette and publication on the Ministry's website.

Rule of Law: 9(a)(ii)

The law should not adversely affect rights and liberties, or impose obligations, retrospectively

Inconsistency identified? NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The amendments apply prospectively and do not adversely affect rights and liberties, or impose obligations, retrospectively.

Rule of Law: 9(a)(iii)

Every person is equal before the law

Inconsistency identified? NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. Home-based education and care services remain subject to the same minimum standards and regulatory requirements. The amendments do not alter the application of those standards and instead update references to regulatory agencies and decision-makers following the transfer of functions to the Director of Regulation at ERO.



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Rule of Law: 9(a)(iv)

There should be an independent impartial judiciary

Inconsistency identified? NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The licensing criteria establish requirements for assessing whether early childhood services meet the minimum standards for licensing. They do not affect existing rights under regulation 39 of the Regulations to appeal to a District Court with civil jurisdiction against decisions or directions of the Director of Regulation under the Education (Early Childhood Services) Regulations 2008 (Regulations), including decisions relating to compliance with the licensing criteria and associated minimum standards, and do not affect the independence or impartiality of the judiciary.

Rule of Law: 9(a)(v)

Issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion

Inconsistency identified? NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The licensing criteria are applied by the Director of Regulation in assessing whether an early childhood service meets the minimum standards required to obtain and retain a licence. The criteria do not confer an absolute or unfettered discretion but instead guide and constrain administrative decision-making by specifying the requirements that a service must meet. The amendments do not affect access to judicial review, and do not affect existing appeal rights under the Regulations.

Liberties: 9(b)

Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person

Inconsistency identified? NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The amendments are primarily technical in nature and update references to regulatory agencies and decision-makers following the transfer of early childhood education and care regulatory functions to the Director of Regulation at ERO. The amendments do not materially affect a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property.



Taking of property: 9(c)

Legislation should not take or severely impair, or authorise the taking or severe impairment of, property without the consent of the owner unless-

- **there is a good justification for the taking or severe impairment; and**
- **fair compensation for the taking or severe impairment is provided to the owner; and**
- **the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or severe impairment**

Inconsistency identified?

NOT APPLICABLE

Summary of agency analysis

The amendments do not provide for the taking or severe impairment of property.

Taxes, fees and levies: 9(d)

The importance of maintaining consistency with section 22(a) of the Constitution Act 1996 (Parliamentary control of taxation)

Inconsistency identified?

NOT APPLICABLE

Summary of agency analysis

The amendments do not impose taxes.

Taxes, fees and levies: 9(e)

Legislation should impose, or authorise the imposition of, a fee for goods or services only if the amount of the fee bears a proper relation to the cost of providing the good or service to which it relates

Inconsistency identified?

NOT APPLICABLE

Summary of agency analysis

The amendments do not impose fees.

Taxes, fees and levies: 9(f)

Legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both—



- the benefits that the class of payers is likely to derive, or the risks attributable to the class, in connection with the objective or function; and
- the costs of efficiently achieving the objective or providing the function

Inconsistency identified?

NOT APPLICABLE

Summary of agency analysis

The amendments do not impose levies.

Role of courts: 9(g)

Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation
Inconsistency identified?

NO

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The amendments do not affect existing appeal rights to a District Court available under the Regulations, or otherwise alter the courts' constitutional role of ascertaining the meaning of legislation and secondary legislation.

Role of courts: 9(h)

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review
Inconsistency identified?

NOT APPLICABLE

Summary of agency analysis

The amendments should be assessed as consistent with this principle. The licensing criteria are applied within a statutory and regulatory framework that clearly identifies the powers of the Director of Regulation and the circumstances in which those powers may be exercised. The criteria are used to assess compliance with minimum standards under the Regulations, and do not limit judicial review or affect the right of appeal under the Regulations.