



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

Report: Consultation on the exposure draft of ECE regulations

To:	Hon David Seymour, Associate Minister of Education		
CC:	Hon Erica Stanford, Minister of Education		
Date:	9/09/2025	Deadline:	12/09/2025
Security Level:	In-Confidence	Priority:	Medium
From:	9(2)(a) Senior Policy Manager	Phone:	9(2)(a)
Drafter:	9(2)(a)	METIS No:	1351369

Why are we sending this to you?

- This report provides you with a final exposure draft of amendments to the Education (Early Childhood Services) Regulations 2008 for your approval and follows previous advice on this [METIS 1352043 refers].

What action do we need, by when?

- We are seeking your approval of the final exposure draft of amendments to the regulations for consultation.
- We are also seeking your approval of the proposed consultation process that is outlined in this report.
- Please return this signed report by 12 September.

Key facts, issues and questions

- The exposure draft proposes amendments to the regulations in response to recommendation 8 of the Ministry for Regulation's regulatory sector review of early childhood education.
- Subject to your approval, the Ministry will release the exposure draft for consultation.
- We recommend that consultation begin on 22 September and run for four weeks.

Alignment with Government priorities

1. This report aligns with the Coalition Government's commitment to carry out a regulatory sector review of early childhood education (ECE) and to improve the quality of ECE regulation.

Background

2. This report follows previous advice that sought joint decisions with Minister Stanford on the exposure draft of amendments to the Education (Early Childhood Services) Regulations 2008 [METIS 1352043 refers].
3. We are seeking your approval of the exposure draft for consultation. In our previous report, we advised that the Attorney General's approval to release the exposure draft would be sought before consultation. However, the Ministry's Chief Legal Advisor has now approved the release of the exposure draft in line with Cabinet Office circular CO (19) 2. This means approval of the Attorney-General is no longer required for you to approve the public consultation.
4. Subject to your approval, we will release the draft and begin consultation. This report also provides an outline of our proposed consultation process, for your approval.
5. Attached to this report is:
 - a. Annex 1: the exposure draft of the Education (Early Childhood Services) Amendment Regulations 2025 ('the Amendment Regulations'). This final version reflects your joint decisions with Minister Stanford in METIS 1352043.
 - b. Annex 2: a draft discussion document that we intend to release along with the exposure draft.
 - c. Annex 3: a summary of the key messages that will be used to inform further engagement with the sector.

Legal advice

6. The protocol for releasing draft legislation outside the Crown is set out in Cabinet Office circular CO (19) 2. This allows the Ministry's Chief Legal Advisor to approve release of draft legislation where there is no legal risk to the Crown. The Chief Legal Advisor has approved release of the exposure draft.

Proposed consultation process

7. Public consultation will include releasing a discussion document and the exposure draft in full for feedback. We recommend a four-week consultation period to begin once you have approved the exposure draft for consultation.
8. We intend for consultation to begin on Monday 22 September. We will work with your office to confirm this date. This timing will enable the Amendment Regulations to come into force shortly after commencement of the Education and Training (Early Childhood Education Reform) Amendment Bill. While this is a tight timeframe, we will continue to identify and mitigate delivery risks throughout this process.
9. We intend to conduct this consultation online. The exposure draft and other consultation materials will be published on the Ministry's website, along with information about how submitters can provide feedback. Details of the consultation will be shared through the Early Learning Bulletin, and we will engage with key sector groups.

10. A draft discussion document that outlines the proposed Amendment Regulations and includes guiding questions for submitters is attached as Annex 2. We recommend that this be released alongside the exposure draft.

Risks

11. This work programme is being undertaken at the same time as work on the Education and Training (Early Childhood Education Reform) Amendment Bill. The proposed consultation on the exposure draft follows both public submissions on the Bill and consultation on the ECE licensing criteria, as well as earlier consultation on the Ministry for Regulation's review. Fatigue from multiple consultations and different announcements could contribute to consultation burn out for the sector, and this work may be perceived as confusing. This could limit the sector's capacity and willingness to provide feedback on these proposals, creating the risk that important concerns are not identified.
12. To mitigate these risks, we are developing clear and consistent messages and consultation materials to support sector engagement as much as possible. As written submissions to the Education and Workforce Committee on the Bill have closed, there is no overlap for the between this consultation and the consultation on the Bill.

