



# Regulatory Review of Early Childhood Education



**Ministry for Regulation**  
**Te Manatū Waeture**



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

ISBN: 978-0-473-73573-9 (Online)

This document is available on the Ministry for Regulation website: [regulation.govt.nz](http://regulation.govt.nz)

Crown copyright © 2024



This work is licensed under the Creative Commons Attribution 3.0 New Zealand licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to the Crown and abide by the other licence terms. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/nz/> Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981. Attribution to the Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

# Contents

Executive Summary	1
ECE regulatory review method and approach	2
Current regulation exacerbates ECE market failures	3
ECE problems are persisting due to the regulatory approach	4
ECE regulatory system settings need to be modernised	6–8
ECE regulation needs strategic leadership	9–11
ECE needs simplified requirements and modern tools	12–13
Proposed changes to licensing criteria	14
ECE regulation needs strategic leadership	15
ECE regulatory practices need to support the sector	16–17
Achieving the desired outcomes requires strategic change	18
Examples of the difference the ECE reforms would make	19–20

# Executive summary

New Zealanders deserve a thriving early childhood education (ECE) sector that offers the best quality of care and education to children. We trust ECE service providers to protect and educate our youngest children, and we rely on services being available and affordable so parents and whānau can participate in the labour market and contribute to the national economy. New Zealand's economy also benefits from ECE enhancing the learning outcomes of those children who attend ECE services.

Without government intervention, through both funding and regulation, the ECE sector would not meet the safety and quality expectations of New Zealanders. In this regulatory review, we found market failures in the ECE sector that place undue limits on the abilities of all parties in the system to exercise choice, particularly parents and whānau.

Parents and whānau do not have easy access to comparable information about their ECE service provider options. This means they cannot accurately judge any ECE service by factors such as health and safety risk for their child(ren) or educational quality in comparison to other available ECE services. Also, given the undersupply of ECE services in many regions, parents and whānau often have little practical choice about which ECE service to access.

We also found the ECE regulatory system is not up to the expected standard of other regulatory systems in New Zealand or ECE regulations in comparable countries. The current ECE regulatory system is causing a range of problems for ECE service providers and parents and whānau, as well as staff in regulatory roles. The main problems are: the 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 addressed.

## **The current ECE regulatory system has:**

- outdated settings, tools and practices are limiting the supply of ECE services
- excessive and confusing regulatory requirements are imposing undue compliance burdens on providers
- weak pressure on low quality ECE service providers to improve quality above minimum standards, and
- insufficient incentive for high quality ECE service providers to expand or innovate.

ECE regulations need to be carefully balanced; they must function to educate and protect children while also supporting the ongoing viability of ECE service provision. The government's response to this review also needs to balance finding ways to reduce compliance costs and administrative burdens on ECE service providers with protecting the quality of care and education for children that New Zealanders expect.

Taken together, the recommendations presented in this report chart a strategy for reforming regulatory design, leadership, capability practices and requirements. They provide directions for how to:

- modernise the ECE regulatory approach and its tools
- simplify the ECE regulatory requirements, and
- improve support for the ECE sector.

The recommendations will lift ECE regulatory capability in ways that would give clarity and practical support to ECE service providers. We need ECE service providers to have greater confidence in their ability to comply with regulatory requirements as this confidence could result in more services entering and expanding in the market to meet the demand for services. More competition in the ECE market could also drive more ECE service providers to lift their service quality above the regulated minimum standards.

We would like to thank all those who contributed to this work including all those who submitted feedback. We would also like to thank officials from across agencies in particular the Education Review Office and the Ministry of Education who have worked constructively and professionally with us through this process.

# ECE regulatory review method and approach

## How did we conduct this regulatory review?

The Ministry for Regulation is the government agency responsible for regulatory systems, while the Ministry of Education is the regulator, and the Education Review Office is responsible for reviewing and evaluating the performance of the ECE sector. This review has brought together the strengths of each party. The diagram to the right shows the sequence of the review activities. Each are described below.

**1. Review foundations:** This preliminary stage of the review involved meeting key agencies and stakeholders to understand the sector and the issues, recruiting staff, and establishing mechanisms for working with the regulatory agencies. This helped the Ministry for Regulation decide the scope, size, and approach for the review. The terms of reference were agreed by Cabinet on 5 June 2024.

### 2. Engagement:

- We established cross-agency groups. Ministry of Education and the Education Review Office representatives were on both the Steering Group (11 meetings) and the cross-agency working group (15 workshops, twice weekly in-person meetings, and daily online check-in meetings from June to November 2024).

- We met with other agencies that also regulate the ECE sector. We held face-to-face meetings with regulatory officials who also supplied information directly to the review team. We conducted a series of structured interviews and workshops guided by a set of lead questions and prompts and were designed to elicit in-depth insights into the challenges and opportunities within the current regulatory system.
- We visited 16 ECE service centres around the country. We visited education and care services, kindergartens, home-based services, kōhanga reo and puna reo, and a playcentre.
- We analysed 2,285 submissions from stakeholders. Please refer to “What submitters told the Early Childhood Education Review” (October 2024) for analysis of the submissions.

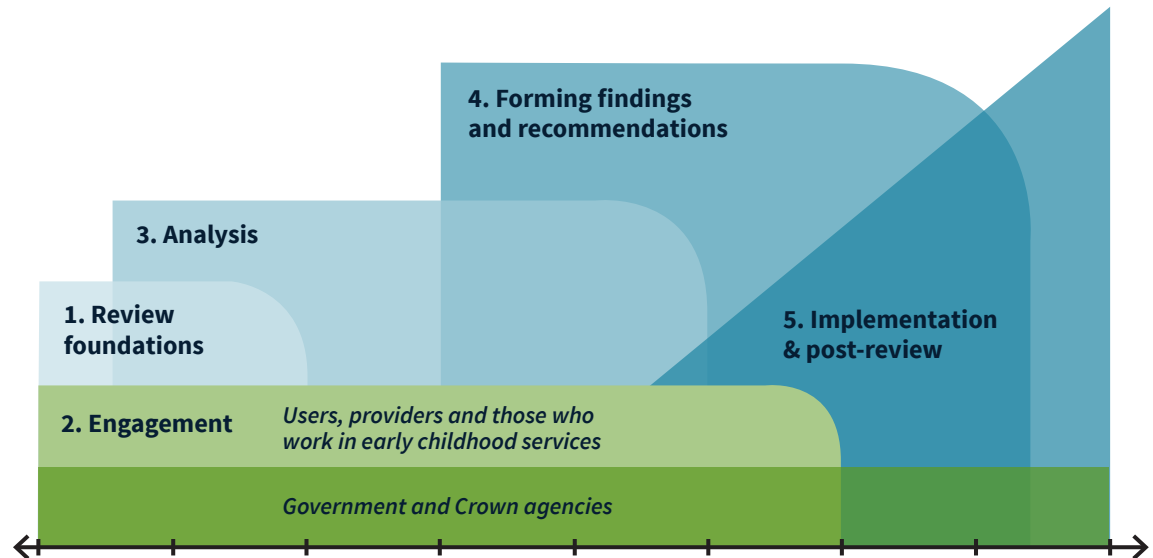
**3. Analysis:** The policy and proposal development work has been conducted primarily by Ministry for Regulation officials. Ministry of Education and the Education Review Office representatives on the working group and steering group as well as with other regulatory officials across government were consulted on analysis, findings and recommendations as needed.

