

Kindergartens Aotearoa

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ECE Regulatory Review
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Tēnā koutou katoa

Thank you for the opportunity to provide feedback to the Early Childhood Education Regulatory Review. As a collective of early childhood education (ECE) service providers operating 257 licensed services across the country¹, we have considerable experience working with the regulations across government institutions, regional councils and territorial authorities. We acknowledge the wide range of statutory requirements will be considered as part of this review, with particular scrutiny given to the Education (Early Childhood Services) Regulations 2008.

- We **unequivocally support the purpose²** of the ECE regulations to:

“... regulate an early childhood education system where all children are able to participate and receive a strong foundation for learning, positive well-being, and life outcomes by -

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

- We believe the current ECE regulations are broadly **fit-for-purpose**.
- We believe it is the **interpretation and application** of the ECE and wider regulations that is problematic and can be ‘burdensome’ for service providers.
- We believe the review provides an opportunity to **improve the regulations** beyond the current minimum.

¹ Our services are located in communities on the Hibiscus Coast north of Auckland, Coromandel, Bay of Plenty, Murupara, Wairoa, Napier, Taranaki, Whanganui, the Central Plateau, Horowhenua, Wairarapa, Whanganui-a-Tara, the Christchurch metropolitan area and greater Canterbury district, the West Coast, and Central and Southern Otago.

² Cl. 14, Part 2, Early Childhood Education, Education and Training Act 2020

This submission comments on the benefits of ECE and approach to the review, sets out a series of recommendations, and provides the background, rationale and examples to support our recommendations. We would welcome the opportunity to meet with the review team to discuss our submission.

1 Benefits of quality early childhood education

‘All children are born with immense potential. Quality ECE helps our children begin to realise that potential and build a strong foundation for later learning and for life ... [ECE] standards are amongst the highest in the world and almost all of our children are participating and benefitting from a rich array of relationships and experiences [in ECE].’³

The ECE curriculum Te Whāriki is central to the quality provision of ECE services. The regulations give effect to the aspirations of Te Whāriki acknowledging:

‘ ... that all children have rights to protection and promotion of their health and wellbeing, to equitable access to learning opportunities, to recognition of their language, culture and identity and, increasingly, to agency in their own lives. These rights align closely with the concept of mana.’⁴

‘For all children to benefit, the early learning system must provide high quality experiences across a range of provision types valued by parents and whānau.’⁵ The Ministry of Education sites multiple studies evidencing the benefits of young children and whānau participating in ECE⁶. The research shows:

- links to better social outcomes for children when they are older such as higher earning, reduced reliance on welfare programmes and lower crime rates;
- better education and vocational gains and a reduction in social inequalities in academic performance in adulthood;
- for children with low socio-economic backgrounds better social interactions, emotional maturity, and better learning abilities;
- better social and emotional skills before starting school and children performing better in maths, reading, communication and logical problem solving during their primary and adolescent years.

The evidence clearly shows the benefit of participation in quality ECE is both a private and a public good in the same way as participating in primary, secondary or tertiary education is. The benefits relate directly to the outcomes the government is looking to achieve across the education system.

³ Ministry of Education (2017) *Te Whāriki. He whāriki mātauranga mō ngā mokopuna o Aotearoa. Early Childhood Curriculum.* p2

⁴ Ministry of Education (2017) *Te Whāriki. He whāriki mātauranga mō ngā mokopuna o Aotearoa. Early Childhood Curriculum.* p12

⁵ Ministry of Education (2019) *He Taonga te Tamaiti. Early child a taonga. Early learning action plan 2019 - 2029. Summary*

⁶ Te Tāhuhu o te Mātaranga (May 2024) *Education Counts. Education Indicator, Early Learning Participation* https://www.educationcounts.govt.nz/_data/assets/pdf_file/0003/208713/Early-learning-participation-Indicator-report.pdf

The benefits of quality ECE are no ‘accident’ or happen by chance. They are directly related to the policy and regulatory settings introduced over time to create and support the conditions necessary to realise those benefits for tamariki, whānau, communities and society.

2 Approach to the review

We understand the *purpose* of the ECE regulations as stated in legislation is not up for debate as part of the review, rather it is the specific regulations giving effect to that purpose, that is the focus of the review.

The regulations are in place to ensure the legislative purpose and the policy governing the sector is reflected, maintained and adhered to by licensed service providers. The review cannot and should not be a defacto policy setting process. The review will need to ensure the integrity of current policy and policy settings is not affected or undermined, and ensure that recommendations do not seek to influence or shape policy settings.