Next steps

13. We will prepare the exposure draft attached in Annex 1 for consultation, subject to your approval.
14. The table below provides a high-level timeline to enable the Amendment Regulations to come into force shortly after commencement of the Education and Training (Early Childhood Education Reform) Amendment Bill.

Key milestone	Timing
<i>Public consultation</i>	22 September – 17 October
Report to MO with consultation feedback and final policy decisions	Week commencing 10 November
LEG paper to Minister Seymour for Ministerial and departmental consultation	Week commencing 1 December
<i>Ministerial and Departmental consultation on LEG paper</i>	Early – mid December
Final LEG paper to Minister Seymour for lodging	January 2026
LEG Committee meeting, Cabinet meeting and Executive Council	February 2026
Regulatory amendments gazetted	February 2026
Regulations come into effect	March 2026

Annexes

The following is annexed to this paper:

- Annex 1: Final version of the exposure draft of Education (Early Childhood Services) Amendment Regulations 2025 [attached separately]
- Annex 2: Draft discussion document to be released with the exposure draft of Education (Early Childhood Services) Amendment Regulations 2025 [attached separately]
- Annex 3: Key consultation messages

Recommended Actions

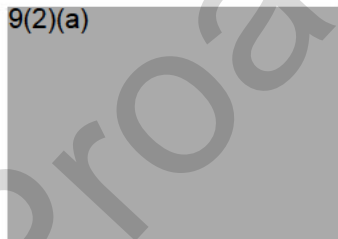
The Ministry of Education recommends you:

- a. **note** that Annex 1 of this report provides you with the exposure draft of Education (Early Childhood Services) Amendment Regulations 2025 for consultation, and that this exposure draft reflects your recent decisions made in METIS 1352043; Noted
- b. **note** that the Ministry's Chief Legal Adviser has approved the release of the exposure draft; Noted
- c. **approve** the release of exposure draft of Education (Early Childhood Services) Amendment Regulations 2025 provided in Annex 1 for public consultation; Agree / Disagree
- d. **agree** that the Ministry will undertake a four-week public consultation on the exposure draft; Agree / Disagree
- e. **agree** that as part of the consultation process, the Ministry will also release the discussion document provided in Annex 2; Agree / Disagree
- f. **note** that Annex 3 sets out the key messages that the Ministry will use during consultation; Noted

Proactive Release:

- g. **agree** that the Ministry of Education release this paper after final decisions have been made by Cabinet with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982. Agree / Disagree

9(2)(a)



Senior Policy Manager (acting)
Te Pou Kaupapahere

9/09/2025


Hon David Seymour
Associate Minister of Education

14/9/25

Annex 3: Key consultation messages

What changes are being made in response to the Ministry for Regulations review?

In June 2024, the Ministry for Regulation undertook a regulatory sector review of early childhood education (the Review). Over 2,285 submissions were received, including from parents, teachers and ECE service providers.

The Ministry for Regulation released its ECE Regulatory Review Report in December 2024. It made 15 recommendations to modernise the ECE regulatory system, simplify and clarify the ECE regulatory requirements and improve support for the ECE sector.

Recommendation 8 identified the 'blunt' nature of the current enforcement tools, which has created an overreliance on changing the status of a licence.

To address this issue, and to ensure a more proportionate approach, Cabinet has agreed to:

- introduce new graduated enforcement tools, to be used to enforce compliance with the regulations and licencing criteria;
- introduce the ability for the Director of Regulation to issue a public notification of non-compliance; and
- raise the threshold for licence reclassification and suspension.

Why do we need new enforcement tools?

The Review found that the ECE regulator's enforcement toolkit is limited and relies primarily on changing the status of a licence (i.e. reclassification as provisional, suspension or cancellation) to address a wide range of non-compliances of varying risk and complexity. The Ministry for Regulation found that these limited tools have created situations with:

- *Limited options*: the regulator is left with limited options about how to respond to non-compliances, creating situations where service providers are concerned that they may lose their licence for a minor issue.
- *Lack of transparency*: using licensing as an enforcement tool fails to clearly signal to parents and whānau the severity of the non-compliance, as it covers a broad range of issues of differing risk. This leads to a lack of transparency about why regulatory decisions have been made.
- *Lack of timeliness*: simple compliance actions can take longer than they should, elongating the process for service providers and increasing the administrative burden.