### 4. Forming findings and recommendations:

The findings and recommendations in this report were tested with the cross-agency working group and steering group as well as the drafts report. Most feedback from those officials has been incorporated into the report. Agencies reserve the right to disagree with any aspect of this independent review of ECE regulation.

### 5. Implementation and post review steps:

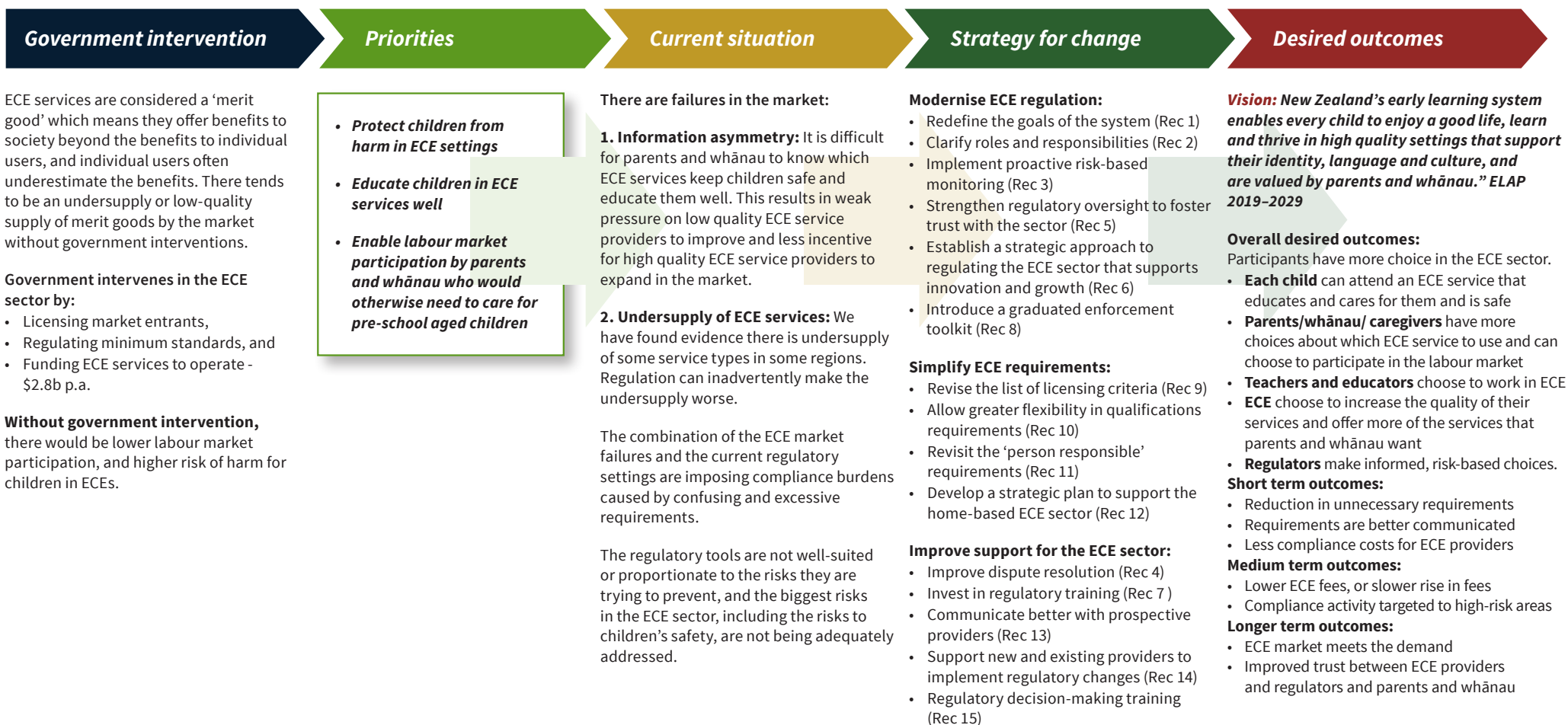
We are publishing this report to share the findings and recommendations publicly and responsible agencies will deliver ECE regulatory reforms from 2025.



# Current regulation exacerbates ECE market failures

The government’s current approach to intervening in the ECE sector is not fully achieving the desired social and economic outcomes for New Zealand.

This logic model shows the current government intervention and priorities for the ECE sector. It notes the issues we have found in the current ECE sector. The ECE regulatory review has found that the rationale for government intervention is sound; however, the desired social and economic outcomes are not being fully achieved due to the current shape of the ECE regulatory system. The logic model shows the strategy for changing the ECE regulatory system that we recommend to increase the potential for the ECE sector to achieve the desired outcomes for New Zealand.



# ECE problems are persisting due to the regulatory approach

The ECE regulatory review has answered many questions about the range of challenges in the ECE sector. The answers to these questions have been drawn from the feedback we gained in the submissions round (we received 2,285 submissions), direct engagement with stakeholders including ECE service providers, ECE teaching staff, ECE sector representatives, and officials from the range of agencies that regulate the ECE sector, primarily the Ministry of Education and the Education Review Office.

Questions	Answers	
<b>What does the government aim to achieve by regulating the ECE sector?</b>	The Education and Training Act 2020 sets out some objectives for ECE regulations related to child development and the health and safety of children. The ECE regulatory framework needs to enable accessible, high-quality services that support diverse needs. This system should minimise administrative burdens while ensuring safety, quality, and choice for families.	New Zealand’s economy benefits from working-age parents and whānau accessing early education for children if they then choose to either be employed in the labour market, operate a business, undertake academic study or vocational training, among other economic pursuits. New Zealand’s economy also benefits from ECE enhancing the learning outcomes of those children who attend ECE services.
<b>Is the regulation adequately managing the risks to children in ECE settings?</b>	No. The Ministry of Education is taking a reactive approach to compliance activity. This means it is not aware of which ECE service providers are in a state of non-compliance unless there is a complaint, an incident or a concern raised by the Education Review Office.	This means that the non-compliance that they do not hear about is tolerated and can continue for potentially long periods of time. If the non-compliance is related to health and safety standards, this can put children and ECE workforce members at risk of harm.
<b>What are the problems in the ECE market?</b>	<p><b>Excessive and confusing requirements:</b> We have found the current regulatory settings, particularly some of the licensing requirements and the way the requirements are assured by regulators, are imposing undue compliance burdens on ECE serviced providers.</p> <p><b>Information asymmetry:</b> Parents and whānau have limited access to information about their ECE service provider options.</p>	<p>This means they cannot accurately judge any ECE service by factors such as health and safety risk for their child(ren) or educational quality in comparison to other available ECE services.</p> <p><b>Undersupply:</b> There is an undersupply of ECE services, particularly in the regions. Parents and whānau often have little practical choice about which ECE service to access.</p>

Questions	Answers
-----------	---------

**Is regulation of ECE the best way to address these problems?**

**Excessive and confusing requirements:** Yes, better regulation can resolve this problem. The next four slides form a strategy for simplifying and clarifying regulatory requirements as well as creating more support for ECE service providers to comply with the requirements that protect children in ECE settings.

**Information asymmetry:** Yes, better regulatory tools and practices can ease this problem. Parents and whānau need to rely on the government to set and assure minimum standards of quality and care for ECE services. Better regulatory tools and practices can ensure non-compliance is more readily detected and addressed, and the regulator may choose to publish information about significant compliance breaches. This would increase pressure on low quality ECE service providers to improve or leave the market.