We note the review is “... taking a principles-based approach applied to assess regulatory systems against standards based on the Government Expectations for Good Regulatory practice, the Regulatory Standards Bill, and the OECD guidance on good practice for reviewing regulations.”⁷ This approach introduces a technical lens to the review and prompts the question ‘who’s interests are served’ in applying the principles. Given the purpose of the regulations is to serve the interests of children, we seek assurance that this is the perspective used by the review team in administering its task.

Children are the focus of the current ECE regulations and must remain central to any examination or assessment of regulations and statutory parameters and practice. Not to do so, places children’s wellbeing and learning at unacceptable risk. The best interests of children must be the priority for regulatory settings and take precedent over any other matter.

3 Service specific legislative requirements

While there are a number of regulations - not all apply to all services, and although they may look complex as a whole, each service knows the regulations applicable to its service and what is required of them. The legislative provisions recognise the history of ECE services, bringing together what were three separate sets of regulations administered by three separate government agencies⁸. The current regulatory and licensing framework recognises the historical context, with service specific provisions.

Kindergartens are bound by additional provisions in the Education and Training Act 2020 with associations being named in the schedule and included as an ‘education service’. Kindergarten teachers are covered by the Public Sector Act with the Ministry of Education

⁷ Ministry for Regulations (May 2024) *Terms of reference for the regulatory sector review of early childhood education review*

⁸ Department of Education (playcentre and kindergarten), Department of Social Welfare (childcare, now education and care services) and Department of Māori Affairs (ngā kohanga reo)

having delegated authority to bargain teachers' terms and conditions. These legislative provisions do not get in the way of associations meeting their regulatory obligations, arguably they support associations to better meet them eg: employing qualified, registered and certificated teachers meets the '... standard to support quality provision and learning.'

4 Recommendations

- That the 'best interests of children' remain paramount in the determination of regulations.
- That any changes proposed to the ECE regulations be assessed against the legislative purpose statement to ensure that they uphold standards to support quality provision and learning, the health, safety, and well-being of children, and enable parental choice by providing for licensing and funding of different types of provision.
- That the regulations be improved to give effect to the recommendations in *He Taonga te Tamaiti* to lift the requirement for 50% qualified teachers to 80% immediately, with a view to increasing to 100% by 2027, and improve ratios particularly for children under three years of age.
- That regulatory agencies be required to ensure consistent interpretation and application of regulations and where there is a difference within the agency itself, the agency determine an agreed interpretation and application.
- That the Ministry for Regulation establish a service to negotiate with local and central government institutions including district and territorial authorities to reach a final decision where different requirements are set by the agencies on the same matter.
- That the Ministry of Education work with the ECE sector to review and co-design the ECE licensing criteria to ensure the interpretation and application of the criteria is consistent, fair and reasonable across ministry regions.
- That ECE services undertake a licensing review every five years in addition to those taking place where there is a change of owner or a complaint.
- That the requirement for the 'contact person' to live locally be removed.
- That the regulation in place for the restraint of children be extended to ECE and the guidelines for schools be reviewed to include the unique ECE environment.

5 Best interests of children

We recommend the ‘best interests of children’ remain paramount in the determination of regulations.

ECE serves our youngest and most vulnerable citizens. Research evidence is unequivocal that what happens in a child’s first five years lays the foundation for life. As a society, we expect where children are independent of their parents, caregivers and whānau that their learning and development is nurtured and progressed, and that they are safe and well-cared for. Where children spend time in an ECE service regardless of the hours a week they attend, we have a social and moral obligation to ensure they thrive.

6 Purpose of the ECE regulations

We recommend any changes proposed to the regulations be assessed against the legislative purpose statement to ensure that they uphold standards to support quality provision and learning, the health, safety, and well-being of children, and enable parental choice by providing for licensing and funding of different types of provision.

The regulations exist to protect the rights of young children to participate in early childhood education and receive a ‘strong foundation for their for learning, positive well-being, and life outcomes.’ Achieving the stated outcomes, relies on ECE services meeting accepted minimum standards and ensuring the conditions required to support quality provision and the health, safety, and wellbeing of children are in place and are maintained.

The regulations set minimum expectations of services providing a level of assurance to whānau, to the community and to the government that young children attending an ECE service - independent of their parents and caregivers - are the priority focus of that service’s provision. The regulations ensure ECE service providers are suitable to operate a service for children and are publicly accountable for the intended use of the public funding they receive.

7 Lifting standards

We recommend the regulations be improved to give effect to the recommendations in He Taonga te Tamaiti to lift the requirement for 50% qualified teachers to 80% immediately, with a view to increasing to 100% by 2027 and improve teacher:child ratios particularly for children under three years of age.

He Taonga te Tamaiti Early Learning Action Plan 2019 - 2029 (ELAP) highlighted that:

‘Every child and young person benefits from participation in learning contexts that strive for excellence, recognise and celebrate diversity, and are culturally and socially responsive.