What are these enforcement tools? How will they work?

There are three key changes to how compliance will be enforced. The first is establishing new graduated enforcement tools. These include:

- *Record of non-compliance*: where a formal record is kept of an incident of non-compliance that has been subsequently rectified by the licenced service provider.
- *Written direction to remedy health and safety risk*: where non-compliance is identified that risks health and safety but can be remedied safely while the service

continues to operate. Action must occur either within 24 hours, or a longer period up to a maximum of ten working days. Timing will be specified by the Director in the written notice.

- *Formal warning:* where a warning will be issued by the Director that specifies the non-compliance, and what remedial action is required to avoid further enforcement action.
- *Specialist help:* where the Director will impose a requirement for a service provider to employ or engage specified specialist help to support them addressing a non-compliance.
- *Improvement plan:* where the Director will impose a requirement for a service provider to prepare, implement, and complete an improvement plan in relation to a specified non-compliance. The improvement plan must be approved prior to implementation.

These new enforcement tools are 'graduated' and will provide the Director of Regulation with additional ways of managing differing levels of compliance risk to ensure a more proportionate approach to non-compliance., this toolkit provides a broad range of options to address non-compliance effectively alongside the existing ability to change licence status.

The second change introduces a new provision for public notifications of non-compliance. This provision will complement the new tools, and ensure parents have access to the right information about a service provider's compliance with the regulations. There will be two types of notifications depending on the circumstances of the non-compliance, one is mandatory (requiring the Director to notify), and the other is discretionary (allowing the Director to notify).

The third change raises the threshold for licence reclassification and suspension, both of which are existing tools. This change ensures proportionality in the Director's response to non-compliance.

What about the new investigation regulation?

A new regulation has been created to address a gap created by the replacement of Regulation 15(1), that sets out new criteria for licence reclassification. This regulation will retain a way to inform parents of investigations undertaken into high-risk issues identified through complaints and reports of incidents at their service.

This new regulation will allow the Director to require that a service provider inform parents and caregivers of investigations, where appropriate. This replaces the current regulatory action of licence reclassification when a serious and high-risk complaint or incident warrants investigation. This new regulation will provide the Director a more proportionate tool that aligns well with the new graduated enforcement tools and closes a potential information gap for parents and caregivers.

When will these changes be made?

The final amendment regulations are intended to come into force from March 2026 to support the changes introduced by the Education and Training (Early Childhood Education Reform) Amendment Bill.

What opportunity will I have to provide feedback on the regulations?

Public consultation on the amendment regulations will occur from Monday 22 September 2025 to Friday 17 October 2025. We will be seeking feedback on the clarity, potential benefits and costs, and intended effect of the draft amendments. To support consultation, we will release a discussion document along with the exposure draft of amendments regulations. Submissions can be made via email or online survey. We will provide more information on consultation on the Ministry of Education website and through the Early Learning Bulletin.

When will the Government be responding to the other recommendations from the Review?

Licensing Criteria

There has been significant work to respond to recommendations from the Review. This includes work on revising the licensing criteria, with the consultation on proposed amendments, merging, or removal of criteria closing on 24 July 2025. These changes will be gazetted in September, with implementation intended for early 2026.

ECE Reform Bill

Work is underway on the Education and Training (Early Childhood Education Reform) Amendment Bill. This Bill will update and clarify the purpose, objectives, and principles of the Act, create a 'Director of Regulation' role, and clarify the Director's functions and powers. The Bill is currently being considered by the Education and Workforce Select Committee. Public submissions to the Committee close on 1 September 2025.

System Improvements

Work to respond to the Review's recommendation around appeals is ongoing (recommendation 4), and work relating more broadly to system improvements (recommendations 10, 11, 12) will begin from September 2025.

Role Clarity and Capability of the Regulator

The Minister for Regulation and Associate Minister for Education, Hon David Seymour, has announced the Government's intention to shift regulatory functions related to licensing and certificating early childhood education services from the Ministry of Education to the Education Review Office. There will need to be changes to legislation and ECE regulations before this transfer takes effect.

Work to respond to the Review's recommendations that involve strengthening and investing in the capability of the regulator (recommendations 7, 13, 14, and 15) is ongoing.