**Undersupply:** Regulation is not well suited to solving the undersupply of ECE services as it is not feasible to require ECE providers to provide services in areas that they do not want to. Fiscal levers, such as targeted subsidies, are a more suitable tool. However, we found regulation is likely to be inadvertently making the undersupply worse by making it harder for new ECE services to enter the market.



# ECE regulatory system settings need to be modernised

## Summary of problems

While the regulatory interface with markets is where problems become visible to parties, these problems often have deeper origins. To find the causes of the problems we heard about from ECE service providers in the review, we looked across the regulatory system. We found several problems originating in the ECE system settings:

**Outdated framework:** The system lacks defined goals, clear outcomes, and principles to guide decision-making, leading to inconsistencies

**Limited compliance monitoring:** There is no proactive monitoring system in place, which prevents early identification of non-compliance and heightens child safety risks. This piece is missing in the regulatory system.

**Role confusion:** The perceived overlap in roles of the Ministry of Education and the Education Review Office sometimes leads to confusion and conflicts, particularly in compliance and enforcement.

**Inconsistent complaint handling by the Ministry of Education:** Procedures for managing complaints need improvement to prevent uneven enforcement and uncertainty for providers.

## Summary of findings

**Finding 1:** The ECE regulatory system is out of date and lacks defined outcomes and objectives and principles for decision-making.

**Finding 2:** The Ministry of Education does not have an effective compliance monitoring system.

**Finding 3:** The Education Review Office has a responsibility to evaluate and report on the performance of ECE services.

**Finding 4:** The Education Review Office does not have enforcement powers or tools to intervene when they identify non-compliance in an ECE service setting.

**Finding 5:** Compliance monitoring does not take a coordinated systems view.

**Finding 6:** Confusion persists between the respective roles of the Ministry of Education and Education Review Office

**Finding 7:** The Ministry of Education's approach to managing complaints is inconsistent.

As the steward and lead regulator, the Ministry of Education needs a modern ECE regulatory system. It also needs to continually ensure the system remains fit-for-purpose as the dynamics in the sector change. Making system changes is an essential first step to find practical regulatory improvements to reduce compliance burdens on ECE service providers.

## Summary of recommendations

**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, 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.

# System settings to modernise and improve

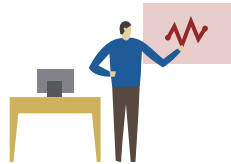
The ECE Regulations



## Primary Legislation

### Education and Training Act 2020

Establishes the framework for ECE licensing, certification, administration and offence provisions. Also contains functions for ERO and Teachers Council. Requires that licensed ECE services receive government funding



## Secondary Legislation

### Education (Early Childhood Services) Regulations 2008

Creates the tools to give effect to the primary legislation – covers granting provisional and full licenses, suspending and cancelling licenses, standards for ECE services, persons responsible. Schedules cover detailed requirements for qualifications, adult-to-child ration, service size and activity spaces

### Education (Playgroups) Regulations 2008

Certification + standards regime for playgroups



## Tools

### Licensing Criteria

Core instrument for regulating ECE service providers. In order to be granted / maintain a license, ECE providers need to achieve the criteria covering:

- Curriculum
- Premises and facilities
- Health and Safety
- Governance, management and administration

### Funding Handbook

Sets the conditions that ECE services must meet to receive funding

### Education (Early Learning Curriculum Framework)

Early Childhood curriculum



## Practice

### Education Review Office Reviews

Occur three-yearly, assesses and identifies compliance issues alongside education quality

### Ministry of Education licensing management

Assesses + manages (through approving, declining, canceling, or giving provisionally) licenses to providers

### Ministry of Education funding

Allocates funding to providers based on handbook

**In the future,** we would expect each of these system settings to be reviewed more often and aspects of the settings would be improved to ensure they remain fit for purpose to changing dynamics in the ECE sector.

# ECE regulatory system settings need to be modernised

Recommendations:	Suggested next steps to progress the recommendation:
<p><b>Recommendation 1:</b> Define clear outcomes, objectives and principles for ECE regulation in legislation, aligning with government priorities for early childhood education.</p>	<ul style="list-style-type: none"> <li>• Redefine the desired objectives for early childhood education (ECE) regulation; e.g., the need for parents and whānau to have the choice to participate in the labour market</li> <li>• Seek amendments to section 14 of the Education and Training Act 2020, and</li> <li>• Use the new purpose statement, and principles, to guide regulatory decision-making</li> </ul>
<p><b>Recommendation 2:</b> Clearly outline the roles and responsibilities of all regulatory agencies involved, ensuring efficient collaboration and accountability, and update legislation if required.</p>	<ul style="list-style-type: none"> <li>• Define roles for monitoring and enforcing compliance with the regulations, and reviewing and reporting on performance, and clarify responsibilities of agencies</li> <li>• If required, update legislation to specify the functions that agencies are expected to carry out in performing their roles, and</li> <li>• Strengthen coordination between the Ministry of Education and the Education Review Office, including reviewing the existing protocols for reporting, escalation, and follow-up on compliance issues identified by the Education Review Office.</li> </ul>
<p><b>Recommendation 3:</b> Implement a more proactive, risk-based approach to compliance to improve safety and accountability in the ECE sector.</p>	<ul style="list-style-type: none"> <li>• Evaluate the full suite of enforcement powers and legal framework</li> <li>• Improve systematic, risk-based compliance monitoring</li> <li>• Develop and implement a proactive risk-based, monitoring framework that allocates resources efficiently and considers how the use of digitization and technology can help</li> <li>• Establish a collaborative, risk-based monitoring plan between the agencies involved for high-risk ECE providers.</li> </ul>
<p><b>Recommendation 4:</b> Improve the pathways for providers to appeal regulatory decisions, ensuring fairness and encouraging trust in the regulatory process.</p>	<ul style="list-style-type: none"> <li>• Use the information from this review gathered from ECE service providers on how to improve the management of complaints, and consider whether the dispute resolution mechanism that ECE service providers can use to appeal regulatory interventions taken against them should be independent</li> <li>• Build a case management system and process to support disputes resolution, and</li> <li>• Dedicate resources to design and operate the improved disputes resolution process.</li> </ul>

## Benefits of modernising system settings

### Benefits to children, parents and whānau:

Regulatory decision-making will factor in the choice of parents and whānau to participate the labour market.

### Benefits to ECE service providers:

Compliance burdens for ECE services would be eased by:

- Reducing the overlap of regulatory requirements from different regimes
- Providing greater transparency over each regulator’s mandate in ECE, so ECE providers know which agency they need to deal with for specific matters
- Allowing reliably compliant ECE providers to enjoy a ‘trust dividend’ with a lighter touch compliance approach
- Ensuring the regulatory stewards are coordinating their compliance monitoring activities, so ECE providers do not experience an ad hoc approach from regulators, and
- Preventing the risk of regulatory creep, by focusing compliance attention on the requirements and not on the recommendations for good practice.

A more reliable disputes resolution mechanism would more efficiently, and impartially, resolve conflicts between the ECE service providers and regulators.

### Other benefits:

- Earlier detection, and resolution, of non-compliance by high risk ECE service providers which would result in less risk of harm to children, and
- ECE service providers may seek additional support from the Ministry of Education to build quality as this is likely to provide evidence that they are reliably compliant and so should be considered ‘low risk.’