The success of this system depends on high quality leadership and teaching, the engagement of parents, whānau and communities, and the ability of learners to exert agency in choosing meaningful learning pathways starting from the early years and throughout their life course.’⁹

The intention of the plan which reflects the purpose of the ECE regulations, includes steps to ensure a fully qualified teacher workforce in all centre-based services and to improve the ratio of teachers to children. Currently, qualifications and ratios are set at a minimum. The ELAP sought to improve the minimums to optimise the benefits of participation in ECE services.

Qualified and certificated teachers

The ELAP summarises the research findings and sector experience that:

‘Teaching qualifications are important because teacher education influences teachers’ attitudes, beliefs, skills and knowledge and supports teachers to apply principles of kotahitanga, mana tikanga, and whakamana. Initial teacher education (ITE) equips teachers to effectively implement [Te Whāriki] for all children. Teacher registration and certification provide ongoing assurance that teachers are meeting the Code of Professional Responsibility and Standards for the Teaching Profession and maintaining current knowledge of theory and practice.’

In 2002, policy¹⁰ determined that over the ensuing decade, support and resource would be available to the ECE sector reach and maintain a 100% qualified teaching workforce in centre-based services by 2012. While the policy target was removed in 2010, the rationale remained sound. Research evidence¹¹ shows in services with 100% qualified teaching - ratioed teachers holding a degree or equivalent teaching qualification - better outcomes are achieved including:

- communication with parents is intentionally about learning rather than informal;
- teachers articulated in greater detail, their teaching philosophy and practice, and the theory underpinning these;
- consistently higher rates and better quality interactions with children including shared sustained thinking.

The review provides the opportunity to align Aotearoa regulations with others in the OECD. Seventeen OECD countries require pre-primary and primary teachers to hold a bachelor’s level degree. In a further six, both require a masters. Qualified teachers:

- understand the pedagogy underpinning the curriculum to inform teaching practice;
- have knowledge and understanding of how children learn,;
- establish age appropriate learning environments to meet the learning needs of each child and promote engagement;

⁹ Ministry of Education (2019) *He Taonga te Tamaiti. Every child a taonga. Early learning action plan 2019 - 2029. Summary*

¹⁰ *Pathways to the Future: Ngā Huaraki Arataki: A 1-Year Plan for Early Childhood Education*. September 2002

¹¹ Meade, A. et al (2012) *Early Childhood Teachers’ Work in Education and Care Centres: profiles patterns and purposes*

- have knowledge and skills to assess and progress children’s learning;
- are part of a profession requiring they remain current in their practice and suitable to teach.

Ratios

Research both in Aotearoa New Zealand and internationally, has built a body of evidence on the importance of sound teacher:child ratios. Many ECE services operate above the minimum ratios particularly for children under three years old because of the known benefits. Good ratios facilitate good relationships and meaningful interactions - both factors being critical to optimise children’s learning and development, and to support their safety and wellbeing.

The review provides the opportunity to improve standards set out in regulation in the best interests of children’s learning and wellbeing and set the ratios 1:4 - four children under three years old to one qualified teacher.

8 Ensure consistent interpretation and application

We recommend the Ministry of Education work with the ECE sector to review and co-design the licensing criteria to ensure the interpretation and application of the criteria is consistent across ministry regions.

We recommend regulatory agencies be required to ensure consistent interpretation and application of regulations and where there is a difference within the agency itself, the agency determine an agreed interpretation and application.

We recommend the Ministry for Regulation establish a service to negotiate with local and central government institutions including district and territorial authorities to reach a final decision where different requirements are set by the agencies on the same matter.

The interpretation or application of a regulation should not cause a change to the regulation itself. Rather, the practices and behaviours of the regulatory bodies need scrutiny. Differing views and requirements within and across government agencies, and the intersection of central and local government requirements are of particular concern.

Kindergartens Aotearoa associations operate across regional and territorial authorities, most across multiple boundaries. For example, He Whānau Manaaki has services across four regional councils and 12 district authorities, and Kidsfirst has services across three regional councils and nine district authorities. While some authorities may operate the same requirements many do not, leaving service providers having to respond to the same issue in different ways.

Government agencies may have interests in the same or similar issues but from differing or competing legislative perspectives.

Example A child is deemed by a health agency to have an educational issue for example learning needs, and the ministry deems the child to have a

health issue such as seizures. Until one of the agencies takes responsibility, the child receives no support while attending the kindergarten.

Where central agencies and district authorities' regulations focus on the same matters but have differing objectives, interpretation or application, service providers not only have to navigate a complex situation they may also be prevented from having a license granted and be required to meet unplanned costs.