# ECE regulation needs strategic leadership

## Summary of problems

We found the stewardship and leadership approach is contributing to a system that does not adequately address ECE market failures. The current stewardship and leadership approach has:

**Lack of Performance Metrics:** The regulatory system's impact isn't adequately measured, making it difficult to assess improvements or risks.

**Unclear Strategy and Priorities:** There's limited direction for regulatory activities, which leads to inconsistencies in enforcement and oversight.

**Weak Compliance Framework:** Compliance actions lack a unified strategy, and risk-based monitoring is insufficient.

**Resource Allocation Mismatch:** Regulatory resources aren't targeted to high-risk areas, causing inefficiencies.

## Summary of findings

**Finding 8:** The performance of the regulatory system is not well measured.

**Finding 9:** Limited direction and prioritisation for ECE regulatory activity.

**Finding 10:** Regulatory changes are not considered in sufficient depth.

**Finding 11:** There is no defined strategy to guide ECE compliance activity.

**Finding 12:** Regulatory functions are not aligned with desired outcomes in ECE sector.

**Finding 13:** The ECE regulatory system is a hybrid model.

**Finding 14:** There is no clear regulatory approach to achieving ECE outcomes.

**Finding 15:** ECE regulatory practice resources are not proactively targeted to areas of risk.

**Finding 16:** The Education Review Office does not have the enforcement training, tools or levers to directly address non-compliance.

**Finding 17:** There is room to improve the mix of regulatory skills and capability and sector knowledge within the agencies with a role in ECE regulation.

**Finding 18:** Workloads for staff in the agencies with a role in ECE regulation are becoming increasingly high and complex.

**Finding 19:** Training for Ministry of Education staff is inconsistent and inadequate.

After making the system changes, the next step is to improve the leadership of the ECE regulatory system in terms of its approach, strategy, decision-making, and targeting of resource.

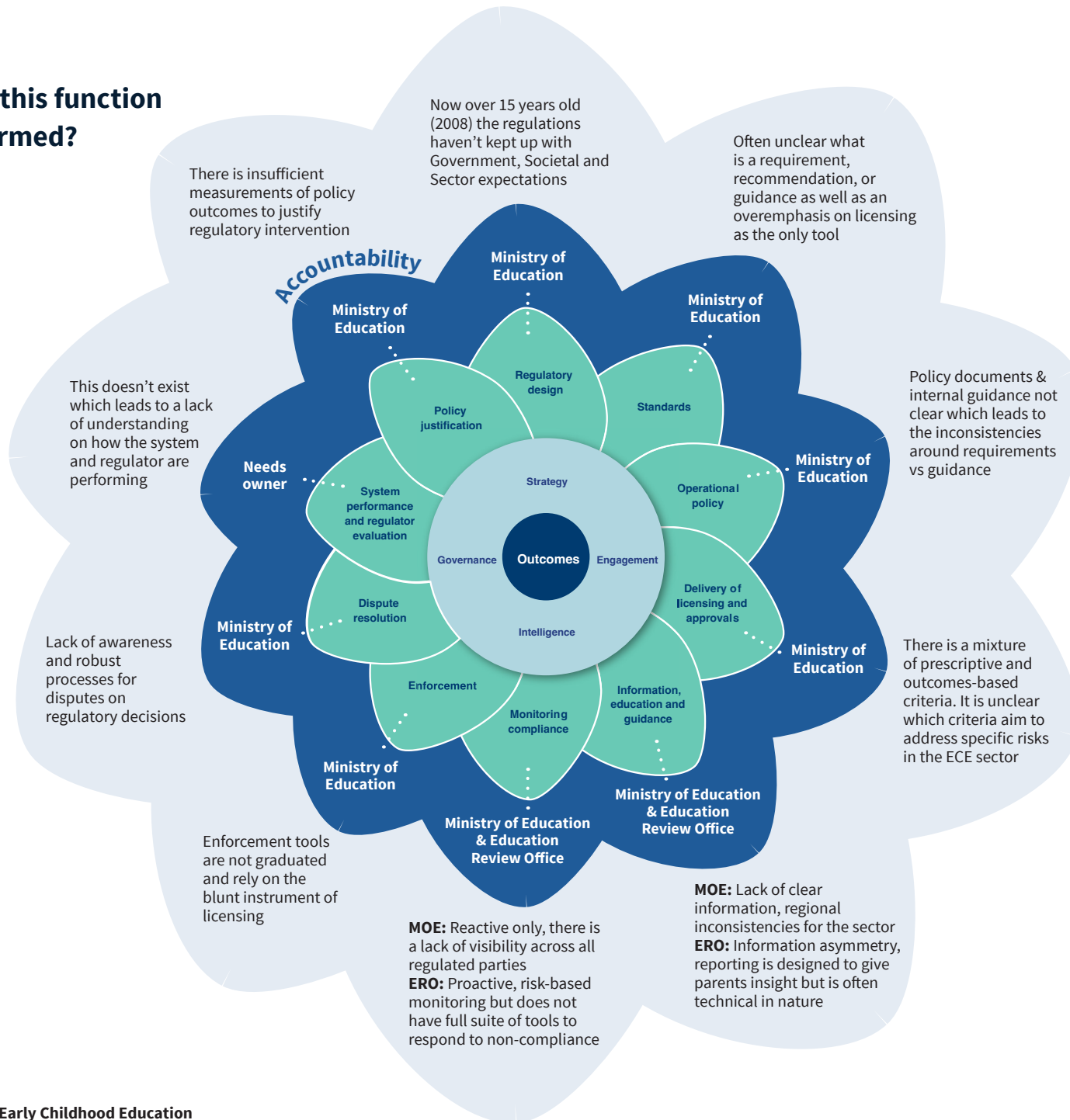
## Summary of recommendations

**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 and consistency.

# How well is this function being performed?



**In the future,** we would expect the Ministry of Education, as steward and lead regulator of the ECE system, to be continually working to improve all aspects of the regulatory functions and to resolve any risks and issues as they arise.

# ECE regulation needs strategic leadership

## Recommendations:

## Suggested next steps to progress the recommendation:

### Recommendation 5:

Strengthen regulatory oversight to foster trust, transparency, and effective sector stewardship.

- Establish performance indicators for the regulatory system with regular reporting for transparency and feedback between ECE service providers, parents and whānau, frontline staff and policy makers
- Review current practice arrangements to ensure it has the mechanisms in place to support a proactive regulatory approach and enhance stewardship, and
- Ensure all changes to regulatory requirements and licensing criteria are thoroughly assessed against policy objectives, costs, and trade-offs.

### Recommendation 6:

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

- Develop a formal ECE regulatory strategy
- Consider whether it would be preferable for the *Education and Training Act 2020* to be amended to include requirements for an ECE regulatory strategy
- Publish that strategy and report on it regularly, and
- Use the strategy and all data and information to identify areas of high risk so that resources can be targeted to early detection of serious non-compliance.

### Recommendation 7:

Invest in workforce training across agencies to improve regulatory effectiveness and consistency.

- Implement a recruitment and workforce management strategy that attracts candidates with a regulatory skillset and develop an ongoing regulatory capability training programme, and
- Improve case management systems, including technology, systems and processes.

## Benefits of improving ECE strategic leadership

### Benefits to children, parents and whānau:

Risks and issues of serious non-compliance are detected earlier which better protects the safety of children.

### Benefits to ECE service providers:

Improving strategic leadership can reduce compliance costs and administrative burdens for ECE service providers by:

- Ensuring the conflicting requirements between regulatory regimes get resolved, so ECE providers do not need to satisfy conflicting requirements
- The stewardship of the system acting to encourage ECE service providers to enter, expand and innovate, rather than acting to limit growth, and
- Upskilling staff in regulatory roles so that there is less subjective interpretation of regulatory requirements, and less regulatory creep.

A more reliable disputes resolution mechanism would more efficiently, and impartially, resolve conflicts between the ECE service providers and regulators.

### Other benefits:

By investing in training for staff in regulatory roles:

- Regulators would have better training to understand their roles, this will reduce their subjective interpretation of requirements.
- They would be better trained on how to effectively regulate the sector without imposing undue compliance costs.

# ECE needs simplified requirements and modern tools

## Summary of problems

The ECE regulatory system relies on licensing as its primary tool. Other tools are not available. This causes problems:

**Limited Tool Variety:** There is an over-reliance on licensing as a regulatory tool, with limited options for addressing varying degrees of non-compliance.

**Inflexibility in Compliance:** Current standards do not account for differences in service types, leading to unnecessary burdens on providers.

**Qualification Confusion:** Differences in the definition of a ‘qualified teacher’ contribute to regulatory misunderstandings and labour supply shortages.

**Home-Based Service Challenges:** Requirements for home-based services often don’t reflect their unique operational needs, limiting growth in this sector.

## Summary of findings

**Finding 20:** The ECE regulatory toolkit is limited and there is an over-reliance on changing licensing status to enforce compliance

**Finding 21:** Compliance activities and enforcement tools are not proportionate.

**Finding 22:** Differences in ECE definitions of ‘qualified teacher’ are causing confusion.

**Finding 23:** ECE service providers can choose to offer better adult-to-child ratios.

**Finding 24:** There are some problems with licensing criteria.

**Finding 25:** The qualification requirements contribute to ECE labour supply shortages in some areas and for some service types.

**Finding 26:** Home-based educators who are qualified teachers are currently unable to maintain their practicing certificate when working as a home-based educator.

**Finding 27:** The ‘person responsible’ requirements are causing problems in the ECE sector, including for home-based ECE services.

**Finding 28:** The ECE regulatory system is not fit for purpose for home-based ECE.

## Summary of recommendations

**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.

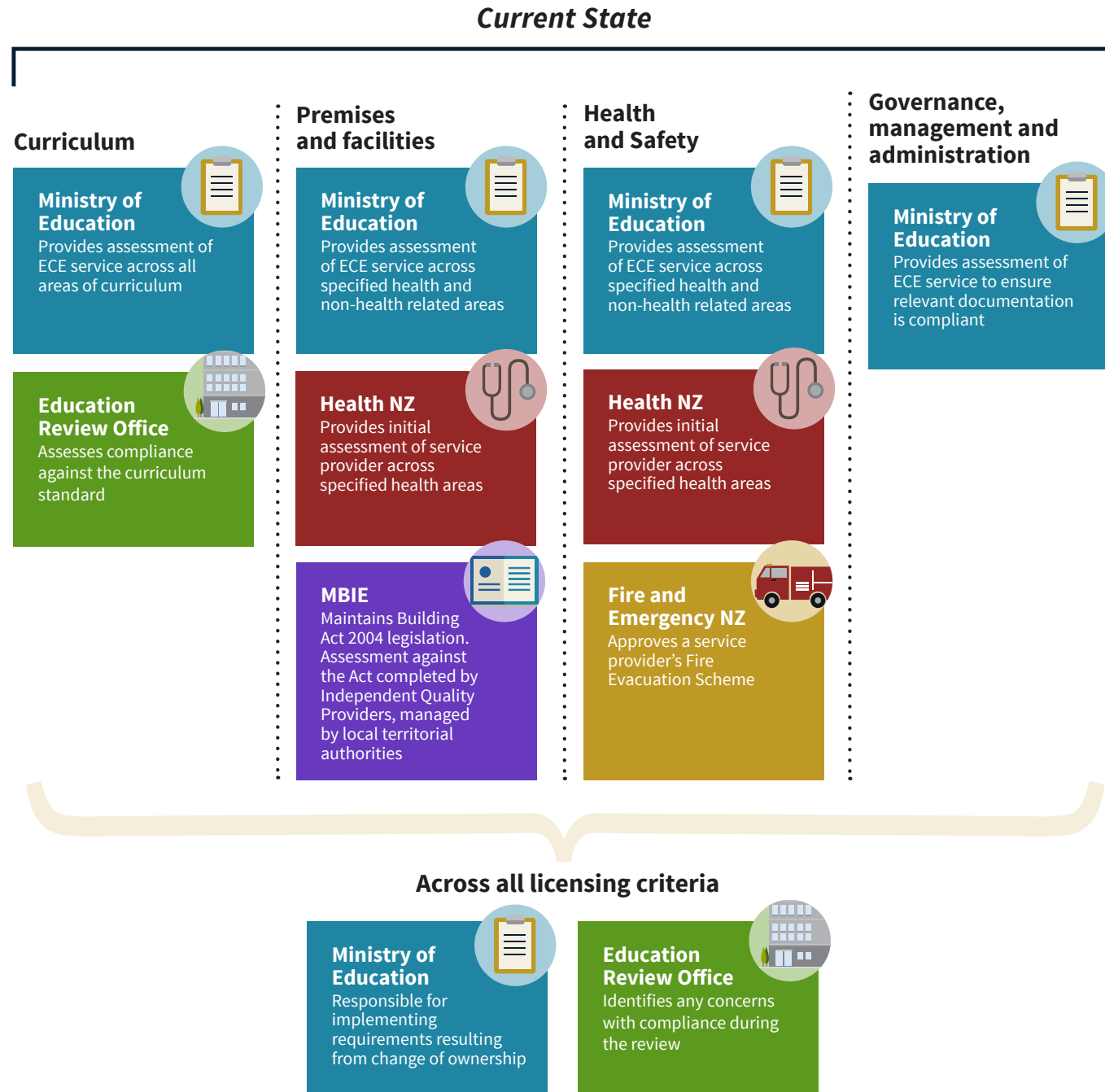
**Recommendation 9:** Revise licensing criteria to ensure they are proportionate, effective, and support quality without overburdening providers. See next slide for our proposed reduction of licensing criteria.

**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 needs.

## Many parties are engaged in ECE regulation



**In the future,** we would expect all the parties engaged in ECE regulation would have an overarching strategy, alignment between the range of regulatory requirements and modern tools.