Example Discrepancies across local Council, Fire and Emergency, and ECE requirements regarding acceptable exterior door handle heights to enable disability access/egress as well as to ensure young children's safety and security. Both requirements are valid but it should not be left up to the ECE service provider to find a solution.

Almost all central government institutions have local or regional offices. While they operate within parameters set by the government or the institution itself, many decisions are made by the local and regional office. The interpretation and application of national policies vary and at times is contradictory leaving associations to negotiate or mediate between two divisions of the same organisation.

The Ministry of Education operates multiple levels of regulation or standard setting, including its own interpretation of how a service could/should meet statutory requirements. Working through the layers - legislation, regulation, licensing criteria, the funding handbook, and ministry guidance on its interpretation can be time consuming and overly complicated.

The ministry makes the rules to ensure an ECE service meet its statutory obligations. In ECE, the ministry's licensing criteria *are* the rules. Education Review Office (ERO) reviews include checking whether a service is compliant with the licensing criteria. The ECE regulations are given effect and monitored for compliance by the Ministry of Education and by ERO.

We have numerous examples of where the ministry's interpretation of the regulations or licensing criteria is inconsistent and contradictory or the application is unfair or unreasonable, and examples where ERO also has a conflicting view including:

Examples Three ministry regional offices were asked the same funding interpretation question relating to a national student management system, and each gave a different answer.

A new kindergarten was licensed by the ministry. Two months later ERO reviewed 11 of the association's other services and found non-compliance regarding not having safety glass film on fixed wall mirrors. ERO's findings related to not only the newly licensed and compliant kindergarten, but also to other kindergartens that ministry had licensed many years before and that had previously been reviewed - and signed off - by ERO.

9 Monitoring

We recommend ECE services undertake a licensing review every five years in addition to those taking place where there is a change of owner or a complaint.

When the ECE regulations were first introduced, ECE services were relicensed every five years. This assured the government and the sector that services remained compliant and service providers remained suitable to offer services to communities. It also meant there was a degree of consistency across the ministry given it was the only agency reviewing services against the regulatory and licensing criteria. Since that time, there has been significant change in ECE with more providers and a wider range of statutory obligations introduced. Ministry and ERO reviews could focus on different aspects of service operations which would streamline processes for services, have the potential to iron out inconsistent or contradictory advice, and provide a heightened level of quality assurance to government and to communities.

10 Streamlining requirements

Contact person

We recommend the requirement for the ‘contact person’ to live locally be removed.

It is unclear why the ‘contact person’ must reside locally. The chief executive or general manager has the delegated authority to manage all the services within the association and by role, is the contact person for the association regardless of where they reside. Associations have systems in place to contact staff and parents in an emergency such as for a service closure; the head teacher is the ‘person responsible’ in each service bound by association policy and procedures and is the local contact for the kindergarten; association chief executives and general managers are responsible and accountable to their governing board with delegated authority to manage all the association’s services and to be the employer of all staff; the chief executive and the governing board have responsibilities under the Health and Safety at Work Act 2015. Unless there is a specific reason the contact person should live locally, we believe there are sufficient checks and balances in place to assure the ministry they can make contact when needed.

Example The ministry ‘rule of thumb’ is that the contact person must reside in the ministry district. However, that is nonsensical when a contact person cannot reside east of the Kaimai ranges in respect of a service in the Coromandel but could reside in Raglan almost 200kms away.

Policy on restraint

We recommend the regulation in place for the restraint of children be extended to ECE and the guidelines for schools be reviewed to include the unique ECE environment.

The Education and Training Act 2020 sets out the parameters for restraining children and young people particularly where they are a danger to themselves or others. The ministry in consultation with the sector, parents, caregivers and whānau, and other government and community agencies, set out carefully thought-through guidelines for the schools

sector. Fit-for-purpose guidelines also need to be developed with and for the ECE sector. Teachers often find themselves in situations where they need to restrain a child. Where there are unqualified staff in a service, guidelines become even more significant. Guidelines support wise practice and keep children and staff safe.

12 Conclusion

In conclusion, we unequivocally support the purpose of the ECE regulations in legislation and believe the current ECE regulations to be broadly fit-for-purpose. Further we believe it is the interpretation and application of the ECE and wider regulations that is problematic and the lack of consistency across agencies means service providers often have to navigate complexities not of their making: this is both unfair and unreasonable.

Children are the focus of the current ECE regulations and must remain central to any examination or assessment of regulations and statutory parameters and practice. Not to do so, places children's wellbeing and learning at unacceptable risk. The best interests of children must be the priority for regulatory settings and take precedent over any other matter.

Please get back to me should you require clarification or any further information Sherryl.Wilson@kidsfirst.org.nz and we welcome the opportunity to meet with the review team in due course.

Ngā mihi nui

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