# Proposed changes to licensing criteria

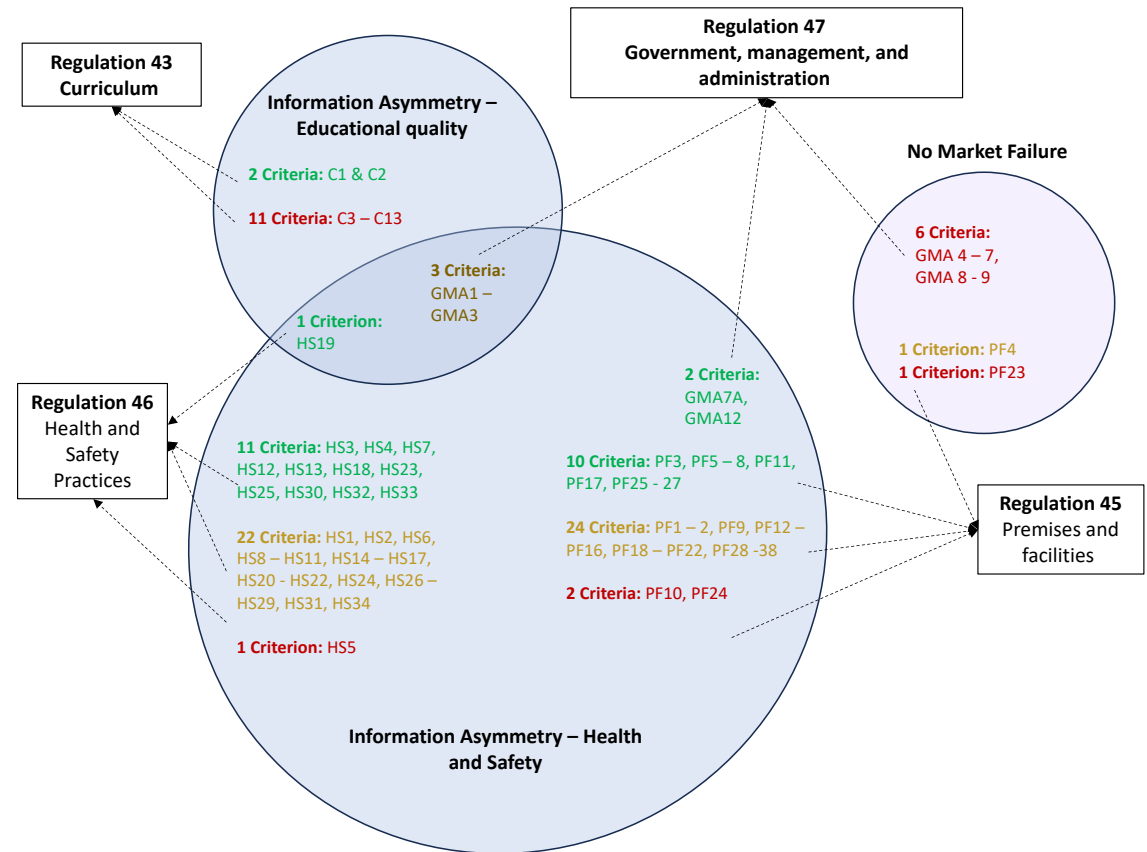
The 98 licensing criteria are intended to assess whether ECE services are meeting the regulatory standards.

- We have evaluated the licensing criteria and considered whether each of the requirements are necessary and proportionate to the risks they are managing.
- We have also mapped the requirements to the marker failures we have identified in the review (see the bubbles in the diagram).
- Our recommendations for how to reduce the licensing criteria are presented in the table below and the diagram.
- These recommendations and practical implementation require further testing and analysis by the Ministry of Education.

Recommendation	Number of Criteria (out of 98)	Percentage of Criteria
<b>Retain</b>	26	26.5%
<b>Change</b>	40 amended to reduce burdens	40.8%
	11 merged with other criteria to remove unnecessary duplication	11.2%
<b>Remove</b>	18 removed from regulatory requirements and moved into good practice guidelines	18.4%
	3 removed entirely	3.1%

## Key

- Retain the criterion
- Change the criterion
- Remove the Criterion



## Proposed change to Health (Immunisation)

**Regulations 1995:** This regulation is no longer necessary. We suggest the government revoke it at the earliest opportunity. The regulation’s primary purpose was for outbreak management; however, an alternative non-regulatory mechanism now exists for that purpose that does not rely on ECE service providers holding immunisation records. Despite the emergence of the alternative mechanism, ECE providers are still required to collect immunisation information from parents and whānau. This information collection is burdensome for parents and whānau and ECE service providers.

Market Failure	Number of Criteria
Health and Safety (Information Asymmetry)	70
Educational Quality (Information Asymmetry)	13
Information Asymmetry (Both)	4
No Market Failure	11
<b>TOTAL</b>	<b>98</b>

# ECE regulation needs strategic leadership

Recommendations:	Suggested next steps to progress the recommendation:
<p><b>Recommendation 8:</b> Update regulation to allow the development of a broader set of graduated regulatory and compliance tools to better manage varying levels of compliance risk.</p>	<ul style="list-style-type: none"> <li>• Create a broader set of graduated compliance tools, including creating sanctions that do not involve changing the status of a license</li> <li>• Consider making all enforcement actions and compliance status publicly available to provide clearer information for parents and whānau, and</li> <li>• Implement a National Enforcement Policy to ensure transparency, consistency, and proportionality in enforcement decisions.</li> </ul>
<p><b>Recommendation 9:</b> Revise licensing criteria to ensure they are proportionate, effective, and support quality without overburdening providers.</p>	<ul style="list-style-type: none"> <li>• Implement our recommendations for each of the 98 specific licensing criteria as per the table on page 14.</li> <li>• For each licensing criterion that is retained, amended or moved the regulator(s) will need to decide the level of risk and what the appropriate sanctions would be.</li> <li>• The approach to sanctions should take into account the context, such as the behaviour and willingness to comply of regulated parties.</li> <li>• This should form part of the regulator's National Enforcement Policy</li> <li>• It is likely that regulations and legislation will need to be updated to reflect these changes and provide for the new enforcement tools.</li> </ul>
<p><b>Recommendation 10:</b> Allow greater flexibility in workforce qualifications to support access and quality across all areas and service types.</p>	<ul style="list-style-type: none"> <li>• Develop options to make qualification requirements more flexible, particularly for services in rural and lower socio-economic areas, Māori and Pasifika services, and home-based services, and</li> <li>• Amend regulations to provide for new flexibility in the qualification requirements.</li> </ul>
<p><b>Recommendation 11:</b> 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.</p>	<ul style="list-style-type: none"> <li>• Develop options to unbundle the 'person responsible' requirements into two different regulated roles (that can be held by one person or different people):               <ol style="list-style-type: none"> <li>1. Leading and supervising education</li> <li>2. Service manager, and</li> </ol> </li> <li>• Amend regulations to provide for adjusted 'person responsible' requirements.</li> </ul>
<p><b>Recommendation 12:</b> Work with stakeholders to develop a strategic plan for home-based services, including provisions for rural areas and whānau with diverse needs.</p>	<ul style="list-style-type: none"> <li>• Develop a strategic plan for home-based ECE services</li> <li>• Review home-based ECE regulation to determine what changes are needed to ensure it is fit-for-purpose and proportionate to risk for low ratio service provision</li> <li>• Consider changing the ratios from 1:4 to 2:8 in a home-based setting.</li> </ul>

## Benefits

### Benefits to children, parents and whānau:

- Greater choice in ECE services if more enter and expand in the market as it has become less burdensome to do so
- Potentially greater access to home-based ECE services

### Benefits to ECE service providers:

These recommendations would ease compliance burdens by:

- Reducing the number of licensing criteria ECE providers need to demonstrate compliance against will reduce the administrative burden, and reduce the level of compliance related documentation needed to be kept up-to-date
- Relieving the stress caused by the perception that a license could be cancelled, or made provisional, in response to minor compliance breaches
- Using a range of regulatory tools which means that there are less requirements that are directly linked to changes in licensing status which can be burdensome
- Clarifying the licensing criteria so that there is less ambiguity about how to comply, and
- Changes to qualifications and person responsible requirements may make it easier for providers to find suitable staff.

### Other benefits:

- Recognition of the importance of language skills for ECE staff alongside their experience and qualifications, and
- Increase regulatory understanding and support for home-based ECE sector may inhibit the current declining trend

# ECE regulatory practices need to support the sector

## Summary of problems

We found problems in the system that are caused by how the regulatory practices are themselves conducted, rather than by systemic problems (i.e., those related to the system set up, leadership or the availability of regulatory tools). We have defined 'regulatory practices' as the operational activity of a regulator. The key problems include:

**Unclear Requirements:** Regulatory requirements are not always clearly communicated, leading to confusion among providers.

**Excessive Documentation:** The focus on paperwork diverts time from essential provider activities, impacting efficiency.

**Inconsistent Interpretation:** Different interpretations across regions lead to inconsistent enforcement, eroding trust.

## Summary of findings

**Finding 29:** Some requirements lack clarity, leading to high compliance costs.

**Finding 30:** There is a disproportionate focus on documentation as evidence of compliance.

## Summary of recommendations

**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.

## Tools to use to support the ECE sector better

### Stewardship and leadership

The Ministry of Education (MoE) has primary responsibility for stewardship of the ECE regulatory system. MoE administers the relevant legislation and regulations for ECE. The Education Review Office (ERO) is responsible for evaluating ECE service performance and assesses whether the service complies with regulatory standards.

### Capability and practice

MoE has staff in regulatory agencies responsible for licensing ECEs as they enter the market and as they continue to operate. ERO review officers visit services on a regular cycle (1 to 3 years) to assess compliance and evaluate the quality of education. MoE and ERO have regional offices for regulatory staff to develop relationships with ECEs in the region.



### Requirements and licensing

ECEs must be licensed and playgroups must be certified. All ECEs must use the ECE curriculum except for Te Kōhanga Reo (they use one developed by Te Kōhanga Reo National Trust). ECE services must comply with the ECE regulations. They must also comply with any other relevant regulations from other government agencies.

### Compliance enforcement

MoE responds to complaints, incidents and notifications. ERO managers notify MoE when they have any compliance concerns when visiting an ECE. MoE seek to support ECEs back into compliance where possible. Compliance tools include issuing a written direction to remedy immediate health and safety risks, putting an ECE on a provisional licence, suspending a licence, and, where necessary, cancelling a licence.

**In the future,** we would expect ECE service providers to trust regulators more, based on an experience of receiving proactive support from agency staff.

# ECE regulatory practices need to support the sector

Recommendations:	Suggested next steps to progress the recommendation:
<p><b>Recommendation 13:</b> Strengthen government communication and support for prospective and current ECE providers to streamline compliance processes.</p>	<ul style="list-style-type: none"> <li>Enhance the process for prospective ECE service providers to clarify the requirements with the responsible agency(ies) before setting up new ECE centres to avoid costly changes, and</li> <li>Update guidelines to make clearer explanations of the requirements available to ECE service providers.</li> </ul>
<p><b>Recommendation 14:</b> Strengthen the support to help providers implement new regulatory requirements effectively.</p>	<ul style="list-style-type: none"> <li>Tailor guidelines and support to different service types, particularly home-based and services provided in non-English mediums where staff may have English as a second language</li> <li>Develop processes to better support ECE service providers to implement changes, including by:               <ul style="list-style-type: none"> <li>Engaging more with providers to ensure changes are understood</li> <li>Improving the resources available to explain changes, and</li> <li>Staggering and sequencing changes to avoid overwhelming providers.</li> </ul> </li> </ul>
<p><b>Recommendation 15:</b> Invest in resources and training to support sound, consistent regulatory decision-making.</p>	<ul style="list-style-type: none"> <li>Improving internal knowledge-bases of ECE regulatory practices, information, education and guidance</li> <li>Provide more information for staff in regulatory roles on how and when to support an ECE service and when to enforce sanctions against an ECE service, and when to escalate so that staff in regulatory roles are aware of when it is appropriate to apply their discretion</li> <li>Improve induction and ongoing training and professional development for staff in regulatory roles, and</li> <li>Review and improve cross-regional moderation of important regulatory decisions.</li> </ul>

## Benefits

### Benefits to children, parents and whānau:

- Teaching staff can spend more time teaching children and less on compliance-related duties
- Parents and whānau would be able to access clearer information about how the regulatory requirements function to keep their child(ren) well cared for in an ECE

### Benefits to ECE service providers:

These recommendations would ease compliance burdens by:

- Upskilling staff in regulatory roles so that there is less subjective interpretation of regulatory requirements, and less regulatory creep, which will prevent staff inadvertently imposing new compliance costs on providers
- Reducing the level of documentation required to demonstrate compliance
- Providing more information about the nature and rationale of requirements and being transparent about how compliance will be assessed, and
- Assisting prospective ECE service providers to enter the market and avoid costly set up problems

### Other benefits:

- Less subjective interpretation of regulatory requirements by staff in regulatory agencies
- Well trained staff will be able to rely more on observations rather than documentation when assessing compliance in an ECE service setting, and will apply regulatory discretion in predictable and appropriate ways

# Achieving the desired outcomes requires strategic change

The strategy for change recommended in the ECE regulatory review aims to lift the quality of the existing regulatory system. This can be done by keeping what is working well, stopping the requirements and practices that are no longer suitable for the ECE sector, and starting new approaches that align with the government's expectations for good regulatory practice.

Keep – the workable systems, requirements and practices	Stop – problematic requirements and practices	Start – establishing a modern regulatory approach
<p><b>Keep – Perpetual licensing for ECE service providers</b></p> <p>ECE services have perpetual licenses. Once they are issued a license to operate, they hold that license until such time as they leave the market. Introducing fixed-term licensing would create too much uncertainty for ECE providers at this time and would increase compliance costs for regulators and ECE service providers. ECE providers that fail to meet licensing criteria could still be excluded from the sector by having their license revoked.</p> <p><b>Keep – The 26 licensing criteria that are fit for purpose</b></p> <p>There are 26 licensing criteria that focus on the health and safety of children and education quality that are essential and should remain as market entry barrier and should facilitate the market exit of irreparably non-compliant ECE service providers.</p> <p><b>Keep – The role of ECE regulation focused on protecting quality of ECE service provision by operating a compliance regime</b></p> <p>The ECE regulatory system requires modernisation to better fulfil its role to ensure that ECE service provision provides a suitable level of care and education to children. To do this, the regulatory system must retain a compliance function.</p>	<p><b>Stop – Requiring ECEs to comply with excessive requirements</b></p> <p>We have reviewed the licensing criteria and have suggestions for both reducing the number of requirements and how they are operationalised. Both aspects would reduce compliance costs.</p> <p>See page 14 for the proposals for how to reduce licensing criteria.</p> <p><b>Stop – Focusing on documentation as evidence of compliance</b></p> <p>We understand staff in regulatory roles place a disproportionate focus on paperwork which diverts time from essential provider activities, impacting efficiency. Audits could be more observational in nature.</p> <p><b>Stop – Taking disproportionate compliance action for breaches</b></p> <p>While licensing is an effective tool for allowing ECE services to enter the market, and for exiting ECE services that can no longer comply with requirements, for every other instance, it is a blunt tool.</p> <p>Minor infractions may, or are perceived to, lead to disproportionate responses by staff in regulatory roles. This is likely due to the limited range of enforcement tools and inadequate training of staff in regulatory roles. We recommend both be remedied so that actions are proportionate.</p> <p><b>Stop – Relying on reactive means to identify non-compliance</b></p> <p>By taking a reactive approach to compliance activity, the Ministry of Education is not aware of which ECE service providers are in a state of non-compliance unless there is a complaint, and incident or a concern raised by the Education Review Office.</p>	<p><b>Short term deliverables</b></p> <p>Start – Designing new enforcement tools and their use (Rec 8)</p> <p>Start – Revising down the number of licensing criteria (Rec 9)</p> <p>Start – Improving proactive risk-based compliance monitoring (Rec 3)</p> <p><b>Medium term deliverables</b></p> <p>Start – Clarifying aspects of MoE and ERO roles (Rec 2)</p> <p>Start – Strengthening regulatory oversight (Rec 5)</p> <p>Start – Establishing a formal ECE regulatory strategy (Rec 6)</p> <p>Start – Developing a strategy to support growth in home-based ECE services (Rec 12)</p> <p>Start – Training staff in regulatory roles on modern regulatory practice (Rec 7)</p> <p>Start – Supporting consistent regulatory decision-making by staff in regulatory roles (Rec 15)</p> <p>Start – Amending requirements to suit the current needs of the ECE sector, such as qualification levels and person responsible (Recs 10 and 11)</p> <p><b>Longer term deliverables</b></p> <p>Start – Considering how the legislation and regulations need to be amended to better provide for modern ECE regulation (Rec 1)</p> <p>Start – Improve the dispute resolution process (Rec 4)</p> <p>Start – Designing and implementing a mechanism to better support prospective providers enter the ECE market (Rec 13)</p> <p>Start – Supporting existing ECE providers to adapt to regulatory changes (Rec 14)</p>

# Examples of the difference ECE reforms would make

This slide presents how we expect the reform would prevent some of the high-profile issues we have seen in the ECE sector that are caused by the current regulatory approach.

Examples of issues we have heard about	How current regulation created this issue	What reforms we are proposing to prevent this	How the issue would be prevented in the future
<p><b>Regulatory overlap</b> – We have heard that there is confusion and undue administration costs caused by overlaps in regulatory regimes. For example, more than one agency is regulating ECE services for their emergency management plans. So, ECE services are twice-penalised when they are in breach of requirements of other regimes that are also included in licensing criteria</p>	<p>Emergency management standards ECE services must meet are owned by Fire and Emergency New Zealand (FENZ). The standards are also expressed in the Ministry of Education’s Licensing Criteria for ECE services. So, if the ECE is in breach of FENZ’s requirements they may also be penalised by the Ministry of Education</p>	<p>We recommend the licensing criteria be amended to only include the requirements for ECE sector entry. Other requirements, including those that relate to other regulatory regimes should either be removed or be assigned to other graduated enforcement tools</p>	<p>If an ECE service was in breach of the FENZ emergency management requirements (e.g. if their evacuation plan did not fully account for all the FENZ requirements) it would not result in a breach of the licensing criteria. Instead, the agencies involved in regulation would be informed of FENZ compliance and enforcement responses</p>
<p><b>Conflicting requirements from different regulatory regimes</b> – We have heard about conflicting requirements on ECE services. For example, two regulatory regimes have a regulatory requirement for how high an external door handle should be at an ECE service. These requirements are in conflict, and compliance with both is required for a License to operate an ECE service. ECEs are spending money moving the height of their door handles around</p>	<p>To ensure access for all, the Building Code specifies that door handles must be between 900 mm to 1200 mm above floor level. However, for an ECE service to have an exit door that cannot be locked at the height of 1200mm would allow children to exit the ECE unsupervised. A door handle higher than 1200mm would be non-compliant with the Building Code</p>	<p>We recommend that as the steward of the ECE regulatory system, the Ministry of Education should work with the stewards of other regimes to resolve the conflicting requirements so that unnecessary confusion and compliance costs are not imposed on ECE service providers and those that have a role in the regulatory system</p>	<p>When new regulatory requirements are developed that interface with the ECE sector, the responsible agencies would have a clear channel to communicate the potential changes to the lead regulator(s) (and the Ministry for Regulation) to ensure the changes are tested for any unintended consequences and potential inefficiencies in the regulation of ECE generally</p>
<p><b>Recommendations conflating with requirements</b> – We have heard that ECE services are being asked to comply with recommendations that are not regulatory requirements. For example, ECE service providers have been instructed that all laundry must be washed at 60 degrees Celsius. This is not a requirement.</p>	<p>Operational guidance from National Public Health Service regional teams suggests hot water with adequate detergent is necessary, mentioning 60 degrees Celsius as an effective temperature for cleaning nappies. This may have led to the misinterpretation that 60 degrees Celsius is a mandatory requirement for all laundering. There appears to be a lack of clear communication regarding the specific requirements for hygienic laundering (under HS2), leading to confusion and overregulation</p>	<p>As well as the amendments to licensing criteria noted above, we recommend:</p> <ul style="list-style-type: none"> <li>• All guidance for the regulatory requirements be updated and expanded</li> <li>• Those with a role in the regulatory system be better trained on the requirements, and the new enforcement tools</li> <li>• Those agencies with a regulatory role offer more support for ECE sector to implement regulatory changes</li> </ul>	<p>The guidance on the revised requirements can include recommendations for good practices, so long as they are clear about what is a requirement, and what is a recommendation.</p> <p>Those with a role in the regulatory system would be also better informed about the requirements and would communicate the requirements to ECE services during compliance visits</p>

# Another example

This slide presents another example of how we expect the reform would prevent some of the high-profile issues we have seen in the ECE sector that are caused by the current regulatory approach.

Examples of issues we have heard about	How current regulation created this issue	What reforms we are proposing to prevent this	How the issue would be prevented in the future
<p><b>Misunderstandings about how to implement multiple requirements</b></p> <p>- In submissions and onsite visits, we heard about the difficulty services have maintaining a minimum room temperature, while also complying with requirements around ventilation and keeping a door open to allow children free access to the outdoors.</p> <p>One service spent tens of thousands of dollars on heated curtains, others installed costly underfloor heating, while others paid higher than necessary energy bills as they attempted to heat the centre with an external door open in the winter.</p>	<p>There is a requirement for ECE services to maintain an indoor temperature of 18 degrees Celsius (<a href="#">HS24</a>). When considered alongside requirements to ensure sufficient ventilation (<a href="#">PF12</a>) and access a range of experiences that includes the outdoors (<a href="#">C9</a>), ECE services found it difficult to maintain the required temperature alongside these competing requirements. This is especially difficult in colder parts of New Zealand.</p> <p>According to the Ministry of Education and the Education Review Office, services have misinterpreted these requirements as the only thing that is a binary requirement is the 18 degree Celsius minimum and services do not have to have doors open all the time to be ventilated or to ensure curriculum requirements are met.</p>	<p><b>As well as the amendments to licensing criteria noted above, we recommend:</b></p> <ul style="list-style-type: none"> <li>• All guidance for the regulatory requirements be updated and expanded</li> <li>• Those who have a role in the regulatory system be better trained on the requirements, and the new enforcement tools</li> <li>• Those who have a role in the regulatory system offer more support for ECE service to implement regulatory changes</li> </ul>	<p>The guidance on the revised requirements can include recommendations for good practices, so long as they are clear about what is a requirement, and what is a recommendation.</p> <p>Those who have a role in the regulatory system would be also better informed about the requirements and would communicate the requirements to ECE service during compliance visits.</p>



**Ministry for Regulation**  
**Te Manatū Waeture**